

A LIFEGUARD'S RESPONSIBILITY – THE LEGAL VIEW

JEANETTE HARWOOD
WALKER MORRIS

16 April 2007



OVERVIEW

- Can it happen to me?
- Criminal liability
 - Under the Health and Safety at Work Act 1974
 - For manslaughter
- Corporate Manslaughter and Homicide Act
- Facts and figures
- What can be done to reduce the risks?

Health and Safety at Work Act 1974

- No specific safety regulations for swimming pools
- Health & Safety at Work Act 1974
 - Employer's Duty
 - To do everything reasonably practicable
 - To ensure health safety and welfare
 - Of employees and third parties

‘Reasonably practicable’

- Requires a balancing exercise
- Risk against sacrifice required to avert it
- Burden of proof on defendant
- Often difficult to demonstrate

Personal Liability

- Section 7 HSWA – every employee has a duty to take reasonable care for health and safety of himself and others who may be affected by his acts at work
- Section 37 HSWA – allows prosecution of directors, managers and company officers
- Danny Phillips prosecuted under section 7

Other Legislation

- Management of Health and Safety at Work Regulations 1999
- Workplace (Health, Safety and Welfare) Regulations 1992
- Provision and Use of Work Equipment Regulations 1998
- Construction (Design and Management) Regulations 1994
- Electricity at Work Regulations 1989
- Manual Handling Regulations 1992
- Control of Substances Hazardous to Health Regulations 2002
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations
1995

Health and Safety Prosecutions



Pool death firm fined £10,000

The operators of a swimming pool have been fined £10,000 after admitting a series of safety lapses which led to the death of a four-year-old boy. Thomas Brown, of Hilton, Inverness, drowned at Inverness Aquadome on 30 September 2000.

Health and Safety Prosecutions

Council fined £75,000 after pool death

A council has been fined £75,000 after a six-year-old girl drowned in its swimming pool.

Charlotte Subuhon drowned at a birthday party held at the Chafford Sports Centre pool in Rainham, Essex.

The judge Mr Recorder Anthony Morris QC, fining the council, said:

"What is remarkable is that with up to 400 children a week attending pool parties a tragic accident such as this had not occurred in the pool before."

Health and Safety Prosecutions

Council fined £12,000 over pool tragedy

- Scarborough Borough Council were fined £12,000 and ordered to pay more than £8,000 prosecution costs in connection with the death of a teenager in a swimming pool.
- Coroner criticised lack of training for lifeguards

Health and Safety Prosecutions

Prosecutions after boy's pool death

The Health and Safety Executive prosecuted Rotherham Council and a lifeguard following the death of a boy at a leisure centre.



Sentences

- General duty under section 3 (employer)
 - £20,000 in magistrates court,
 - Unlimited fine in crown court
- Section 7 and section 37 (employee)
 - Unlimited fine
- Not imprisonable

Manslaughter

- Danny prosecuted for gross negligence manslaughter
- R v Adomako
 - Duty of care
 - Breach
 - Causation
 - Criminal

Corporate manslaughter

- Existing law
 - Duty of care
 - Breached
 - Resulting in death
 - Gross negligence
 - ‘guiding mind’ of company

Corporate Manslaughter

- Convictions
 - Jackson Transport (Ossett) Limited
 - Oll Limited
 - Keymark Services
- Acquittals
 - IMCO Plastics Limited
 - Balfour Beatty
 - Jack Robinson (Trawlers) Limited

Corporate manslaughter and corporate homicide bill

- ETA October 2007/April 2008
- Makes it easier to prosecute
- Identification principle overridden
- Replaced with management/organisational failure
- Gross negligence test

Relevant duty of care

- To employees
- As occupier of premises
- Supplier of goods or services
- Construction or maintenance operations
- Using or keeping plant, vehicle
- Any other commercial activity

Scope

- England and Wales, Scotland, Northern Ireland
- Corporations
- Partnerships
- Not individuals
- Crown Immunity does not apply

Exemptions

- Public authority decisions of public policy
- Exclusively public functions
- Statutory inspections
- Military activities
- Policing and law enforcement
- Emergency services (police, fire, ambulance)

Sanctions

- Fines
- Compensation orders
- 'Alternative sanctions' under review
- 'Corporate killer' tag

‘Nothing to fear’ ?

- Vested political interests = hunt for high profile ‘scalp’
- Don’t let it be you!
- Review compliance
 - Policy and procedure
 - Knowledge and understanding
 - Performance

Facts and figures

Year	All Drowning Deaths	All Pool Drowning Deaths*	Public Pool	Private Pool	Home Pool
1993	384	24	11	6	6
1994	448	12	6	5	1
1995	473	13	9	0	4
1996	441	10	1	4	5
1997	440	24	7	7	9
1998	568	17	4	9	4
1999	569	14	7	5	1
2000	448	13	8	2	3
2001	430	9	1	1	1
2002	427	15	8	1	1
2003*	381	12	7	2	3
Average	455	15	6	4	3

Practical tips

- Prevention, not cure
- If in doubt, clear the pool
- Lifeguard numbers

Pool Size	Area (metres squared)	Minimum Number of lifeguards	Busy conditions
20.0 x 8.5	170	1	2
25.0 x 8.5	212	1	2
25.0 x 10.0	250	1	2
25.0 x 12.5	312	2	2
33.3 x 12.5	416	2	3
50.0 x 20.0	1000	4	6

Practical tips

- Supervision
 - Scan zone in 10 seconds
 - Reach incident within 20 seconds
- Multi-tasking
- Training records
 - Employers required to assess capabilities of lifeguards and ensure adequate training

Any questions?