

Adventure Activities Licensing Authority Management Board

Ninth Meeting 29 March 2011

Fiveways House, Birmingham

11.00 – 15.00

In attendance: David Ashton – HSE (Chair AALA MB)
Alistair McNab – HSE (Vice-Chair AALA MB)
Clare McNicholas – HSE Policy
Gavin Howat – HSE Field Operations Directorate
Ian McMorris – Independent member AALA MB
Brian Chapman – Independent member of AALA MB
John Price – DWP (by phone)
Gordon Currie – Scottish Government
John-Paul Lawrence (JPL) – LGR
Sir Brooke Boothby – Chair, TQS/AALS
John Walsh-Heron – Chief Executive TQS/AALS
Marcus Bailie – Head of Inspection

Apologies: Martin Elliott – DfE
Stephen Jones – Welsh Assembly
Derek Grieve – Scottish Government

1 Welcome and introductions

1.1 David Ashton welcomed all those attending. He informed the Board that Marion Evans had left HSE under its voluntary early release scheme. The Board extended its best wishes to Marion and thanked her for her wise advice and support to the Board.

2 Minutes and actions from the previous meetings (30 September and 24 January)

2.1 Item 5.3 (30 September) – Kayak fatality on River Tay

This has been referred to the BCU Slalom Committee

2.2 Item 5.4 (30 September) – Laura McDairmant

The Crown Office and Procurator Fiscal Service has accepted HSE's holding position following Lord Young's report.

2.3 The Local Authority Circular (LAC), having been agreed with LGR, has now been released.

HSE's Operational Circular is currently being considered as part of HSE's overall review of internal guidance.

2.4 Item 6.3

David Ashton confirmed that no additional funding will be available and the AALA budget for 2011/12 has been reduced by 10%.

3 Lord Young Briefing Paper

3.1 Clare McNicholas introduced this paper which informs the Management Board of the various workstreams involved in implementing Lord Young's recommendation. A submission to Minister Grayling will shortly be made to seek his views on various elements of the implementation programme of work.

3.2 DWP clarified that Minister Grayling has assumed the overall lead on implementing the recommendations in Lord Young's report and therefore has a keen interest in the delivery milestones. The recently announced review of Health and Safety legislation was also mentioned although it is unlikely that the AALA will be affected by this.

Devolution implications

3.3 The AALA is clearly devolved in Wales, enabling the Welsh Assembly to take its own decision. Wales is in a pre-election period and a clear steer from the Welsh Assembly will not be given until after the elections and a Welsh Government is formed.

3.4 For Scotland, the devolution issue is less clear. Like Wales, Scotland is in its pre-election period. HSE is however respectful of the views of the Scottish Government and, after the elections, will work with colleagues in the Scottish Government to

- (a) clarify the devolution position; and
- (b) establish the will of Scotland in respect of the AALA.

3.5 Scottish Government colleagues requested that HSE keep them informed of developments to enable them to advise new ministers after the election.

Lord Young milestone on Consultation

3.6 It is proposed that, without prejudice to the decisions taken by Scotland and Wales, HSE consult, in the first instance, in relation to England with the

aim being to obtain views to shape the Code of Practice (CoP) (preliminary consultation). Scottish Government confirmed that, provided the preliminary consultation is intended for this purpose, it would have no objection. The Consultation Document will clarify that the duties established under the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999 apply equally to licensable and non-licensable activities and the removal of statutory licensing will not change those duties.

3.7 DWP advises that the Minister is informed of whatever decision is taken on consultation.

3.8 In the event that either or both the Welsh Assembly and Scottish Government are hung Parliaments, there are likely to be delays in forming governments. It is therefore possible that the views of the Devolved Administrations will not be available before mid-June.

3.9 Following the preliminary consultation, a draft CoP will be developed and put out for a second consultation.

3.10 Lord Young's recommendation includes a requirement to provide reassurance of compliance with the CoP. It was noted that there are similar non-statutory schemes and relevant NGB industry standards which could be vehicles for this.

3.11 There was some discussion about market drivers and the risks associated with moving to a voluntary CoP, the conclusion being that it will be important in the preliminary consultation to make clear that the duties under HSWA and MHSWR remain in place.

3.12 The Management Board advised that the preliminary consultation should set out the facts and figures around licensing, for example: full background as to why licensing was introduced; identify the scope of licensing; state the cost of a licence; the number of serious incidents/fatalities occurring during licensable activities; the inspection system; the enforcement responsibilities; and the full wording of Lord Young's recommendation, to enable respondents to develop as strong and informed a response as possible. It should also confirm that pro-active inspection is unlikely to continue, given that there have been cuts in funding both to HSE and Local Authorities.

Interim/transitional arrangements

3.13 It was noted that Royal Assent for the Repeals Bill may not be given until June/July 2012 for implementation on 1st October 2012 at the earliest.

3.14 The Management Board agreed that providers and potential providers should be informed of the need to obtain a licence if planning to deliver in-scope activities and that, given HM Treasury rules on fees and refunds and the fact that the licence fee is intended partially to cover the up-front costs of obtaining a licence (AALS inspection and administrative costs), no refund of

any of the licence fee will be offered. The method of communicating this will be via HSE's website (the AALA pages) and in the application information for providers and potential providers. HSE and TQS/AALS will work together on developing the appropriate wording.

**Action: Clare McNicholas/Gavin Howat for HSE Website
John Walsh-Heron for Application Pack information**

Enforcement issues

3.15 The difficulties in split enforcement were highlighted in Sheriff Johnstone's determination and the LAC had been revised to address those difficulties. Both enforcement authorities – HSE and LAs – have had funding cuts and there will be a need to ensure that, post-abolition of the AALA, there will not be an increased inspection activity. Given the low-risk nature of the sector, there is unlikely to be any pro-active inspection nor is inspection likely to be automatic. This is similar to HSE's treatment of other low-risk sectors.

3.16 LGR has some feedback which JPL will send to DH to circulate.

Action – Dawn Hepworth to circulate LGR feedback

4 TQS Reports

Finance and Staffing

4.1 It was reported that the financial year had ended within budget and there was no reason for not completing the next financial year within budget but that this was dependent on the impact of Lord Young's recommendation.

4.2 One senior inspector is retiring in June and will not be replaced. His work will be covered by freelance inspectors and a redistribution of the existing inspectors' geographical patches.

Head of Inspection Report

4.3 Despite the recommendation to abolish AALA, the number of licence holders continues to increase.

4.4 There is some evidence that suggests that some posts in Local Authority centres are currently under threat, given funding cuts.

4.5 The number of ongoing accidents/incidents has increased due to a change in the way in which these are recorded by TQS. Four incidents are known but are not yet in the system. One, in particular, is a cause for concern. A young British skier on a school trip in France was strangled by his own rucksack as he was dismounting a ski-lift. If a causal factor was loose straps on the rucksack, any lessons learnt will need to be taken forward with the sector.

Action – Alistair McNab to take forward once cause of accident identified.

5 Sector Engagement - Feedback

5.1 There has been a significant number of informal meetings with a wide spectrum of the Adventure Activities sector. There is some evidence that the over-arching HSWA and MHSWR duties are not widely appreciated.

5.2 Some stakeholders (wrongly) perceive licences to be a guarantee of safety of all activities operated by a provider.

5.3 There are clearly a large number of people in the sector who are committed to adventure activities and their safety but it would appear that co-operative relationships between the various different stakeholders are not well-developed.

5.4 Some stakeholders recognise that one of the legacies of licensing is high standard of providers and the fact that the use of technical advisors is more widespread because their role has been clarified.

5.5 Some stakeholders have suggested that the CoP should reinforce the role of NGBs in setting standards.

6 AOB

RYA licences

6.1 Given the uncertainty, the Management Board agreed that those RYA licences due for renewal after 1 October 2011 should be renewed free of charge.

Declaration of interest

6.2 Brian Chapman declared his interest as Chairman of the British Canoe Union and the fact that BCU is likely to lobby against revocation of licensing. Any such lobbying will, however be taken forward by the Chief Executive of BCU. The Management Board noted this interest. It was felt that Brian's contribution to the Management Board is highly valued and he therefore should be invited to continue as an independent member of the Management Board.

7 Date and venue of next meeting

Date – 27 September 2011

Venue – Fiveways House, Birmingham

Pre-meeting 10.30 for 11.00 start.