

# From Licence Holders to Cowboys: What is the middle ground regarding safety requirements?

by Ian Harris



## Background

For the last decade and a half some parts of the adventure activities industry have been required by law to hold a licence to operate. However, licences are not required for the majority of the industry, leading to concerns about an unfair playing field, confusion for customers and a risk of cowboy operators infiltrating the industry. While recognising that Lord Young (2010) recommended that the Adventure Activities Licensing Authority be abolished, this recommendation, if accepted by Parliament will take time to implement.

There are just over 1200 providers in Great Britain who hold a licence; however there are many more providers who do not fall within the scope of the regulations because:

- the activities they offer are out of scope
- they work only with ages 18 or over
- they operate outside Great Britain and therefore are not able to apply for or hold a licence

These operators are still able to provide exciting, safe and valuable outdoor learning and recreational opportunities for adults and children, but are not always seen to be equal in status to licence holders. Perhaps this is because there seems to be a misconception (even from some within the industry) that these providers are not legislated for in any way. However while they may not be required to be licenced, the health and safety requirements are no different only the statutory inspection procedures differ.

## The Law

All work activities\* in the UK fall within the scope of the Health and Safety at Work Act 1974. The requirements are based on doing what is reasonable to protect people from the risks in each workplace, balanced against the benefits and costs involved. This is therefore the same for providers within or outside of the licensing requirements and indeed all other workplaces from a factory to a library. The opening statement of the guidance from the Licensing Authority states:

*'The aim of the adventure activities licensing scheme is to give assurance that good safety management practice is being followed so that young people can continue to have opportunities to experience exciting and stimulating activities outdoors while not being exposed to avoidable risks of death and disabling injury. The requirements on providers are drawn from existing health and safety legislation.'* (HSE 2007 P6).

(\*with a few exceptions like domestic service in the home)



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We often hear the term 'Health and Safety' used, sometimes in a positive light to consider how we can do an activity effectively and safely and balance the risks against the benefits, but also sadly far too often as an excuse for not doing something.

So let us consider what the law requires of all workplaces and what providers do to fulfil their duties. The following steps could be applied to any industry as the requirements of health and safety law are process driven and therefore largely the same for all industries\*

It is not possible to give a comprehensive explanation of all the health and safety legislation here (that would require a rather long book, not an article in Horizons), however there are some key steps that should be followed and would cover the general legal duties if implemented effectively.

(\*There are additional specific requirements for particular industries (eg mining, explosives, asbestos removal etc) or types of work activity: for example 'working at height' or Control of Substances Hazardous to Health (COSHH) which may be relevant in an activity centre but will not be addressed within this article).

All employers are legally required to do is  
*"All that is reasonably practicable in ensuring the health, safety and welfare of employees and others affected by work activities"* (as required by the 1974 Act.)

So what is the starting point.

#### **A commitment to safety or Health & Safety Policy**

The first stage is for the employer, or self-employed person, to be committed to this aim. This sounds obvious, but is not part of the psyche in all industries and is an essential foundation for safe workplaces. This commitment should be recorded within the company Health and Safety policy which must provide an overview of the organisation and arrangements to ensure this commitment is met and if there are more than five employees must this be a written document.

#### **Identifying what is dangerous or doing a Risk Assessment**

The next step in the process is to identify what could be dangerous in the work place and who can be harmed. Ideally this will also consider the benefits that the activities are hoping to achieve. This would take the form of a risk assessment of all significant hazards (which all work places must do as required by the Management of H&S at Work Regulations of 1999, and it must be written if the company has five or more employees). To be truly effective a risk assessment is not

something that is done on a business, but is done by a business, utilising the skills of managers and employees (at all levels) to jointly:

1. identify the hazards and risks;
2. identify who may be harmed;
3. evaluate the risk (often in the form of severity and likelihood ratings) and identify appropriate precautions;
4. record the findings, ideally using a common format across all aspects of the business, and finally
5. review the findings on a regular basis and certainly after any incidents or changes to activities, group types, equipment etc, then revise the written document as necessary and then share the changes with those who are affected i.e. the staff.

A written risk assessment is not the same as, or a replacement for, dynamic risk assessments or good decision making by instructors, both are necessary and essential. The purpose of the risk assessment is not to eliminate all risks, that would not be possible, but to balance the risks against the benefits. Further details are outlined by the HSE (2006).

#### **Making things safer or Operating Procedures**

Having undertaken the risk assessment and evaluated the risks against the benefits it will be necessary to ensure that there is a safe system of work in place (as required by the Management of H&S regulations 1999). In other words, that activities are carried out properly by suitably competent people, using appropriate equipment and following suitable procedures.

The details would take the form of operating procedures (also known as operating standards, local operating procedures, activity standards etc). It has been suggested that the larger the document the less safe the provider will be, as staff will not read the document, and senior staff will be spend more time writing the documents than working with staff making sure activities that are safe! To be effective this needs to be a working document, not a huge dust collector, however all aspects of the business need to be covered, from adventurous activities to sections on admin, cleaning, gardening etc.

The procedures need to consider the level of danger identified by the risk assessment and draw on National Governing Body standards, AALA advice, reviews of previous incidents (internally and in the wider industry) etc. It is however important that the purpose is to make the activities safe whilst balancing this against the benefits that can be gained. Indeed it would be possible to make a centre absolutely safe by not doing the activities, but that rather defeats our purpose, does not balance risk against benefit and will probably ultimately lead to more deaths from boredom, heart disease or strokes as a result of obesity!

### Staff Competence

To deliver the operating procedures, and therefore safe activity, the staff are the most significant piece of the jigsaw. Therefore any provider of activities must ensure that the people they put in front of groups as instructors, facilitators or leaders possess all the necessary skills to fulfil the role appropriately. This must start with the process of selection and pre employment checks, followed by induction training and assessment of competence, supplemented by continuous professional development and monitoring throughout their employment.

Clearly induction training will differ for employees depending on their level of expertise, experience and role within an organisation, however all staff must be

made aware of the expectations of the role, local and company processes and procedures, even such things as simple as knowing where the first aid facilities are, and the employer must ensure the employee is competent to carry out their duties safely for themselves and others affected. Simply giving a new member of staff a huge document and getting them to sign to say they have read it would not meet these requirements. There is little better than face to face training carried out by an enthusiastic and competent practitioner who can inspire new recruits into the philosophy of organisation. However it is also important that they are competent to assess the performance of others.

Competence is an area that the outdoor industry tends to associate directly to qualifications and while unqualified people can be very competent, providing evidence of this can be challenging. It is however important to recognise that: qualified people are not always competent and may need additional support and guidance. To illustrate the issue, the most dangerous group of road users are those who have recently passed their driving test as they have a 'licence to thrill', without the wisdom to know when, where and how to act to ensure they do it safely. It is ultimately the employer's responsibility to ensure staff are competent to undertake the tasks they are asked to do, as required by the Management of Health and Safety at Work regulations 1999.

### Equipment

The next cog in the wheel of safe activities is the equipment being used and the way it is used. Again this starts at the selection stage ensuring the equipment is fit for the purpose it is intended to be used for. Also the training of operators, whether they be staff or participants, appropriate use storage and care of the equipment in line with manufactures recommendations, with suitable pre, during and post activity checks, planned maintenance and procedures for dealing with damaged equipment.

### Incident and Emergency Planning

The final cog... very little goes perfectly to plan and on occasions we all know that incidents happen that cause harm, or increase the potential for harm, and therefore these need to be dealt with appropriately. To ensure that appropriate actions are taken there needs to be a plan in place which would be in the form of an emergency action plan. This should include a clear plan for what needs to be done and who should do what, along with plans for things such as evacuation and communication internally and externally, and to deal with things like RIDDOR (1995)\*, parents or even the press. This plan must also be part of the staff training and rehearsed and practiced if it is to be implemented smoothly when the pressure is on due to some unexpected or unwanted occurrence.

\* Reporting of Injuries, Diseases and Dangerous Occurrences Regulations



*..... the staff are the most significant piece of the jigsaw*





*No one should have the expectation of guaranteed safety as this is not possible*

or outside the company in assisting in getting things right cannot be under estimated.

With these steps in place for all aspects of an organisation, things should go smoothly. However the culture of the organisation is what will really make the difference. Awareness of safety should be one of the key goals of an organisation, not something that is bolted on as an after thought. Complacency can be a key contributing factor to incidents, along with the belief that it 'can not happen to me'. However, things do happen; therefore after putting in place a range of steps, it is necessary to continually monitor and evaluate the operation, ensure that there is supportive culture, and not a blame culture, with a collective aim to get things right.

### Do Inspections matter?

While Lord Young's (2010) report recommends to government that they seek to change the law and end the need for Activity Centres (young Person's Safety) Act 1995 which requires licensing inspections. We all know that in any society some people do not follow the same standards that others comply with and it is not reasonable to expect customers to have the expertise to evaluate the safety of providers. The safety of provision is something the public would expect to be statutorily in place, like railways or buses.

HSE and Local Authority Environmental Health Officers do have responsibility to enforce the law of the land regarding health and safety at work. So why is

it that all activity centres are not regularly inspected? In short it is because the outdoor industry is safe when compared to many other industries and these bodies do not have the resources to inspect all work places so focus on industries like agriculture, transport and construction where there are the highest levels of reported incidents (HSE 2011). Hence it is likely that operators outside of the scope of licensing are never externally reviewed through inspections by statutory agencies.

As a result many operators both within and outside the scope of the licensing scheme offer themselves up and pay for multiple inspection schemes and agree to meet various standards set out. For the public, there is little clarity as to what each body asks for and the scope of their coverage. For example, National Governing Bodies may only check staff qualifications, equipment and facilities directly related to their sport, while others like British Activities Holiday Association (BAHA) also cover things such as advertising, food hygiene, transport and accommodation. More recently an overarching badge in the form of Adventure Mark has been developed to try to clarify things for the consumer by matching these schemes to safety standards approved by the Adventure Activity Industry Advisory Committee\*. For those working in education that may not have been in scope for licencing, this has been used as part of the Learning Outside the Classroom badge which considers the quality of the learning environment provided.



The ultimate responsibility in law for all aspects of safety is with the employer, while employees must also fulfil their part by acting in a responsible way, following the procedures covered in their training and not doing anything reckless or omitting to do anything that is essential. However in a large organisation the employer cannot be an expert in all aspects of the business, from activities to cooking, or from marketing to accountancy, therefore the value of technical experts, from within

## Conclusion

So to conclude any employer or self employed person must comply with the health and safety laws that apply to all industries. These standards do not differ between licenced and unlicenced providers. In short they should do all that is reasonably practicable to ensure the health, safety and welfare of employees and others affected by work activities.

It is important that no one should have the expectation of guaranteed safety as this is not possible. Nor should operators try to eliminate all risk as this would defeat the objects of adventure learning, but they must balance the risks and benefits and not expose people to unnecessary or unreasonable risks.

To achieve this they should: have in place a safety policy showing their commitment; undertake a risk assessment that identifies and evaluates all the significant risks associated with their operation; put in place operating procedures that act as guidance for everybody; ensure they have selected, trained and assessed the competence of staff appropriately and recorded this; along with suitable selection, use, care and maintenance of equipment. Additionally it is necessary to train for the unexpected, and finally regularly review and evaluate the whole process. To help achieve this the use of technically competent advisors, and opening the operation to inspection by a well-recognised external body should ensure the public can remain confident of the excellent standards of safety provided throughout the industry. ■

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*...the most dangerous group of road users are those who have recently passed their driving test*

\* AAIC - Adventure Activities Industry Advisory Committee works to identify, develop and disseminate good practice, and to advise Governments and Agencies accordingly. AAIC is a free-standing UK-wide body representing a wide range of stakeholders from the UK adventure activities sector. It works closely with the Sport and Recreation Alliance and with SkillsActive for which it is the Technical Reference Group of the Outdoor & Adventure Sub-Sector Committee. AAIC has observers from the Health & Safety Executive [HSE], and from each of the four countries' legislative executives. AAIC was originally established in 1996 by HSC, as one of its standing Industry Advisory Committees, reconstituted in 2009 as an independent not for profit organisation its 20 Members are appointed as individuals to provide experience, knowledge and judgement, and are selected to cover broadly defined "constituencies" with which they were encouraged to keep in touch, and of whose concerns and interests they were expected to be aware. AAIC currently subcontracts the Adventure Activities Associates (3As) an independent company to deliver the Adventuremark scheme.

### Principle pieces of relevant legislation

Health and Safety at Work Act 1974  
Activity Centre (Young Person's Safety) Act 1995  
Management of H&S at Work Regulations of 1999  
Adventure Activities Licensing Regulations 2004  
Additional relevant legislation  
Control of Substances Hazardous to Health Regulations 2002  
Dangerous Substances and Explosive, Atmospheres Regulations 2002,  
Health and Safety (First Aid) Regulations 1981  
Health and Safety (Safety Signs and Signals) Regulations 1996  
Personal Protective Equipment Regulations 1992  
Provision and use of Work Equipment Regulations 1998  
Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations 1995,  
Safety Representatives and Safety Committee Regulations 1977

### References

HSE 2011 online at [www.hse.gov.uk](http://www.hse.gov.uk)  
HSE 2007 Guidance from the Licensing Authority on the Adventure Activities Licensing Regulations 2004 HSE  
HSE 2006 Five Steps to risk assessment HSE  
Lord Young (2010) Common Sense Common Safety Cabinet office

### Author's Notes

Ian Harris LPIOL, is Director of the School of Sport, Tourism and Languages at Southampton Solent University where he also teaches on the Outdoor suite of degree courses. Ian has nearly 20 years experience inspecting activity centres for the RYA, BAHA and more recently Adventure Mark and LOTC badges. He has recently retired as senior Helmsman of the Hayling Island RNLI inshore lifeboats and has also been active with the RYA having chaired the Association's windsurfing committee and been a member of Council, Training Committee and now the Sports Development Committee. Ian is also an APIOL and LPIOL mentor and assessor and member of the Southern region IOL committee.

**Photos:** Low Bank Ground team.