

12 November 2020

Update on Maritime and Coastguard Agency Review of the Legal Responsibilities for Beach Safety

Purpose of report

For information.

Summary

This paper provides an overview of the independent review into beach safety carried out for the Maritime and Coastguard Agency (MCA). It explores the key recommendations of the review and potential implications for local authorities.

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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Background

1. The [Review of the Legal Responsibilities for Beach Safety](#), carried out by the law firm DWF and commissioned by the Maritime and Coastguard Agency (MCA) was published on 2 November. The review was commissioned in response to the tragic drowning of seven men in two separate incidents at Camber Sands beach in Rother District Council in the summer of 2016.
2. The view of the Coroner investigating the incidents was that there was a complex patchwork of legal responsibilities and asked for these to be reviewed to bring greater clarity around who is legally responsible for beach safety.
3. Working with the LGA's Coastal Special Interest Group we fed in a formal LGA submission to the review and Dominic Watkins, Head of Regulatory at DWF the author of the review presented key findings [at the March Safer Stronger Communities Board meeting](#).
4. As the Coroner and other stakeholders who fed into the review including local authorities and the RLNI indicated, the issue of legal responsibility for beach safety is a complex one. Fundamental questions such as what the definition of a beach is, who may owe duties, and what those duties are, all required unpicking as part of the review.
5. However, the focus of this paper is on the recommendations coming out the review and the potential impact of these on local authorities. The recommendations fall into three broad categories: legal duties; coast and lifeguarding; and broader engagement which are summarised below.

Legal duties

6. The focus of the report is on addressing the regulatory gap in relation to responsibilities for beach safety. The report found that at present no one is likely to be legally responsible for ensuring the safety of people swimming in the sea.
7. A number of options for addressing this gap are explored in the report, including the extension of byelaws and extending existing legislation, for example the Health and Safety at Work Act (HSWA).
8. However the key recommendation is for a new legislative framework to be created which places a duty on the owner or occupier of the Shore (defined as the 'dry bit' of the beach) to ensure that those using the Shore for access to the Foreshore or Sea (defined as the 'sometimes wet' bit between the high and low tide mark and the 'always wet' bit

12 November 2020

respectively) are protected from foreseeable risks to their health and safety. This would include a specific duty to risk assess.

9. The report suggests that for many duty holders it will be a question of making sure that an existing risk assessment is suitable and sufficient, and then provided that they are implementing the control measures in that risk assessment, no further action would be required.
10. As owners and managers of beaches a new legal duty would have implications for coastal local authorities. In practice many local authorities have voluntarily put in place measures to control risks, despite there not being a clear legal duty to do so. However, there is a risk that putting this on a statutory footing could create an additional regulatory burden for those authorities that own and manage beaches.
11. The report sets out some key principles for what a new legislative framework must do which are a useful starting point but would need to be worked through in more detail. These are:
 - 11.1 Create sensible sustainable definitions, particularly of the areas of land;
 - 11.2 Apply both to the Foreshore and the Sea;
 - 11.3 Be clear about who it applies to, what they are required to do and how they should collaborate;
 - 11.4 Be risk based, the primary duty being to risk assess and to act upon it;
 - 11.5 Not create disproportionate and unsustainable duties – basing it on risk assessment processes is likely to be the most proportionate approach;
 - 11.6 Recognise that everyone knows and understands that there is a risk of drowning when you enter the Sea;
 - 11.7 Create an enforcement regime; and
 - 11.8 Be supported by clear and effective guidance

Key issues

12. Whilst clarity within a legal framework is welcome, a new duty would need to be carefully defined to strike an appropriate balance between the acceptance of risk by individuals making use of and swimming at beaches and a duty on those encouraging people to the coast to ensure they are protected.
13. Whilst there are no clear statistics about the number of people who safely enjoy the sea every year, we do know that millions of people visit beaches every year and the percentage of those who come to harm is very low. However, figures from the [Water Incident Database \(WAID\)](#) show that 52 people accidentally drowned in the sea 2019, the [RLNI reported](#) saving 220 lives and aiding 9,379 people in the same year, which suggests that the number of coastal drownings could have been very substantially higher.
14. Clarity is also needed on who the duty holder would be where complex arrangements are in place. On most amenity beaches (like Blackpool or Bournemouth where facilities are provided for visitors) there are likely to be several different duty holders as the Shore and the Foreshore will have different owners, or occupiers, or both. For example while around 55 per cent of the Foreshore is owned by the Crown Estate, the area is then often leased to other occupiers – as it was at Camber Sands where Rother District

12 November 2020

Council were responsible, or there are management agreements in place. This relationship can be complicated further by a sequence of sub-agreements, such as Chichester District Council's agreement with West Sussex County Council to manage the Foreshore at Pagham which is now part of a RSPB's managed nature reserve.

15. There is potential for confusion unless there is a clear expectation that duty holders need to work together to assess risk and provide as well as maintain any mitigations.
16. Whilst the creation of an enforcement regime is highlighted there is no detail in the report about how this would work or indeed who would be the regulator and fund the regime. This needs careful consideration and if there was to be a role for local authorities, the significant costs this would bring would need to be fully resourced.
17. There are also inevitable questions about how any new duties would be resourced especially in the context of increasing financial pressures as a result of the pandemic, not only for local authorities but also for landowners like the National Trust. There may also be unintended consequences with extending the law for example if a risk assessment identifies significant risk and remediation measures are costly, a duty holder may simply chose to restrict access to beaches in order to seek to limit the costs and liabilities they are exposed to form the public using the beach.
18. Guidance will be vital to provide clear instruction on how a good risk assessment should be undertaken in this area and provide clarity on what is expected of stakeholders at the beach. In particular, it could offer clarity on duties, responsibilities and the best way to maintain safety.
19. The MCA has indicated that the National Water Safety Forum (NWSF) will be leading a consultation exercise to consider the reviews recommendations such as the viability of legislation. We will work with the Coastal SIG to develop a response to the consultation and inform the development of any future legislation.
20. In response to the report's recommendation for updated and consolidated guidance for managing beach safety the MCA has [recently published guidance](#) for coastal landowners.

Coast and lifeguarding

21. The report also calls for further clarity of the HM Coastguard's duties. Compared to the other emergency services, the duties of the HM Coastguard are set out in almost no detail and in a way that offers little clarity.
22. In the Coastguard Act 1925 HM Coastguard is described simply as 'a coast watching force'. However, in practice the HM Coastguard is the emergency service that has responsibility for search and rescue (SAR) in the sea.
23. A recommendation is made for a review of the Coastguard Act and for the duty to updated and made fit for purpose as well as more closely reflecting what the HM

12 November 2020

Coastguard actually does. The report suggests the Fire and Rescue Services Act 2004 would act as a useful framework for how clear duties could be drafted.

24. As part of the review of the Coastguard Act the report suggests that consideration be given to who is responsible for the provision and/or funding of lifeguarding given the budgetary constraints of the Royal National Lifeboat Institution (RNLI) and other volunteer lifeguards. The report recommends that consideration should be given to the centralisation of the funding, delivery, or both of beach lifeguarding.
25. This is in response to a seeming over reliance on the charity of the RNLI and other volunteers for lifeguarding in the UK. The RNLI is under no legal duty to provide lifeguards and therefore could at any time withdraw the service, if it chose to.
26. Central government funding for lifeguarding services would be welcome however the implications of centralised delivery of these services would need to be explored further.

Broader engagement

27. The third area the report considers is the need for a more coordinated approach to beach safety. Whilst there are a number of stakeholders identified as having a role in beach safety including landowners, local and national government, schools and community groups and charities there is a lack of co-ordination and consistency across these groups in terms of how they address this issue.
28. The report recommends that one national body is designated to lead and co-ordinate work on beach safety. The Fire and Rescue Service is used as an example for how a more collaborative approach could work in practice. Fire and rescue services have a statutory duty under the [Fire and Rescue National Framework](#) to complete an integrated risk management plan—a community risk assessment—taking into account risks identified through Local Resilience Forums and any other local risk analyses as appropriate.
29. Councils have already recognised the value of a collaborative approach as shown by the growth of local Water Safety Partnerships. We will be working to update our [water safety toolkit](#) to ensure that it includes examples of effective partnership working at the coast.

Implications for Wales

30. The report was commissioned by the MCA which is an executive agency of the United Kingdom and the reports recommendations apply to Wales as well as England.

Financial Implications

31. We will work with member authorities and the MCA to identify financial implications of any new legislative framework and inform the new burdens process to ensure that this work does not create excessive new responsibilities for local authorities and that any new burdens it does create are fully funded.
32. Any work by the LGA will be carried out using existing resources.

12 November 2020

Next steps

33. The National Water Safety Forum which leads on drowning prevention will be leading a consultation exercise to consider the reviews recommendations such as the viability of legislation, and funding options for beach lifeguarding. We will work with the Coastal SIG to develop a response to the consultation.

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