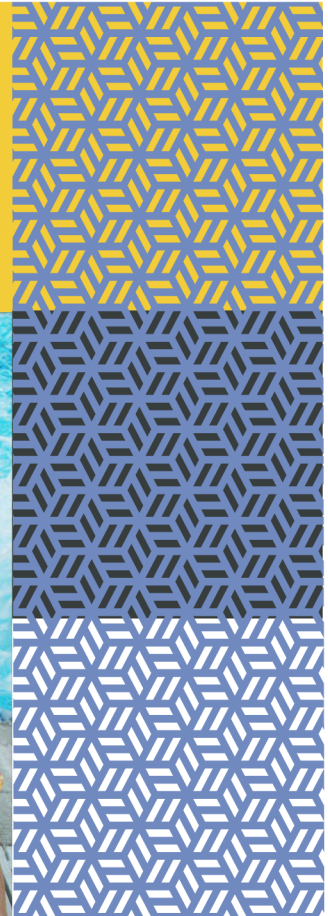
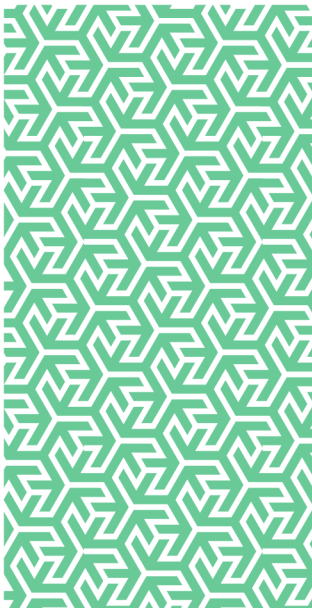


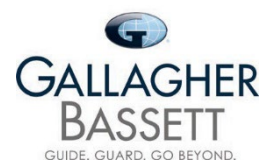


Risk control

Managing Risks associated with Swimming Pools in Education



In partnership with



Managing Risks associated with Swimming Pools in Education

Introduction

This guide relates to school's use of swimming pools (usually enclosed) as part of the everyday student activities. It considers the liability risks of Local Authorities and teachers with responsibility for the process of facilitating children swimming at local pools.

The guidance does not cover children using leisure pools as recreation, where children engage in different activities. Neither does it cover open water activities, where water is an incidental hazard (such as in canoeing, sailing or other water-based events).

The Risk

Generally, risk in respect of educational visits to swimming pools will be shared amongst different stakeholders including:

- The user - a woman won a judgment against her Local Authority after she nearly drowned during a school swimming lesson and was awarded £2m in compensation¹
- The school - liability for provision of safe infrastructure²
- Facilities providers - the legal duty on the provider to supervise activities in the pool, particularly young persons³
- Contractors and utilities - general operational and safety recommendations for the management of swimming pool water treatment systems and associated water treatment plant, and heating and ventilation systems⁴.

The Law

The Local Authority cannot exclude or restrict their liability when providing swimming lessons outside the narrow focus of the education curriculum. The *Summary of Legal Responsibilities* below has a longer explanation.

There is no specific legislation for managing swimming lessons in the public sector. The key legislation for those holding responsible positions in the provision of lessons and facilities are the Health and Safety at Work etc. Act 1974⁵, and the Occupiers' Liability Acts 1957⁶ and 1984⁷. In practice, this legislation implies a level of care for providers that are captured within the notion of 'reasonableness'. The Management of Health and Safety at Work Regulations 1999⁸ impose a legal duty on providers to carry out a 'suitable and sufficient assessment' of the risks associated with a site or activity, to document their risk assessments and to act upon them accordingly.

Local Authorities also have an overall responsibility to promote community well-being. This inevitably involves balancing a range of considerations, of which reducing adverse outcomes such as injuries are just one of a number. Whilst not covering swimming lessons specifically, the Health and Safety Executive (HSE) provides guidance on school trips and outdoor learning activities⁹.

The expectations are that:

- Schools and staff focus on real risks when planning trips
- Those organising trips understand their roles, are supported, and are competent to lead or take part
- The real risks are effectively managed during the trip
- Learning opportunities are maximised

Vicarious Liability and Non-Delegable Duties

Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. The summary of legal responsibilities below has a longer explanation.

For a long time it has been assumed that Local Authorities have been vicariously liable for the negligent actions of their employees. Of more recent times, the Supreme Court has recognised that Local Authorities could, in certain circumstances, be found liable for the negligent actions of third parties.

As Local Authorities are increasingly required to outsource services, the views of the Supreme Court place a greater importance on these organisations to ensure that third parties are reasonably competent and able to carry out services on their behalf.

Consent

It is expected that the school will follow the normal procedure of asking parents or guardians to sign a consent form when they first enrol their child. This form will cover a child's participation in any school activity that needs a higher level of risk management or that takes place outside school hours¹⁰.

Risk Assessment

The service provider should be able to provide a specific risk assessment of the location, and physical characteristics (such as pool design, safety and security, safeguarding and child protection measures) appropriate to the lesson needs.

Competency of assessment is explained in the *Summary of Legal Responsibilities* below.

Transport

If road transport is required, then road risk is an important consideration. Assurance must be gained that the driver is competent to operate the class of passenger vehicle and that the vehicle is roadworthy and meets the minimum standards laid out in any Local Authority fleet policy.

Head teachers should have suitable and sufficient training to ensure they are aware of their responsibilities regarding driving at work, and that drivers have knowledge of the existing legal and health and safety process (particularly risk assessments) regarding vehicle and driver operations.

All mini-bus drivers must have received training by a qualified safety team. New drivers should be assessed by the Local Authority's Occupational Health practitioners to ensure they meet DVLA standards of medical fitness¹¹.

Controls

The Facilities

Assess the facilities that are available before selecting the most appropriate swimming pool to meet needs and safety standards.

Suitable life-saving equipment must be provided, such as buoyancy aids and throwing ropes. These must be available, maintained in safe working order, and be clearly identifiable.

Emergency alarms, where installed, must have clear written instructions as to their use and sound distinct from any other alarms so that the sound is clearly identifiable as a pool alarm. There must be evidence that lifesaving equipment and alarms are regularly checked, maintained and tested.

Supervision

Constant supervision of children whilst at the swimming pool is essential. It is not sufficient to rely solely on the supervision of the lifeguard at the pool-side. Minimum supervision levels, as determined by risk assessment, must be met at all times, including cover for rest breaks, natural breaks, and shift changes.

Buoyancy Aids

Swim jackets that contain floats are helpful in giving children confidence in water whilst learning to swim. If they are to be used then suitability, size, and fit are important considerations. All buoyancy aids should be compliant with the relevant British Standards such as BS EN ISO 12402-6:2020 'Personal flotation devices - Special application lifejackets and buoyancy aids. Safety requirements and additional test methods'¹².

Teacher Skills

Whilst there are professional qualifications for life-guard skills, such dedicated training might be considered as too onerous for teachers and coaches providing ad hoc or weekly structured sessions. Qualifications such as the National Rescue Award for Swimming Teachers and Coaches (NRASTC)¹³ are designed for teachers working by the poolside or in the water during programmed activities. They may be regarded as an appropriate qualification when lifeguard or first aid back up is available to respond quickly in the event of an emergency.

Hygiene

There are a number of water-borne diseases and parasites associated with public swimming pools, which have the potential to affect large numbers of people before being accurately detected¹⁴. Amongst these is cryptosporidium which can infect the bowels (intestines) and cause cryptosporidiosis. This is a form of bowel infection called gastroenteritis, which leads to diarrhoea and vomiting. The parasite is protected by an outer shell that allows it to survive outside the body for long periods of time and makes it very tolerant to chlorine disinfection.

The Pool Water Treatment Advisory Group (PWTAG) provides guidance on swimming pool water quality and treatment which is recognised by enforcement authorities as the standard to be achieved in effectively managed swimming pools and a useful resource for pool operators when drawing up their operating procedures¹⁵.

First Aid

Where lifeguards are provided they must be properly qualified, with a qualification from a recognised training organisation. Pool operators must also ensure that their staff are trained in pool rescue, first aid and cardiopulmonary resuscitation (CPR) techniques.

Emergency Planning and Rescue

It is extremely unlikely that any form of emergency will arise from a well-planned lesson in a public swimming pool.

However, the risk assessment should consider such factors.

Emergency planning activities should include:

- Practice and rehearsal, as part of emergency / business continuity / recovery exercises
- Practice with the rescue services, to develop appropriate first aid measures that preserve life until the emergency services arrive on site
- Emergency response which must reflect the site location, response times and the equipment and training provided

Child Admission Policies

Establish what the child admission policies are in operation within the pool facility to ensure that appropriate categories of users are taken into account when considering risk. For instance, it would not be appropriate for very young persons to be using pool facilities alongside more advanced adult swimmers.

Safeguarding and Child Protection

Ensure that the swimming pool provider operates a changing-room policy that adheres to the safeguarding and child protection criteria set by the school. Ensure that there are sufficient staff to provide supervision of children of different ages and sexes. The CPSU offer guidance about this in relation to changing for school groups¹⁶.

Summary of Legal Responsibilities

Local Authorities have a responsibility to take **reasonable care** to avoid acts and omissions which could reasonably foreseeably injure a neighbour. *Donoghue* created the modern concept of negligence, by setting out general principles whereby one person would owe another person a duty of care. *Caparo* sets out the "three-fold test" in order for a duty of care to arise in negligence¹⁷.

No one can *exclude or restrict their liability* for the death or personal injury of another resulting from their negligence. Liability for negligence in other cases of loss or damage can be excluded or restricted only if it is reasonable to do so¹⁸.

Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment. The state of vicarious liability for Local Authorities was subject of a Supreme Court decision in 2017. In the case *NA (Armes) v Nottinghamshire County Council*¹⁹ the Supreme Court determined that a Local Authority should be fixed with vicarious liability by applying the five stage test developed through other recent cases such as *Cox v MoJ* [2016]. The majority concluded that where a non-delegable duty is sufficiently integral to the Local Authority's "business activity" and that the Local Authority had sufficient control to satisfy the relevant elements of the test. The ability of the Local Authority to pay the claim, and the fact that primary defendant would be unlikely to be able to do so, was also a factor in the court's reasoning.

Competence

The risk assessor will be a need to be competent in the risk assessment process itself, with an understanding of the approach to risk assessment and methodology used by the school. They must apply this skill to any hazards present, and identify the options available to eliminate or reduce risks and their relative merit (current and potential risk control measures). For extra-curricular activities such as swimming in a pool, the ability to identify situations where they would be unable to adequately assess the risk without help and be able to advise on the need for further assistance is also important.

Guidance on risk assessment, including competence of the risk assessor has been produced by the HSE²⁰.

References

- 1 The Guardian. *Woman gets £2m over near-drowning in school swimming lesson* | UK news | The Guardian. [ONLINE] Available at: <https://www.theguardian.com/uk-news/2016/aug/21/woman-awarded-2m-compensation-over-near-drowning-16-years-ago>.
- 2 Swim England. *Managing Your Pool* | Advice and guidance on managing swimming pools. [ONLINE] Available at: <http://www.swimming.org/swimengland/managing-your-pool/>.
- 3 Evening Standard. 2016. David Lloyd health firm fined £330,000 after child nearly drowned in Hounslow swimming pool. [ONLINE] Available at: <https://www.standard.co.uk/news/london/david-lloyd-health-firm-fined-ps330-000-after-child-nearly-drowned-in-hounslow-swimming-session-a3398711.html>
- 4 Pool Water Treatment Advisory Group. Code of Practice for Swimming Pool Water, [Online]. 2, 1-40. Available at: <https://www.pwtag.org/code-of-practice/>
- 5 Health and Safety at Work etc. Act 1974. [ONLINE] Available at: <http://www.legislation.gov.uk/ukpga/1974/37>.
- 6 Occupiers' Liability Act 1957. [ONLINE] Available at: <https://www.legislation.gov.uk/ukpga/Eliz2/5-6/31/contents>.
- 7 Occupiers' Liability Act 1984. [ONLINE] Available at: <https://www.legislation.gov.uk/ukpga/1984/3/contents>
- 8 Management of Health and Safety at Work Regulations 1999, Available at: <http://www.legislation.gov.uk/uksi/1999/3242/contents/made>
- 9 Occupiers' Liability Act 1957. [ONLINE] Available at: <https://www.legislation.gov.uk/ukpga/Eliz2/5-6/31/contents>.
- 10 HM Government. Consent for school trips and other off-site activities. [ONLINE]. Available at: <https://www.gov.uk/government/publications/consent-for-school-trips-and-other-off-site-activities>
- 11 HM Government. Minibus advice for schools [ONLINE] <https://www.gov.uk/government/publications/driving-school-minibuses-advice-for-schools-and-local-authorities/driving-school-minibuses-advice-for-schools-and-local-authorities>
- 12 BS EN ISO 12402-6:2020 Personal flotation devices - Special application lifejackets and buoyancy aids. Safety requirements and additional test methods. [ONLINE] Available at: <https://knowledge.bsigroup.com/products/personal-flotation-devices-special-application-lifejackets-and-buoyancy-aids-safety-requirements-and-additional-test-methods?version=standard&tab=preview>
- 13 Rescue awards for teachers [ONLINE] Available at: <https://www.rlss.org.uk/national-rescue-award-for-swimming-teachers-coaches-nrastc>

- 14 Recreational Water Illnesses, Centres for Disease Control and Prevention, Available at:
https://www.cdc.gov/healthywater/observances/rwipw_2008/rwi.html
- 15 Pool Water Treatment Advisory Group. Code of Practice for Swimming Pool Water, [ONLINE].
<https://www.pwtag.org/code-of-practice/>
- 16 Safe Use of Changing Facilities, Child Protection in Sport Unit, Available at: <https://thecpsu.org.uk/resource-library/best-practice/safe-use-of-changing-facilities/>
- 17 Donoghue vs Stevenson [1932] AC562 [duty of care]. [ONLINE] Available at:
<https://www.lawteacher.net/cases/donoghue-v-stevenson.php>
- 18 Unfair Contract Terms Act 1977. [ONLINE] Available at:
<https://www.legislation.gov.uk/ukpga/1977/50/contents>
- 19 Armes (Appellant) v Nottinghamshire County Council (Respondent), The Supreme Court, Available at:
<https://www.supremecourt.uk/cases/docs/uksc-2016-0004-judgment.pdf>
- 20 Health and Safety Executive, Managing risks and risk assessment at work, Available at:
<https://www.hse.gov.uk/simple-health-safety/risk/index.htm>

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

contact@rmpartners.co.uk



Risk Management Partners

The Walbrook
Building 25 Walbrook
London EC4N 8AW

020 7204 1800
rmpartners.co.uk

This newsletter does not purport to be comprehensive or to give legal advice. While every effort has been made to ensure accuracy, Risk Management Partners cannot be held liable for any errors, omissions or inaccuracies contained within the document. Readers should not act upon (or refrain from acting upon) information in this document without first taking further specialist or professional advice.

Risk Management Partners Limited is authorised and regulated by the Financial Conduct Authority. Registered office: The Walbrook Building, 25 Walbrook, London EC4N 8AW.

FP1607-2023