

Health and Safety Executive

**Discussion document as part of the review of the
Adventure Activities Licensing Authority**



A response by the Association of Personal Injury Lawyers

February 2018

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of over 25 years of working to help injured people gain access to justice they need and deserve. We have over 3,400 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

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Introduction

APIL welcomes the opportunity to respond to the HSE's review of the Adventure Activities Licensing Authority. In our view, option two would be the best option to pursue. It is vital that the authority and licensing regime remain in place to protect those under 18 from the risk of injury or death when undertaking potentially dangerous adventure activities. A voluntary accreditation scheme run by providers themselves would not ensure that the necessary safety standards are upheld.

Executive Summary

- We believe that the Adventure Accidents Licensing Authority should be retained, and its scope should be broadened to include other activities, in particular trampolining.
- The scope of the scheme should be extended to, or a similar scheme should be established in, Northern Ireland.
- A voluntary accreditation scheme run by those who operate adventure activity centres would not be adequate to ensure safety standards are complied with. It is likely that a move to a voluntary scheme will result in some providers simply choosing not to join, with a subsequent drop in safety standards. While the costs to businesses may reduce as a result, the cost to the public sector will increase as users such as schools and youth clubs will no longer be able to rely on the licensing scheme for reassurance that the provider is safe, and will have to carry out alternative forms of risk assessment.

Option 1

Regardless of whether the scheme is extended to cover other activities, it must remain in place. The activities covered by the Adventure Activities Licensing scheme can be extremely dangerous – the Lyme Bay disaster, which was the catalyst for the scheme to be established, highlights the dangers of these sorts of activities. Parents should be able to send their children to these centres to enjoy an educational experience, and be sure they are safe. A licensing regime provides this surety to parents and carers, giving reassurance that the provider has been inspected, with particular attention paid to their safety management systems in relation to young people. Option 3, handing responsibility over to a voluntary arrangement administered by those who own the businesses themselves, would not ensure the same level of oversight.

We also note that the feedback from stakeholders does not call for the licensing scheme to be abolished and replaced. Rather, respondents liked the assurance that the AALA provides, wanted more activities to be covered by the licensing requirements, and wanted broader inspections covering quality of education and safeguarding. The licensing scheme provides a mark of assurance that health and safety standards have been complied with, requiring license applicants to provide information on amongst other things, who is responsible for safety management, the details of the operating procedures and/or safety information relating to activities to be covered by the license, details of the methods of ensuring staff are provided with the relevant safety training and information, details of the first aid qualifications of staff, supervision arrangements, and the company's methods of verifying staff competence. With the lives of children potentially at risk should health and safety regulations

not be complied with, it is not enough to rely on the providers of these activities to comply – this extra level of oversight is essential.

Option 2

Option 2 is our preferred option for the future of the Adventure Activities Licensing Authority. One of the criticisms from Lord Young's report was that the licensing regime was narrowly focused on a limited number of outdoor activities and did not reflect the wide range of adventure activities now available. We agree with this criticism.

We agree with the extensions suggested in the consultation document at page 18. Another activity which we believe should fall within the scope of the Adventure Activities Licensing Authority is trampolining. Having only been operational in the UK since 2014, trampoline parks were not a safety concern when the Adventure Activities Licensing Authority was established in 1996. Trampoline parks have surged in popularity in the past four years, and the dangerous nature of the activity has become all too apparent. Figures obtained by "I" news indicated that ambulances had been called out to trampoline parks across Britain more than 700 times in 2017, which was a 50 per cent increase on the year before¹. One trampoline park in Chester closed one of its pieces of apparatus after three people broke their backs in one day². We recognise that since March 2017, there has been a code of practice in place for trampoline parks, which sets out minimum standards for the design and operating procedure. However, this code is voluntary, and is not sufficient to ensure that all safety standards are being complied with. We suggest that the AALA should broaden its scope to encompass trampoline parks, given their surge in popularity and obvious dangers that they present to the public and in particular, children.

Similar consideration should be given to the inclusion of the operation of inflatables open to the public (bouncy castles, inflatable assault courses, for example). There is currently no regulation for these activities, and often they are inadequately supervised, with one individual supervising everyone using the facility, and they may not even be properly anchored. There have been numerous accidents in the past few years involving inflatables, some fatal, and we suggest that those running inflatable hire should also be covered by the licensing regime.

We would also call for a similar scheme to be set up in Northern Ireland. The consultation states that option 2 would not allow for the scheme to be extended to Northern Ireland. We see no reason why an Order could not replicate and be introduced to bring the rules in line with those in England and Wales. We are extremely concerned that operators of adventure activities in Northern Ireland are able to operate without oversight by any sort of licensing authority, and note that our concern about this lack of oversight is shared by other stakeholders.

Option 3

As above, we do not support a move towards a voluntary arrangement set up by the adventure activity organisations themselves. If the accreditation scheme is voluntary, some

¹ <https://inews.co.uk/news/uk/ambulances-called-trampoline-parks-hundreds-times-operators-insist-safety-improving/>

² <https://www.chesterchronicle.co.uk/news/chester-cheshire-news/flip-out-chester-closes-tower-12563771>

providers will choose not to join, and so will not be scrutinised to ensure that they are complying with the relevant health and safety standards. It is likely that standards amongst those who are not part of the scheme will fall, because they are not being checked or held to account, and this will result in a rise in accidents resulting in injuries and fatalities.

There is also no evidence that option 3 would lead to any costs savings, as this option has not been costed. There is no consideration of how much it will cost to take the existing licensing system apart.

Impact assessment

As with the review in 2011, there is a focus on assessing the cost to businesses, without considering the benefits that a licensing scheme provides in terms of upholding safety standards and keeping other costs down. While a voluntary scheme may on the face of it be cheaper for businesses than a compulsory license, there are implications for safety standards (as explained above), and there will be increased costs to the public sector.

The grant of a license to an outdoor activity provider gives an assurance that children can take part in adventure activities safely. If the license regime is removed, those that use these activity centres will have that reassurance removed and, therefore, will have to rely on alternative considerations, which may result in increased costs to them. For example, the additional burden of a license on a business may have to be replaced by additional burdens on schools and teachers to conduct increased or more thorough risk assessments of activity centres in order to ensure that they are safe. There will be further work in ensuring that they are compliant, and schools may have to travel further afield to attend an activity centre that voluntarily takes part in the accreditation scheme. With school budgets becoming ever more strained, it is possible that more thorough risk assessments may be overlooked, and before long, accidents involving adventure activities will start to rise. This will have a knock on effect on increasing insurance premiums, and schools may be costed out of taking pupils to these activity centres.

By far the best option would be to keep the licensing scheme in place, and broaden the scope of activities within it. It is clear that stakeholders are supportive of the scheme in its current form, and that it achieves the licensing scheme's aims. Replacement with a voluntary accreditation scheme, a move which is as yet uncoded, would result in a fall in safety standards, with no guarantee that any savings will be made.