

## **Maritime and Coastguard Agency proposals on responsibilities for beach safety and update from the National Water Safety Forum**

### **Purpose of report**

For discussion.

### **Summary**

This paper provides a brief overview of the LGA's recent work around water safety and drowning prevention. It accompanies a presentation by Dominic Watkins from DWF legal on behalf of the Maritime and Coastguard Agency (MCA) and David Walker from the Royal Society for the Prevention of Accidents (RoSPA), who will be updating the Board on the review of beach safety and the work of the National Water Safety forum respectively.

### **Recommendation**

Members of the Safer and Stronger Communities Board are asked to note this paper and provide any further feedback.

### **Action**

Officers to take forward as directed.

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## **Maritime and Coastguard Agency proposals on responsibilities for beach safety and update from the National Water Safety Forum**

### **Background**

1. In 2018, 263 people lost their lives in accidental drownings in the UK, with hundreds more having near drowning experiences, sometimes suffering life-changing injuries. Children can be particularly at risk.
2. Strikingly, many people drowned despite having no intention of entering the water. The number of people who drowned last year while walking or running is nearly double those who drowned while swimming or having jumped or dived into open water combined. Sadly, there has also been a rise in the number of suicides in water over the past few years.
3. Whilst there has been a small increase in the number of drownings since 2017, overall deaths from accidental drowning have fallen in the last three years and the National Water Safety Forum (NWSF) who are responsible for compiling the Water Incident Database (WAID) are 'cautiously optimistic' as the downward trend continues.
4. The improved picture has been attributed in part to the NWSF's publication of the National Drowning Prevention Strategy in 2016 which set a target to 'reduce accidental drowning fatalities in the UK by 50 per cent by 2026, and reduce risk amongst the highest risk populations, groups and communities.'
5. The strategy has encouraged partners to develop a more coordinated and collaborative approach to reduce drowning and water-related harm and recent trends suggest that progress has been made in terms of keeping people informed of the risks, and that working together to prevent drowning is having an impact.
6. There is of course still more that needs to be done to tackle preventable drownings. Following the tragedy at Camber Sands in 2016, the Coroner investigating the incidents called for further work on the prevention of future deaths. In response to this the Maritime and Coastguard Agency (MCA) commissioned a review into the responsibilities for safety along our coastlines.
7. Whilst the findings of the review are yet to be published, it is likely that there will be implications on coastal authorities which will be explored later in this paper.

### **LGA work on water safety and drowning prevention**

8. The majority of LGA's work on water safety has been focused on promoting best practice and raising awareness about the dangers of water. We have also worked with the NWSF to successfully lobby the Home Office to improve data sharing.

9. Councils, as community leaders play a key role in tackling water safety. This includes working with statutory partners in the Fire and Rescue Service and police as well as water safety experts like the RNLI to assess and respond to risks locally. Councils also play a key role in educating residents about the risks posed by water.
10. There are some excellent examples of practice across the country of effective water safety partnerships, which councils play a key role in, but elsewhere these have been a challenge to set up and sustain.
11. The LGA has developed a [water safety toolkit](#) for councils, bringing together some of this good practice and providing an overview of the steps they should consider when looking at water safety in their local area. Drawing on the Royal Life Saving Society's (RLSS) work the toolkit suggests ways councils might seek to work in partnership to tackle water safety.
12. Officers keep the toolkit under review and it was recently updated to include reference to the MCA's new guidance on managing beach safety. We are planning to update the toolkit again in the Spring to include emerging good practice.
13. Councils also play a key role in raising awareness about the risks posed by water. Over the last year the LGA has used [media work](#) and [parliamentary briefings](#) to promote our call for the dangers of cold-water shock to be taught in swimming lessons, and for children to receive safety advice as part of personal, social, health and economic (PHSE) lessons.
14. Cold-water shock is the effect on the body of entering cold water (15°C or lower) which causes increased heart rate and breathlessness and is one of the main causes of drowning. This has been the focus of the RNLI's '[Respect the Water](#)' campaign.
15. Councils have developed innovative approaches to getting key water safety messages out to schools. Hampshire council have worked with the RNLI and the University of Portsmouth to create '[Stay afloat](#)' an educational resource for secondary schools suitable for Key stages 3 and 4 (years 8, 9, 10 and 11). Similarly, Durham council has developed a local campaign called '[Dying-to-be-Cool](#)' which is also aimed at school-age children.
16. The LGA has also used our media work to highlight water safety messages, including the dangers of cold-water shock and 'tombstoning' (jumping or diving from a height into water unsupervised) by young people into the sea and rivers where they could hit unseen objects or land badly. This work continues to get good coverage in the press.
17. The National Fire Chief's Council water safety lead, Dawn Whittaker is running a workshop session on water safety at the LGA's Fire Conference on 10-11 March which is

an opportunity to promote the importance of community leadership in tackling the issue of drowning.

### **National Water Safety Forum**

18. The National Water Safety Forum (NWSF) is a UK-wide network set up to direct and co-ordinate activity around reducing water-related deaths and associated harm. Established in 2004 following a Government review into water safety it brought together pre-existing national groups to create a 'one-stop shop' for the prevention of drowning and water safety harm in the UK.
19. The NWSF is hosted by the Royal Society for the Prevention of Accidents (RoSPA) and its activity is directed by a series of specialist advisory groups made up of relevant experts for example around inland and coastal waters. There are also several aligned groups, these include around 80 local authorities, the National Fire Chiefs Council (NFCC), the MCA and RNLI. The LGA is not a formal member of the NWSF but we have worked alongside and supported them around some key campaigns and to promote their publications.
20. The most significant outputs from the forum have been the UK Drowning Prevention Strategy 2016–2026 and 'Guiding Principles for Water Safety Management' which forms the basis for the LGA's water safety toolkit.
21. The NWSF are also responsible for administering the Water Incident Database (WAID) which is a comprehensive incident database which draws data from the emergency services, coastguard, rescue services, coroners' courts, media reports and a range of other sources. Fatality statistics are published on an annual basis.
22. WAID is intended to support activity around prevention and the appropriateness of risk controls and regulation. The LGA worked alongside the NWSF to successfully lobby the Home Office to include incident level data in WAID as previously non-fatal incidents or 'near misses' were excluded from Home Office figures making it difficult to draw conclusions about relative risks.
23. Our intention is to continue to work alongside the NWSF to promote water safety issues. David Walker, Leisure risk policy lead at RoSPA will provide an update on the work of the NWSF at the Board meeting.

### **MCA review of responsibilities for coastline safety**

24. In the summer of 2016 seven men tragically drowned in two separate incidents at Camber Sands beach in Rother District Council. The inquest into these deaths prompted the Maritime and Coastguard Agency (MCA) to commission an independent review of the legal framework for safety and make recommendations for improvement.

25. The MCA is an executive agency, sponsored by the Department for Transport, which is responsible for producing legislation and guidance on maritime matters, and provides certification to seafarers.
26. The purpose of the review was to provide clarity on who has legal responsibility for ensuring water safety on our coastline. The review concluded in January 2019 and Dominic Watkins, Head of Regulatory at DWF Law LLP, who was commissioned by the MCA to undertake the review will summarise the findings at the Board.
27. Officers met with Dominic and, working with the LGA's Coastal Special Interest Group, we also fed in a formal LGA response (see Annex 1).
28. Whilst the review has yet to be published, it seems likely that it will make recommendations around the need for a new legislative framework which may have implications for councils' responsibilities for safety at beaches.
29. Whilst recognising councils will likely have a key role to play, especially where they own or manage beaches, we want to make sure that this work does not create excessive new burdens or responsibilities for local authorities and that any new burdens it does create are fully funded.

### **Possible questions (in response to the presentations)**

30. Questions members may wish to ask David and Dominic include:
- 30.1. What are some of the key actions that local authorities could take to help support the aims of the Drowning Prevention Strategy?
- 30.2. Is there anything additional the LGA could do to promote the UK Drowning Prevention Strategy and assist councils and fire and rescue authorities in their drowning prevention work?
- 30.3. How do you see a new legal duty relating to local authorities working in practice and how will funding for any new burdens be met?
- 30.4. What does the MCA intend to do to prevent private landowners simply preventing public access to beaches if a new duty is introduced?
- 30.5. How do you plan to ensure those using the waterfront, for example waterside businesses or running clubs play their part in protecting the public?

### **Implications for Wales**

31. The NSWf and the NFCC cover the UK and seek to promote water safety and drowning prevention messages in Wales.

**Financial Implications**

32. There may be financial implications for councils from the MCA review of responsibility for water safety on our coastlines. Any work by the LGA will be carried out using existing resources.

**Next steps**

33. Officers to note any feedback from SSC Board Members and take forward any future work, as directed.

## Annex 1

### **MCA review of responsibilities for beach safety**

#### **LGA response**

December 2018

#### **Key messages**

- **Given the ease with which the public can access beaches, the LGA's view is that individuals have to take primary responsibility for their own safety when making use of and swimming at beaches.**
- **It is therefore important that the public are properly educated on the risks of swimming in the sea, with greater emphasis in the school curriculum on water safety and drowning prevention covering the sea and in-land waters.**
- **In our view it would be inappropriate for local authorities to be given new statutory responsibilities or duties for ensuring the safety of those swimming at all beaches. If the review is minded to create new statutory responsibilities or duties then these would in our view be better placed on bodies with relevant expertise and experience like the Maritime and Coastguard Agency or on landowners.**
- **If the review is committed to making recommendations relating to the future role for local government our view is that this should be as a regulator to ensure that any new statutory responsibilities are being fulfilled. This approach would need careful consideration and there would be significant costs for councils which would need to be fully resourced.**
- **Given the number of people who use beaches safely every year, the review should consider what a proportionate response to the risks presented would be in this context.**

#### **Detailed response**

1. **Is it clear who is responsible for safety at the foreshore, i.e. for those entering the water from the beach for recreation? If so, who is responsible?**

In some cases, where there is a body or individual (a council, the National Trust, an individual owner) that clearly owns or manages the beach there are clear duties on them under health and safety legislation, and the Occupiers Liability Act. This would cover them conducting risk assessments and providing rescue equipment.

However responsibility is less clear where ownership is not clearly defined – which is the situation in the majority of cases.

**2. Would you welcome greater clarity on the legal responsibility for safety at the foreshore?**

Councils and others need clarity about where responsibilities lie for a range of reasons. Our view is that primary responsibility for their safety ultimately lies with individuals using and swimming at a beach. Beyond that, it seems simplest to us if responsibility in the future either lies with a body with expertise in safety at sea such as the Maritime and Coastguard Agency or lies with the landowners of the land through which access is given to the beach, and then the owner of the foreshore if they are different.

**3. Do you feel that local authorities should have greater responsibility in relation to ensuring safety at the foreshore?**

Our view is that local authorities should not be given a blanket responsibility for the safety of the foreshore in its entirety. If new duties were placed on authorities, an unintended consequence could be that measures are taken to reduce access to beaches, for example by removing non-statutory access staircases to popular beaches. This in turn could lead to new potential sources of risk from slips, trips, and falls if visitors create informal paths to beaches.

As already mentioned we see primary responsibility for their own safety resting with individuals, which requires education about the risks they face, and we would like to see greater emphasis in the school curriculum on water safety and drowning prevention covering the sea and in-land waters.

If the recommendation set out in the review is clear that local authorities should have a greater role, one option would be that the role of councils is a regulatory one, ensuring that landowners (as duty holders) are fulfilling their new statutory responsibilities for safety at the foreshore.

This would need to be carefully thought out and councils would need clear powers in this respect. Any new responsibility councils take on would have to be fully paid for, or councils given powers to fully recover their costs.

**4. What is the LGA's / your position on the provision of public rescue and what results in the decision to make such provision?**

On beaches where there is a clear owner, or someone who is clearly managing it, then provision of lifeguards or other public rescue equipment arises from legal obligations. In other circumstances the provision may be as a result of a desire to address a safety issue.

Again clarity would be helpful in terms of what the duties are, and who is responsible for providing and maintaining equipment. Such provision may in the past have been made due to local issues being identified and councils wishing to address safety concerns rather than because they identified any legal obligation applying to local authorities.

Better data with regards to near miss incidents and WAID data would help to give a more accurate picture of what happens at the moment, and the impact of provision of public rescue equipment has.

**5. Is the provision of lifeguards and other public rescue equipment something that is borne out of moral / social responsibility or from a legal obligation?**

See above.

**6. There appear to be two options for regulatory change to achieve greater clarity in this area: extending the Health and Safety At Work etc Act 1974 ('HSWA') and extending existing powers under the various Public Health Acts related to bathing or the seashore:**

- a. **Given that the HSWA does not apply beyond the low water mark (as the geographical end of the UK) and most swimming would take place seaward beyond that point, do you think that an extension to the HSWA to cover swimming activities would be an appropriate step which has an appropriate enforcement regime to support it?**
- b. **Would you agree that an extension of existing byelaw powers under the various Public Health Acts which deal with bathing or the seashore would not be the most appropriate way to regulate this area as it would have a low penalty and limited ability for enforcement.**

There are a number of legal options for responsibilities. One would be new statutory duties for the landowner (as set out above) to ensure prevention of drowning from the high water mark out to sea.

The extension of Health and Safety legislation to make the sea environment in scope seems the most robust option to achieve this. Again this would need to clearly set our powers for councils and identify how this would be resourced. Our view is that this approach would be favourable to any amendments to Public Health legislation.

There may also be a question about what the role of the Maritime and Coast Guard Agency could be in this.

Our view is that extending byelaws would not be an appropriate way to regulate this area. In other areas byelaws have not proved a deterrent due to the small penalties which apply.

**7. What limitations are there to extending the law to expressly address this issue?**

There would inevitably be questions raised about how any new duties would be resourced, whoever any new statutory responsibility or duty was placed on. For example placing a new duty on councils, whatever form it took, would require them to be provided with significant additional funding under the new burdens principle.

There may also be unintended consequences with extending the law to ensure an organisation or organisations or a body or bodies or an individual or individuals have responsibility for ensuring the safety of those using and swimming at beaches. An outcome may be that access to beaches are significantly reduced in the future as those with statutory responsibilities for safety seek to limit the costs and liabilities they are exposed to by preventing the public from using beaches.

There may also be continuing questions around where any new duty holder responsibility ends and where for example that of the Maritime and Coastguard Agency begins.