

Warwick District Council

Managing the risk around water bodies

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1 Introduction and purpose

The Council's general approach to the management of risk associated with open water is to incorporate it into broader risk management systems for parks and open spaces, which are described in the document "Risk Management Arrangements for Parks and Open Spaces".

Parks and open spaces have been graded on a traffic light system according to the level of risk present, and the intensity of risk management regimes varies in accordance with this grading. Recognising that open water poses a particular risk within parks, the presence of open water is weighted heavily in this grading.

The purpose of this document is to set out consistent principles to be used when carrying out risk assessments of bodies of water within parks and open spaces owned or managed by Warwick District Council.

2 Scope

This document is concerned with the Council's general duty of care to the public and to service users, and the specific statutory duty to the public under section 3 of the Health and Safety at Work Act 1974.

It is not intended to address the full scope of the Council's duty to its staff or contractors, or duties imposed by the Management of Health and Safety at Work Regulations 1999. These duties are addressed elsewhere.

3 Background

3.1 Legal requirements

3.1.1 *Introduction*

As a landowner Warwick District Council has a duty to take reasonable steps to ensure the safety of those visiting our land. These duties arise from a number of statutes, and from common and case law.

A common theme throughout these various sources is that land owners are obliged to do what is reasonable and practical, but not ensure absolute safety.

3.1.2 *Occupiers Liability Acts*

The Occupiers Liability Acts of 1957 imposes a general duty of care on occupiers to take reasonable steps to ensure the safety of their visitors – essentially anyone who is on the land with permission. The Occupiers Liability Act 1984 provides for a reduced duty of care to be owed to trespassers.

3.1.3 *Health and Safety at Work Act*

Section 3 of the Health and Safety at Work Act 1984 places a duty on an employer to "conduct his undertaking in such a way as to ensure, so far as is reasonably practical, that persons not in his employment who may be affected thereby are not exposed to risks to their health and safety".

3.1.4 *Common law duty of care*

The common law imposes a duty on everyone to take reasonable precautions to avoid causing injury to his or her neighbour. Injury that arises from failure to take such care can lead to an action for negligence against the occupier. However, in order for such an action to succeed it is necessary to show that the injury was reasonably foreseeable and that the duty was breached – that is, that reasonable steps were not taken.

The Court of Appeal in *Leakey v National Trust* defined the scope of the duty as:

"...a duty to do that which is reasonable in all the circumstances, and no more than what, if anything, is reasonable, to prevent or minimise the known risk of damage or injury to one's neighbour or to his property"

3.1.5 **Case law**

A number of important decisions of the courts contribute to the law with regard to open water and the duty of the council.

Tomlinson v. Congleton Borough Council

Tomlinson sustained a paralysing injury when diving into a shallow lake in a site owned by Congleton Borough Council. The House of Lords ruled that the plaintiff had taken the risk upon himself and that the danger was not 'due to the state of the premises'. It considered that the Council had no duty to warn about an obvious danger, or to put in place measures to prevent the plaintiff from taking the risk. Lord Hoffman said in the judgement:

"It will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land. If people want to climb mountains, go hang gliding or swim or dive in ponds or lakes, that is their affair"

Darby v National Trust

In this case it was held that there was no duty on an occupier of land to warn visitors of dangers which it could reasonably be assumed the visitor would be aware of. Lord Justice May stated

"It cannot be the duty of the owner of every stretch of coastline to have notices warning of the dangers of swimming in the sea. If it were so, the coast would have to be littered with notices in places other than those where there are known to be special dangers which are not obvious. The same would apply to all inland lakes and reservoirs. In my judgment there was no duty on the National Trust on the facts of this case to warn against swimming in this pond where the dangers of drowning were no other or greater than those which were quite obvious to any adult such as the unfortunate deceased. That, in my view, applies as much to the risk that a swimmer might get into difficulties from the temperature of the water as to the risk that he might get into difficulties from mud or sludge on the bottom of the pond."

Hampstead Heath Winter Swimming Club and another v The Corporation of London and The Health & Safety Executive (Interested Party)

The court held that if an adult swimmer with knowledge of the risk of swimming chooses to swim in a pool with permission, the risks incurred were a result of the swimmer's decision, not of the granting of permission. It follows that the risks were not the result of the conduct of an employer in his undertakings, and so the provisions of section 3 of the Health and Safety at Work Act do not apply.

3.2 Risk

3.2.1 *Acceptable risk and the concept of 'safe'*

Every aspect of life involves risk. With everything that brings benefits there are also risks. We are constantly evaluating these and making decisions as to whether or not to accept the risk in order to enjoy the benefits. For example, motor vehicles enable us to travel at much greater speeds than we can walking, but bring with them a much higher risk of injury during the journey. As a society, we accept the risks of motor vehicles in exchange for the benefits that we perceive that they bring. To keep the risks to a minimum we implement control measures to limit them, such as speed limits, regular MoT tests, driver licensing and so on.

Water bodies are no different. No pond or river is completely safe, just as no car or road is completely safe. There is always a risk. Thus the issue is not to ensure that all water bodies are safe, but to contain the risk that they pose within acceptable limits. The Royal Society for the Prevention of Accidents (RoSPA) have estimated that the risk of drowning in the UK is as low as 1 in 100,000 of the population per annum (Water UK, 1999)

A reasonable approach to managing the risk from water bodies should be based on a level of expenditure of resources that is proportionate to the risk posed. That risk will vary across different types of water body with differing levels of public access and differing patterns of usage.

Policy 1: The Council will incorporate an evidence based review of the levels of risk posed by water into its risk managements procedures, and will focus resources for improving water safety in areas where there is the highest risk of accidents.

3.3 Balancing risk and enjoyment

The Council provides open spaces principally to enable residents to visit and enjoy them. In many cases, access to open water is an essential element of recreational activities undertaken in the Council's parks.

It is important that efforts to minimise the risk to which users are exposed do not unduly affect their ability to enjoy their visit to our parks and open space. The general approach of the council will therefore be to strike a balance between controlling risk and allowing activities that access open water to continue.

3.4 The Chain of Drowning

The Royal Society for the Prevention of Accidents (RoSPA) has identified a "chain of drowning" – a series of linked events that eventually lead to drowning. Preventing drowning requires only that one link be broken, and the earlier in the chain that link is the better (Royal Society for the Prevention of Accidents, n.d.).

1. **Ignorance, disregard or misjudgement of danger**

An intervention is most successful if it breaks this first link in the drowning chain. Through education comes recognition and therefore avoidance of danger. The danger is then recognised, respected and avoided.

2. **Unrestricted access to hazards**

The counter to the second link in the drowning chain is to deny access to the hazard. This may be done by warning of danger or by otherwise preventing potential casualties from entering into danger, e.g. fencing.

3. **Absence of adequate supervision**

Absence of adequate supervision can only be countered by more competent training and application. Those who guard the lives of others can only ever be totally vigilant.

4. **Inability to save yourself, or be rescued**

If the drowning chain is still intact, and the victim has not been 'saved' while still out of the hazard, only the fourth and final link remains! Now only self rescue, or rescue by another person, can avoid the worst consequences.

RoSPA state that:

"Although rescue is a poor option in any preventative plan, this does not mean that it should not be considered and encouraged where appropriate. Other options should have greater priority because they have more chance of success"

Acknowledging the value of this approach the council will work to break the chain of drowning at the earliest link possible.

Policy 2: The Council will focus its management of risk from water on education about the risks of water and on managing access to water.

4 Approaches to controlling risk

4.1 **Education, information and training**

The first link in the chain of drowning is "Ignorance, disregard or misjudgement of danger". An important control measure is raising the general awareness of the dangers of water.

Young people are most at risk from not properly understanding the dangers of water. The council will explore ways of raising awareness amongst young people, using its relationships with schools and youth clubs, the press and its website. This will include promoting the R U A DUMMY2 initiative by RoSPA and the Environment Agency and the Wild over Waterways Safety Challenge created by British Waterways.

4.2 **Signage**

The use of warning signs can have a value in reducing risk where the hazard is not obvious. They contribute to breaking the chain of drowning at the first link, "Ignorance, disregard or misjudgement of danger". However, where hazards are clear the addition of a sign is unlikely to increase the public's awareness of the hazard significantly. Equally, the use of warning signs has little value where those exposed to the hazard are unlikely to see, read or understand the sign. Furthermore, the excessive use of signage can lead to 'sign fatigue', where signs are not read, and can significantly detract from the appearance of a park.

The use of signage will therefore usually only be considered when:

- The presence of open water is not obvious, such as steep or sudden banks which are not visible on the approach to them.
- There are unusual or non-obvious hazards present, such as unexpectedly strong currents or blue green algae. In areas where the public are invited

onto, or known to venture onto the water this will include the approaches to weirs.

- It is known that potentially hazardous activities take place, such as jumping from bridges

Policy 3: The Council will seek to provide warning signage where this is likely to have a significant effect in increasing the awareness of danger

Where signage is provided it should be clear, concise and designed to appeal to the group or groups most at risk. This will often mean that signs should conform to BS5499:2002 Part 11. However, in some circumstances where particular groups are considered to be at risk it may be appropriate to design signage with more directed impact. An example might be where teenagers are known to take part in risky activities – signs specifically designed to appeal to that age group may be more appropriate.

4.3 Access control

Managing access to water is in many circumstances an effective way of controlling risk. However, this will need to be balanced against a number of other considerations.

Activities such as fishing and boating require access to the water. Part of the experience of visiting a park may derive from the ability to get close to the water, or fencing may not be in keeping with the character of the area.

Access can be controlled in a number of ways, including robust fencing, low fences and 'knee rails', defensive planting and careful routing of paths. Where it is desirable to control access the technique most appropriate will be adopted, dependant on the level of use, the nature of the water edge and the character of the surrounding area.

Controlling access will particularly be considered as a control measure where:

- The water edge is not well defined
- There is a path adjacent to the bank and the surface is poor or slippery and fencing is preferred to changes to the surface
- There are high levels of use at pinch points adjacent to the water edge
- Water is particularly deep or the water surface is a significant distance beneath the bank
- In proximity to unfenced playgrounds

Policy 4: The Council will seek to control access to open water where doing so would not conflict disproportionately with the enjoyment of the site by visitors

4.4 Public rescue equipment

According to RoSPA, public rescue equipment (PRE) should be the control measure of last resort. It must be part of a whole strategy for drowning prevention and is not a solution in itself.

The effectiveness of PRE is dependent on a number of factors and circumstances:

- The victim has to be seen
- They must be recognised as being in difficulty
- They must remain afloat until rescue arrives

- Appropriate rescue equipment must be to hand, and in operational condition
- The rescuer must have the ability, judgement and skill to use the equipment, and to effect a rescue
- The environment must be suitable – for example bankside or marginal vegetation may affect the ability to throw a device to the victim
- The weather conditions must be favourable – for example, strong winds may hamper the ability to throw the equipment to the victim; cold will limit the amount of time available to effect a rescue.
- The victim must be able to co-operate, i.e. grasp a rescue device.

Unfortunately, most casualties are not able to wave or call for help, severely limiting the usefulness of PRE (RoSPA, 1999).

The intermittent usefulness of PRE is further complicated by its vulnerability to vandalism and theft, particularly in an urban parks environment. Furthermore, a review of research recently carried out by RoSPA and others (Walker, 2007) reveals significant problems with all forms of PRE in the context of WDC's open water:

- Life rings are difficult to throw horizontally and more useful when they can be lowered to a victim. Water levels in most WDC open water are similar to the bank levels and horizontal throws would be required.
- Throw bags are noted as being particularly vulnerable to vandalism.
- Throw buoys were found to offer no buoyancy support in water, be affected by poor throwing techniques and vulnerable to line snagging.
- Frisbee buoys had similar issues to throw buoys.
- Throwable lifejackets are not designed to be thrown to a victim already in the water and are often misunderstood by the rescuer.

Because of the vulnerability to vandalism and consequent need for regular checking it is only practical and sustainable to install PRE at a small number of high risk sites. Installation will be restricted to sites where:

- there is sufficiently high use that it is likely that a rescuer will be available to effect a rescue; and
- other conditions are such that it is likely that PRE could be deployed effectively in an emergency

and will be focused on sites meeting one or more of the following conditions:

- Sites where the public are invited onto the water.
- Sites with steeply shelving banks where the public are invited close to the water or where controlling access to the water edge is impractical or undesirable
- Sites where the public are known to engage in high risk activities

Where PRE has historically been installed at sites that do not fit these criteria it will not continue to be maintained or checked and will be removed when it becomes unserviceable.

Policy 5: The Council will provide and maintain Public Rescue Equipment (PRE) where it is practical and sustainable to do so, there is a high risk of the public getting into difficulty in the water and it is likely that PRE could be deployed effectively in the event of an incident

Where PRE is installed, the locations will be determined by the risk assessment process and will reflect likely points of access to the water and places where a rescue attempt may be safely attempted.

5 Guidance on types of water body

5.1 Introduction

This section provides comments on some specific types of water body and the risks associated with them. It is by its nature general and is intended to assist those carrying out risk assessments in understanding some of the issues associated with different type of water body.

5.2 Rivers and streams

According to figures provided by RoSPA, 31% of all incidents of accidental drowning in the UK in 2005 took place in rivers (Royal Society for the Prevention of Accidents, n.d.). This represents the highest proportion of drowning, and is nearly twice the rate of the next type of water (coastal: 17%).

Two significant rivers, the Avon and the Leam, form the setting for many of the parks within Warwick and Leamington Spa. These parks, including Jephson Gardens, Victoria Park and St Nicholas Park, are amongst the most visited open spaces in the district.

Assessments of risk from rivers should reflect the high proportion of incidents associated with them nationally, and the high levels of access at some sites.

5.3 Canals

The majority of public access to canal side locations within the district are not under the control of the Council. Tow-path walks are generally along land managed by British Waterways, although in a number of locations WDC does own land directly adjoining the tow-path.

Where land owned by the Council does directly adjoin a canal, risk should be assessed in the same way as a river.

5.4 Lakes and ponds (permanent)

There are a number of lakes or ponds within open space owned by WDC. Notable examples include Abbey Fields, Jephson Gardens and the Kingfisher Pools in Myton Fields.

On the whole lakes and ponds have a natural, vegetated edge which itself restricts access. Notable exceptions include the lake in Jephsons Gardens, which is fenced. Access is therefore restricted except in specific areas where fishing or bird feeding platforms are provided. The suitability of such platforms, and in particular the state of non slip surfaces, should be assessed as part of routine risk assessments.

5.5 Flood attenuation areas

Flood attenuation areas are areas that are designed to contain large volumes of storm water during surges in the drainage network, and then feed this back slowly into the network. They are intended to mitigate the effects of flash flooding during storms.

Flood attenuation areas have unusual characteristics in terms of risk by virtue of the fact that for much of the time they are dry. The sudden and unusual presence of water may increase certain risks, such as accidentally falling into the

water, simply because the public are not used to exercising the additional caution normally taken when walking close to water. On the other hand, the fact that most of the time there is no water clearly reduces the overall risk.

One of the greatest areas of risk from water bodies is brought about by people swimming in them to cool off during hot periods. As flood attenuation areas usually only contain water during bad weather this risk is largely absent.

5.6 Paddling pools

Paddling pools are specifically provided to enable young children to play in the water in a controlled environment. They are shallow and easy to get in and out of. They are expected to be used by toddlers under supervision of a responsible adult.

WDC paddling pools are subject to a regular inspection regime to ensure that they are fit for purpose and any risk is adequately managed (see "Risk Management Arrangements for Parks and Open Spaces").

6 Organised activities

6.1 Responsibilities of franchisees

Two boat hire franchises operate from Council land, at St Nicholas Park and Mill Gardens.

The operators of these businesses are responsible for carrying out risk assessments relating to their operations and for ensuring that all necessary control measures are in place to minimise any risk to their customers or to the general public.

6.2 Responsibilities of event organisers

A number of events that take place on or adjacent to water are run each year by external organisations. These include regattas, dragon boat races, fishing competitions and duck races.

As with all events run on Council land, the organisers are expected to ensure that robust risk assessments are in place and adequate measures have been taken to minimise the risk to event participants, spectators and the general public. The existence of these risk assessments will be checked by the Council as part of the event booking process.

7 Responsibilities

7.1 Risk assessments

Overall responsibility for risk management in parks and open spaces rests with the Sports, Parks and Leisure Manager (SPLM). The SPLM will ensure that competent staff carry out risk assessments in parks and open spaces, including assessment of the risk from water bodies, in accordance with guidance in the document "Risk Management Arrangements for Parks and Open Spaces".

7.2 Inspection of public rescue equipment

Where public rescue equipment is installed a regime of inspections will be put in place in order to maximise the likelihood that it will be in a serviceable condition when needed.

PRE will be inspected:

- At least once every three months
- Immediately prior to bank holiday weekends, other than Christmas and New Year (but allowing sufficient time for damaged or missing equipment to be replaced prior to the bank holiday weekend)
- Within 24 hours of receiving a report that it is not in a serviceable condition

Assessnet will be used to manage routine inspections. These will be carried out by Contract Services.

Where possible, the Council will seek to work with others who are regularly on the site (eg contractors or franchise holders) to supplement this inspection regime.

7.3 Inspection of signage

Where a risk assessment has identified the need for signage, the condition of that signage will be checked as part of routine site specific risk assessments carried out in accordance with the document "Risk Management Arrangements for Parks and Open Spaces"

7.4 Inspection of access control measures

Access control measures will be checked as part of routine site specific risk assessments carried out in accordance with the document "Risk Management Arrangements for Parks and Open Spaces"

8 Review of policy

This policy will be reviewed no later than May 2014 by the SPLM.

9 References

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