

Adventure Activities Licensing Service

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Adventure Activities Licensing Service Report **From 1st April 2018 – 31st March 2019**

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1. Foreword

- 1.1 The adventure activities licensing scheme was introduced in April 1996 and implements the Activity Centres (Young Persons' Safety) Act 1995 and the Adventure Activities Licensing Regulations 1996, revised 2004. For 11 years it was administered by Tourism Quality Services Ltd. (TQS), a company designated as The Adventure Activities Licensing Authority (AALA) by the Secretary of State.
- 1.2 In 2007 the Health and Safety Executive (HSE) was designated as the AALA and contracted TQS to carry out the day to day functions of the scheme on its behalf. These include, but are not limited to, the receipt and consideration of licence applications, inspections, and the granting or refusal of a licence. TQS carries out its contracted work under the name of the Adventure Activities Licensing Service (AALS).
- 1.3 This report covers the work of AALS in fulfilling the contract during the period running from 1st April 2018 to 31st March 2019 (the reporting year). AALS has always been, and remains, a not-for-profit company limited by guarantee.

2. Background to the Licensing Scheme

- 2.1 The adventure activities licensing scheme is the mechanism for the inspection and regulation of certain providers of adventure activities to young people as set out in the Activity Centres (Young Persons' Safety) Act 1995 and the Adventure Activities Licensing Regulations 2004 (AALR).
- 2.2 AALS operates under the written guidance of the HSE as detailed in:
 - a) 'Guidance from the Licensing Authority on the Adventure Activity Licensing Regulations 2004' (Ref: L77 Second Edition published 2007. ISBN 978 0 7176 6243 2).
 - b) The Approach to the Inspection of Providers within Scope of the Adventure Activities Licensing Scheme to Permit the Issue of a Licence (2009 revised 2019).
- 2.3 L77 guidance 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." (L77 page 1 paragraph 1.)

3. The Functions of the Licensing Authority contracted to AALS.

3.1 The following functions are contracted to the AALS:

- receive applications for new licences and the renewal of existing licences;
- collect licence fees;
- consider applications for licences against the criteria in the regulations;
- inspect providers' activities/premises/management systems etc as appropriate;
- prepare a report following inspection;
- decide if a licence should be granted or not;
- inform the applicant of the AALS' decision;
- issue a licence as appropriate;
- handle the first stage of complaints and appeal procedures;
- refer unresolved complaints/appeals to the AALA or to the relevant Enforcement Authority, as appropriate;
- maintain the AALA public register of licensed providers on-line;
- liaise with, and assist, enforcement authorities as requested;
- such other duties as may be, from time to time, requested by the AALA.

4. Inspections

4.1 Initial scheduled inspections.

- As provided by the 2004 Regulations inspections of new applicants are carried out following application. For existing licence holders inspections may be carried out either following application or up to one year in advance of their scheduled renewal date;
- Wherever possible this includes both an inspection of management systems and the observation of an activity session taking place, which allows the inspector to compare theory with practice for a sample of activities. These inspections generally result in a recommendation on whether or not to issue a licence.

4.2 Supplementary scheduled inspections are carried out:

- If it was not possible to complete all aspects of the main inspection;
- To follow up on requirements made at a previous inspection;
- To investigate a complaint;
- At the request of the AALA or another agency;

- In anticipation of an application to renew a licence.

4.3 Spot check inspections are carried out:

- As part of a targeted schedule of checks;
- As part of a number of random unannounced checks.

The breakdown of number and type of inspection visit carried out by the Inspectorate can be found in Annex 1.

5. Licences Issued and Refused

5.1 The number of licence holders runs as follows for selected years since licensing was fully implemented (*figures taken at 31st March in each year*);

1998	2002	2006	2008	2010	2012	2014	2015	2016	2017	2018	2019
887	949	1052	1134	1205	1214	1238	1243	1267	1251	1180	1161

Note the sharp decline in numbers from 2016 to the present.

5.2 Giving providers specific ‘required action’ and ensuring that they are completed, is the means by which the Licensing Scheme is able to provide assurances that “good safety management practice is being followed” in a way that is proportionate. (Quote from Guidance from the Licensing Authority on the Adventure Activities Licensing Regulations 2004 (L77) page 1, paragraph 1.)

5.3 In the reporting year notices to providers that AALS was considering refusing or revoking licences were issued in 16 cases. In 14 cases the provider actioned the requirements made by AALS in the allotted time, and AALS subsequently issued or continued the licence. AALS varied 2 licences.

The two providers had their licence varied by having activities (improvised rafting and kayaking respectively) removed from their licence when they did not provide the required information.

Adequate remedial action achieved	14
Total number of refused licences	0
Total number of varied licences	2
Total number of withdrawn licences	0
Total number of revoked licences	0
Total number of cases where we considered refusing or revoking	16

5.4 More detailed information for this section can be found in Annex 2.

6. Complaints

- 6.1 Regulation 11(1) of the AALR states “The Licensing Authority shall consider any complaints which it receives relating to the provision of facilities for adventure activities by licence holders and shall, if it considers it necessary, cause those complaints to be investigated.”
- 6.2 Where issues related to out of scope activities offered by a licensed provider, it was deemed appropriate to deal with these because of the expertise and knowledge of the provider’s operation that exists within AALS. Enforcement authorities are notified if a satisfactory resolution is not or cannot be achieved by this means.
- 6.3 Where a complaint refers to an issue which is not relevant to the AALS (for example, complaints relating to customer care, financial issues, etc.) the complaint is referred directly to the relevant authority.
- 6.4 Where activities are offered by an un-licensed provider the AALS may make enquiries but has no authority to investigate further. The complainant is advised to whom they should make their complaint.
- 6.5 In the reporting year, 26 complaints were received by AALS. Further detail about the substance of the complaints made and the actions of AALS can be found in Annex 3 to this report.

7. Letters to Unlicensed Providers

- 7.1 In the reporting year, AALS received 33 reports of unlicensed providers who appeared to be offering activities that fell within scope of AALR but without holding an adventure activities licence.
- 7.2 Each of these providers was sent a standard letter. However the AALS may make enquiries but has no authority to investigate further. For the latest version see Annex 4.
- 7.3 Of the 33 providers contacted the provider claimed they:

operate with family groups only	15
subsequently applied for a licence	7
only offer activities not in scope of AALR	4
do not operate in AALR specified terrain or water	3
subcontract licensable activities to licensed provider	1
hire only	1
are a membership organisation	1
do not charge for activities	1

7.4 If any of the providers had not responded, they would have been referred to the relevant enforcing authority. The enforcement authority is empowered to investigate further, whereas the AALS is not.

8. Funding and Administration of funds.

8.1 AALS commenced 2018-19 continuing to operate under an interim regime scenario pending resolution between UK Government departments and the devolved administrations as to the future of licensing. This meant that certain detailed requirements of the contract cannot be met owing to short term timing issues e.g. the length of the remaining contract.

8.2 During the year a partial resolution was announced and AALS was informed that it's temporary contract would terminate on 31st March 2020. Furthermore a tender would take place for a contract under present legislation for a period whilst the favoured option of transferring responsibility to the industry was explored and developed.

8.3 This has not affected the ability of AALS to deliver the services. Indeed the announcement to some extent stabilised the position and assisted the AALS in meeting its budgets.

8.4 AALS has provided to HSE estimated figures for closure costs under the existing contract and has provided all data requested to assist with facilitating the tender and any handover process.

8.5 The financial year 2018-19 benefited from two significant items. The first was a one-off technical 'bonus' in connection with the contract with the Ministry of Defence. Payment delays from 2017-18 resulted in receipts from that contract being approx £55k (vs approx £28k in 2017-18 – netting to the expected £42k per annum over the 2 years).

8.6 The second was that the unexpected decline in numbers between 2016 and 2018 itself reduced faster than anticipated, equally unexplained. The figures at 5.1 above show the result. Thus instead of fee income continuing to fall rapidly it stabilised.

8.7 Finally, the ever present uncertainty over fee income at the end of the financial year – referred to extensively in earlier reports – yielded a surge in fee income at the end of 2018-19. This resulted in total fee income being some £12k up on 2017-18 even though numbers of licence holders were down.

8.8 Thus AALS had forecast that the total income of £450k in 2017-18 would fall to £414k in 2018-19. By contrast the above taken together resulted in total income being £489k. This is by far the greatest discrepancy between forecast and outcome that AALS has ever experienced. The fact that the widening uncertainty had been well flagged in advance, only partly mitigates the slight embarrassment at so large a gap.

- 8.9 By contrast total expenditure was £875k in 2017-18, forecast at £864k for 2018-19 and outturn was £858k. All within a 2% bracket which is comfortably within the 5% noted in the contract.
- 8.10 Under the contractual requirement to provide forecasting AALS has offered its best guess at income for 2019-20 of £440k. However that comes with all the caveats of the last two years. Total expenditure is forecast at approx £850k and is expected to be comfortably within +/-5% of that figure.
- 8.11 Since the financial year end, the TQS Ltd results for the year ended 31st March 2019 have been audited. The audited figures show no material differences from draft figures already submitted to AALA in support of the invoices for that year.
- 8.12 TQS Ltd. maintains internal checks on its financial operations and is not aware of any discrepancy or losses within the funds that it administers. However, the annual audit apart, it does not utilise independent monitors owing to the relatively small sums involved overall.
- 8.13 TQS Ltd. is not aware of any threats to the company that might prejudice its ability to continue to fulfil the functions noted at 3.1. However close liaison with HSE will be required to achieve a smooth transition at the contract end.

9. Joint inspections / Work with Other Agencies

Consultancy work undertaken by AALS.

In the reporting year, Senior Inspectors and/or the Head of Inspection spent a total of 959 hours (hours when the Senior Inspector and/or Head of Inspection were not available to do their normal duties, including travel time) on:

- 9.1 Ministry of Defence inspections. Consultancy fees were charged for this work.
- 9.2 Joint visits with HSE/ LA enforcement. No consultancy fee was charged for this work.
- 9.3 Expert witness report for inquest into fatality on an indoor climbing wall at a licensed provider. No consultancy fee was charged for this work.
- 9.4 Advice given to LA enforcement to assist accident investigation. No consultancy fee was charged for this work.

See Annex 5 for more information on assistance provided.

10. Other Relevant issues and AALS activity during the Reporting Year

- 10.01 Anne Salisbury, the Senior Inspector for North West England, retired at the end of November 2018. Anne has been with us since January 2003. She was initially the Senior Inspector for South East England and took over the post of Senior Inspector for North West England in 2004. David Crossland (a former senior inspector and current freelance inspector) was employed on a short term basis to cover her patch.

Annex 1: Number of Inspections per month carried out in the reporting year compared with prior reporting year.

Main Scheduled Inspections

	The Reporting Year 01.04.18 – 31.03.19	Prior Reporting Year 01.04.17 – 31.03.18	Previous Reporting Year 01.04.16 – 31.03.17
April	66	65	68
May	68	93	79
June	66	86	75
July	58	70	68
August	43	45	48
September	46	33	30
October	37	31	34
November	37	33	29
December	28	29	25
January	31	33	38
February	37	35	47
March	49	63	54
Totals	566	616	595

Supplementary Scheduled Inspections

	The Reporting Year 01.04.18 – 31.03.19	Prior Reporting Year 01.04.17 – 31.03.18	Previous Reporting Year 01.04.16 – 31.03.17
April	6	4	9
May	10	15	15
June	14	20	14
July	20	21	44
August	15	17	27
September	16	15	20
October	13	14	18
November	6	8	10
December	0	0	3
January	3	0	0
February	4	3	2
March	5	6	2
Totals	112	123	164

Spot Check Inspections

38 spot checks were also carried out in the reporting year, compared with 22 during the prior reporting year and 45 during the previous reporting year

The total number of inspections under the AALR therefore, was 716 in the reporting year, compared with 761 in the prior reporting year and 804 in the previous reporting year.

Number and Type of Inspections carried out from 2012/13 to 2018/19

Report Type	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Main	629	664	594	636	595	616	566
Supplementary	167	163	225	201	164	123	112
Spot check	40	46	33	30	45	22	38
TOTAL	836	873	852	867	804	761	716

This decline is consistent with a steady improvement in completing inspections in a single visit.

Annex 2: Licence Refusals/Revocations/Variations

For this reporting period the refusals/revocations are as follows:

Licence Refusal Statistics in the reporting year

Total number of cases where we considered refusing or revoking	16
Adequate remedial action achieved	14
Total number of refused licences	0
Total number of varied licences	2
Total number of withdrawn licences	0
Total number of revoked licences	0

Of these 16 cases, inspections had identified failings relating to:

Evidence of instructor competence	11
Appointment & use of Technical Advisor	5
Ensuring deployment of competent staff	3
Lack of Operating Procedures	3
Equipment checking & repair/replace	2
Outstanding licence renewal fee	2
Group sizes	1
Induction of freelance instructors	1
Kit used by instructors, specifically buoyancy aids	1
Total	29

NB: The above categories are not mutually exclusive i.e. some providers had more than one problem. Indeed most refusals/revocations are for multiple reasons.

Relevant Action Taken

	13/14	14/15	15/16	16/17	17/18	18/19
Total of providers who, at least initially, did not meet the requirements of AALR	9	19	23	13	17	16
Number of considerations rescinded	7	14	18	9	13	14
Number of Licences Refused	2	2	3	2	1	0
Number of Licences Revoked	0	3	0	0	0	0
Number of Licences Varied	0	0	2	1	2	2
Number of Licences Withdrawn	0	0	0	1	1	0

Annex 3: Complaints

26 complaints were received by AALS in the reporting year.

Complaints were made by:

Member of the Public (including parents)	8
Another provider	6
Employee	3
Public Body (Local Authority and National Park)	2
Licensed provider	2
Freelance instructor	1
Insurance company	1
Ropes course builder	1
Technical advisor	1
Anonymous	1
Total	26

Of these:

Licence holders where complaints related to matters in scope of the AALR	17
Licence holders where complaints related to matters not in scope of the AALR	4
Non licence holders	5
Total	26

Action taken in respect of all complaints:

Matter resolved by some other means (e.g. telephone call, e mail)	14
Arranged visit	10
Referred to enforcing authority	2
Total	26

Of the 21 relevant complaints against licence holders, the allegations concerned:

Allegations in scope of AALR:

- No (or inadequate) Personal Protective Equipment (PPE) provided by employer to staff;
- Concerns about disclaimer that parents are being asked to sign regarding not taking any action against the provider in the event of accident, injury or death;
- Inadequate first aid provided following an injury;
- Employee being asked to lead sessions that he is neither competent nor confident to run at inappropriate ratios;
- Ghyll scrambling practices of a licensed provider;
- Unlicensed provider (who applied for a licence the day after the complaint was received) offering activities without parents present and using instructors who didn't supervise their groups adequately;

- Safety concerns on a via ferrata (a protected climbing route, built with a steel cable rail fixed to the rock, metal steps, ladders, suspension bridges and zip wires) activity run on a course at a licensed centre, subcontracted to another provider by the provider who had the original booking (3 licensed providers involved in the same complaint);
- Coasteering activity during which the instructor did not wear a helmet or buoyancy aid. Some of the participants also did not wear a helmet or buoyancy aid;
- A licensed canoe club running kayaking trips where the instructors are working beyond their remit and skill level;
- Mountain bike activity run by a licensed provider where the 15 year old instructor did not react appropriately to an accident;
- Complaint made by local authority about the whole operation of a watersports company;
- A licensed provider requiring freelance instructors to provide their own climbing kit and not checking the equipment being used;
- Concerns about the safety of activities being run at a licensed centre and the lack of opportunity to learn from accidents or near misses;
- Concerns for the ability of a licensed provider to run activities following heart problems;
- Counter complaint made by the provider with the alleged heart problems.

Allegations not in scope of AALR:

- Family caving session as part of an adult group;
- Paintball pellets crossing onto neighbour's property;
- Staff not being aware of operating procedures for high ropes activities;
- Adult kayaking trip to a venue inappropriate for their ability level.

Of these 21 cases involving licensed providers:

6 complaints were deemed to have been justified:

- Paintball pellets crossing onto neighbour's property;
- Concerns about disclaimer that parents are being asked to sign regarding not taking any action against the provider in the event of accident, injury or death;
- Adult kayaking trip to a venue inappropriate for their ability level;
- Complaint made by local authority about the whole operation of a watersports company;
- A licensed provider requiring freelance instructors to provide their own climbing kit and not checking the equipment being used;
- Complaint made by the provider with the alleged heart problems.

8 were deemed to have been justified in part:

- No (or inadequate) Personal Protective Equipment (PPE) provided by employer to staff;
- Inadequate first aid provided following an injury;

- Staff not being aware of operating procedures for high ropes activities;
- Unlicensed provider (who applied for a licence the day after the complaint was received) offering activities without parents present and using instructors who didn't supervise their groups adequately;
- Safety concerns on a via ferrata activity run on a course at a licensed centre – complaint against the centre who owns the via ferrata course was deemed to have been justified in part (induction of staff by a technical advisor and equipment checking recording);
- Coasteering activity during which the instructor did not wear a helmet or buoyancy aid. Some of the participants also did not wear a helmet or buoyancy aid;
- Mountain bike activity run by a licensed provider where the 15 year old instructor did not react appropriately to an accident;
- Concerns about the safety of activities being run at a licensed centre and the lack of opportunity to learn from accidents or near misses.

5 were deemed to have been not justified:

- Family caving session as part of an adult group;
- Ghyll scrambling practices of a licensed provider;
- Safety concerns on a via ferrata activity run on a course at a licensed centre, subcontracted to another provider by the provider who had the original booking. Complaints against the provider who took the original booking and the provider who ran the activity were deemed not justified;
- A licensed canoe club running kayaking trips where the instructors are working beyond their remit and skill level.

2 were deemed to have been unsubstantiated:

- Employee being asked to lead sessions that he is neither competent nor confident to run at inappropriate ratios;
- Concerns for the ability of a licensed provider to run activities following heart problems;

2 complaints involving unlicensed providers were referred to the relevant Enforcing Authority:

- A school group were witnessed on a canoe expedition on the River Wye in very high water levels. AALS carried out initial enquiries with local canoe hire companies and British canoeing and contacted the school. The case was then referred on to HSE Plymouth.
- A complaint regarding an unsafe kayak trip led by an unlicensed provider in which they had to intervene was made by a representative of a National Park. The issue was referred to the local authority for investigation.

Annex 4: Text of Standard Unlicensed Provider Letter

Dear

RE: ADVENTURE ACTIVITIES LICENSING REGULATIONS 2004

We understand that you may be offering outdoor activities to young people under the age of 18 years and we cannot find you on our database as a Licence Holder under the above regulations. If you are providing either caving, climbing, trekking, or watersports activities to young people in return for payment, then it is possible that the above Regulations apply to you. If this is the case then to offer these activities legally you would need to be inspected by the Adventure Activities Licensing Service and issued with an appropriate licence.

The Adventure Activities Licensing Scheme was introduced by the Government in 1996 to inspect safety management systems and to issue licences to those operating within scope of these Regulations.

Enclosed is an extract from the Health and Safety Executive (HSE) guidance publication which details those activities which come within scope of the Adventure Activities Licensing. It also explains who is exempt from the requirement to hold a licence.

If you have any doubts about whether or not the law applies to your operation then you can contact us and we will endeavour to help you.

If, either you are not making any provision to young persons or you believe these Regulations do not apply to you, we would ask you to confirm this to us **in writing**, stating the reasons for your exemption. If these Regulations do apply you can apply online at: <http://www.hse.gov.uk/aala/apply-for-a-licence.htm>. Alternatively we can send you an application form.

Thank you, in anticipation of your co-operation.

Yours faithfully,

MARCUS BAILIE
Head of Inspection, AALS

Annex 5 – Work with other agencies and authorities

1. AALS received a request from the Ministry of Defence (MoD) in the Reporting Year of 2015/16 to carry out inspections of the safety management systems for Adventurous Training (AT) within the Armed Forces and Cadet Forces and compare these with the requirements of the Adventure Activities Licensing Regulations (AALR). An initial pilot of up to 40+ inspections of different units was envisaged. During this Reporting Year, inspections have been carried out at 25 centres in the UK and abroad (Kenya, Cyprus, Canada, Germany and the Falkland Islands).
2. A Senior Inspector carried out a joint visit to a licensed provider with the local authority's Environmental Health Officer (EHO) following the rescinding of a prohibition notice for watersports.
3. A Senior Inspector carried out a joint visit to an unlicensed provider with the local authority's EHO following a fatality of a young child in the on-site swimming pool. The police were investigating the fatality but the EHO wanted assistance to carry out a general safety inspection.
4. A Senior Inspector carried out a joint visit to an unlicensed provider with the local authority's EHO following a complaint made by a licensed provider that the unlicensed provider was operating within scope of the Adventure Activities Licensing Regulations. The unlicensed provider applied for a licence shortly after the visit.
5. The Head of Inspection and the Deputy Head of Inspection liaised with a local authority EHO in the investigation of a fatality of an adult on the indoor climbing wall of a licensed centre. They wrote an expert witness report for the coroner's court. The Head of Inspection was due to give evidence at the inquest, but the inquest was postponed.