

## REGULATION 28: REPORT TO PREVENT FUTURE DEATHS

Jan KLEMPAR, deceased

### RNLI Response

#### Introduction/Background

The Prevention of Future Deaths Report (PFD) in relation to Mr Klempar, as well the PFD reports for Gillian Davey, Michael Pender and Anthony Williamson, all relate to fatalities at sea and raise wider questions about:

- The RNLI's role in relation to safety on beaches;
- Broader legal responsibility for safety on beaches;
- How the RNLI provides its lifeguarding services; and
- The impact of Covid-19 on RNLI lifeguarding this year.

This response therefore sets out a summary of the position in relation to those matters. As the Inquests have not yet taken place, evidence will be provided in due course in relation to the RNLI's involvement in the circumstances surrounding each specific incident.

#### **RNLI role in relation to safety on beaches**

The vision of the RNLI, which is a charity, is 'to end preventable loss of life at sea'. The implications of Covid-19 and lockdown resulted in the RNLI being unable to provide its full lifeguarding service this year. Notwithstanding this, it has been able to provide cover on over 70% of its normal lifeguarded beaches and is doing everything in its power to provide a lifeguard service that protects beach users, whilst ensuring the safety of lifeguards on many beaches across the UK, including on beaches in Cornwall.

At the outset of this response, we consider it important to note that whilst Porthcurno beach was not lifeguarded on 25 June 2020, there were signs in and around the beach warning of this and advising people not to swim in the sea. Further, RNLI Lifeboats did respond and assist at the request of the Falmouth Coastguard.

#### **Legal Responsibility**

Following the tragic deaths at Camber Sands in 2017, an independent report entitled "Review of the legal responsibility for beach safety" was carried out in 2019 for the Maritime and Coastguard Agency. This reviewed the law relating to the legal responsibility for safety at beaches and on the foreshore. It concluded that the law is unclear with many competing duties. Importantly, the report went on to hold: *"...it does not automatically follow that either the Health and Safety at work Act or Occupier's Liability regime would apply. It is more likely than not that absent some specific circumstances, it would not bite. The consequence of which is that there is no regulatory or other duty which is applicable to ensure the safety of those using the Beach **and they are therefore doing so at their own risk.**"* (emphasis added).

The position is further complicated as the report found the shore and foreshore can have different owners and management, and also that the foreshore can often be leased to other occupiers with sub-agreements. It can be even further complicated by the fact that a lifeguard service might be provided under contract to a council who wish to have a service although they are not the landowner or occupier.

It is against a backdrop of this framework that the RNLI, a charity, has provided lifeguarding services across the UK and Channel Islands since 2001.

The report is clear that although the RNLI chooses to provide a lifeguarding service, it has no legal duty to do so. Importantly, it cannot provide any service unless the landowner/occupier requests or consents to it. It is entirely a matter for the landowner/occupier whether they ask and contract with the RNLI to provide a lifeguarding service, should they determine to provide a service as a risk control measure.

The RNLI therefore provides a lifeguarding service to a landowner/occupier under a contract and often needs consent to do so from several different parties. However, many beaches, possibly the majority, do not have lifeguard services. Further, there are other organisations beyond the RNLI who also provide lifeguarding services on beaches around the UK coast.

### **Background to RNLI Lifeguarding Service**

Lifeguarding goes beyond performing rescues and lifeguards are primarily deploying a preventative approach both on and off the beach with education programmes informing beach visitors on how to stay safe and avoid getting into difficulty in the first place.

In 2019, there were 248 RNLI Beach Lifeguard Units (BLU) in total. During 2019, the estimated number of beach visitors to those 248 beaches patrolled by RNLI lifeguards was over 18 million (18,609,232). 206,760 hours of supervised beach patrols were provided, performing 3,890,982 preventative actions. 29,334 people were assisted, from rescue and casualty care to searches for missing persons and 154 lives were saved.

The 248 BLUs include beaches that are split into two or more for patrol purposes; each part of the beach patrolled by a BLU will count towards the total number of beaches that the RNLI patrols. For example, South Fistril beach and Fistril beach counts as two beaches within the 248. Lifeguards aim to reach anyone up to 300m from shore, within the red and yellow flags on RNLI-patrolled beaches, within 3½ minutes.

When a beach is lifeguarded, it is only lifeguarded during certain hours, normally 10am to 6pm and only at certain times of the year.

### **Cost of the Service/Funding**

The lack of regulatory/legal duty to provide a lifeguarding service means the Local Authorities do not receive funding for providing such a service. Further, as it is not a statutory responsibility, Councils have to primarily direct their budgets to the services which they are legally obliged to provide. The difficulty Councils have in providing funding to the RNLI is compounded by the reduction in central government grants that Councils receive; these have been decreasing since 2010.

Notwithstanding this, Councils and landowners do provide some payment for the service. However, the amount of payment amounts to a contribution rather than full cost for provision of the service.

The cost of providing a lifeguarding service is significant. Whilst there are 180 voluntary RNLI lifeguards the majority of the c.1,500 RNLI lifeguards are paid seasonal workers. Further, the amount of the amount of equipment needed is significant, including: rescue boards, four-wheel drive and other support vehicles, rescue watercraft, inshore rescue boats, first aid equipment and personal lifeguard kit such as wetsuits, fleeces and uniforms, as well as a dedicated full-time management structure and associated support costs of maintaining the workforce such as payroll and insurance.

There is also a need on all beaches for a unit/building for the lifeguards to operate out of. In 2019, there were 56 permanent lifeguard buildings, 104 transient lifeguard units and a further 274 additional permanent buildings or structures including support buildings, fixed container stores and rescue board bins. This equipment needs to be purchased, maintained and stored not only during the season, but also removed and then replaced at the end and start of the season. This is true for lifeguard kit and vehicles and the non-permanent lifeguarding buildings.

In depth training is also required for all lifeguards, whether they are returning having been a lifeguard in the previous season or are new to lifeguarding. Training includes rescue techniques, through to casualty care and equipment training. Recruitment for lifeguards started on 6 January 2020. In some areas, because of high numbers of lifeguards returning from previous seasons, recruitment may only take 4 to 6 weeks. However, some vacancies are hard to fill and therefore vacancies can remain until the season commences. The training/on-boarding process for lifeguards would normally only start two weeks before the season commences.

In 2019, the cost of providing the lifeguarding service was £21m. The payments by landowners/occupiers was £3.9m, which was less than 20% of the cost of providing the service. The majority of funding for lifeguarding services therefore comes from donations and legacies, not from monies received pursuant to agreements with landowners/occupiers.

## **Covid-19**

At the start of the pandemic on 9 March 2020, the RNLI set up a command/crisis team with Gold and Silver teams. The purpose of these teams was to assess and manage the impact of the pandemic, including setting organisational strategies, priorities and decision making, and ensuring the coordinated and consistent implementation of those decisions. Importantly, it also made sure that the many interdependencies were considered. The Gold and Silver teams are in addition to the normal Executive Team. There was also a Bronze team which consisted of the regional lifesaving leads and central support managers.

Covid-19 had both immediate, short term and medium to long term impacts on lifeguarding services.

### Immediate effect

Between 20 and 23 March 2020, the Government made a series of announcements which put the country in lockdown prior to Coronavirus Restriction Regulations coming into force on 26 March 2020. Businesses were closed, only essential travel was allowed, social gatherings stopped, shielding and social distancing rules were introduced together with stringent requirements for people to stay at home.

At this point beaches, together with many other public spaces such as National Parks, were in effect closed and visitors actively discouraged. Landowners were locking beach car parks and facilities were closed including toilets, which are needed for lifeguards. The RNLI's initial assessment, which it actively discussed and agreed with occupiers/landowners and other stakeholders, was that providing a lifeguarding service would be inconsistent with the message being given to the public and would encourage people to visit patrolled beaches, and risked providing the public with the impression that beaches were 'open'. This would go against the Government's clear instruction for people to stay at home, to restrict and limit exercise/leisure time, maintain social distancing and not congregate in groups. Landowners did not want to encourage people to come to the beaches.

The RNLI was also regularly reviewing Public Health England guidance in relation to the use of equipment and PPE, in particular how work could safely be done where social distancing between colleagues was not possible (lifeguarding often requires working in close contact), and with a lack of clear guidance on how to and when to carry out resuscitation safely. Lifeguards would ordinarily receive training from March onwards, but this had to be postponed until clear guidance was available and able to be implemented into RNLI systems, procedures and training. The difficulties associated with training lifeguards is demonstrated by the Non-Governmental Bodies that provide training in lifeguard qualifications having only just now, in September 2020, started to reach agreement on safe systems of training and assessment.

The RNLI was also trying to understand how far the restrictions impacted issues relating to key worker status, the voluntary sector, contracted services, the impact on statutory inspections and the use of equipment and travel. The situation was and continues to be further complicated by operating across multiple legal jurisdictions.

Given these factors, on the 24 March 2020, the Gold team made the decision to pause the roll-out of the lifeguard service. At that point, 20 beaches across UK and the Channel Islands were due to go live that weekend, and a further 28 beaches due to go live in April. There was also one additional beach being patrolled, Crosby beach, which is patrolled 365 days of the year.

This also meant that all recruitment and training/on-boarding for lifeguards and roll-out of equipment had to stop.

### Short term and Planning

Although the lifeguarding service was paused, planning immediately began on how the service could be run in 2020 and by 31 March 2020, an initial options paper had been prepared for consideration. The options ranged from providing no service through to trying to provide a service on all 248 beaches.

During April, the options were fully worked-up and considered by Gold team, the Executive Team and the Trustees. It was agreed that lifeguarding would be provided on approximately 48 beaches. The beaches that would be lifeguarded would be based on risk and professional judgement, ensuring a geographic spread across the UK and Channel Islands so that the UK beach going public would be able to visit an RNLI lifeguarded beach once restrictions permitted. Of those 48 beaches, approximately 25 are 'Easter' beaches and primarily southwest based. At the beginning of May, the plan was increased to cover 70 beaches having discussed the intention to provide cover across 70 beaches with the Maritime and Coastguard Agency.

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## Limiting factors

In providing any service in the short term and medium term, the RNLI faced significant challenges and dependencies. Those factors/dependencies included:

- Ability to source PPE equipment required as operational control measures, given the Covid-19 risk to the workforce
- Inability to wear PPE equipment and social distance whilst carrying out water rescues but with a legal requirement to keep lifeguards safe
- Conflicting medical guidance from medical associations on if and when resuscitation should take place
- Landowners or occupiers closing beaches and not wanting a service
- Lack of welfare facilities for lifeguards – often toilet facilities were closed and, for example in Cornwall, often not owned by the Landowner
- Inability to dispose of medical waste as providers not providing a service
- Difficulties in getting the equipment into the right location with external providers struggling to move equipment
- Matching timings with holiday parks
- Swimming pools that are important to initial and ongoing training being closed and access still remains limited as at September 2020
- Deteriorating/changing beach conditions because the service had not been in place, for example sand drifts occurring which then required diggers to be brought in to create room for the lifeguard unit
- Need to ensure budgetary restraint given a decrease in donations and uncertainty as to how long that decrease would continue for
- Lack of lifeguards for specific beaches due to:
  - Social distancing measures limiting lifeguard training. Priority was therefore given to returning lifeguards who had the greatest and most recent training and qualifications. This therefore limited the pool of lifeguards and trained lifeguards were not evenly spread across the country.
  - The majority of lifeguards (save for Lifeguard Supervisors) did not qualify for furlough as they were not employed and/or had not received pay by 19 March 2020 which was a government requirement to qualify for furlough. Lifeguards are generally seasonal workers and therefore paid for each hour worked. As they were not working, they did not qualify for pay. The RNLI did fund its own ex-gratia retention payments to lifeguards to try and support them, but many had no option but to seek alternative employment, which then meant they were not available for lifeguarding duties.

## Government

At the same time as planning the service within the constrictions set out above, the Chief Executive wrote to the Prime Minister and the Department of Transport explaining that it would be impossible to deliver an immediate full service: the level of lifeguarding service which it could provide would depend on the amount of notice the RNLI was given of the relaxing of public restrictions.

The Chief Executive requested advance notification of the Government's future planning and policy so that the RNLI could get ready to save lives once again.

The response was that the Department of Transport would liaise with the RNLI via the Maritime and Coastguard Agency to ensure as much advance notice as possible was given. However, regrettably, no such notice was given, and the RNLI was notified at the same time as the public. Hairdressers were given more advance notice than the RNLI about the re-opening of the sectors in which they operated than the RNLI was about the relaxation of public restrictions.

The Chief Executive also raised the issue of the lifeguards' qualification criteria for furlough and the response was to engage with HMRC, however, the Chancellor had already made his position clear.

### Medium term

In May 2020, planning work was ongoing including casualty care mitigations, and guidance for lifeguards during the Covid-19 pandemic was being produced. Revised contract negotiations with Councils were required, in particular around some of the challenges to agree protocols for the lifeguards' safe return to work as facilities such as lavatories and car parks remained closed. A Governance group and Lifeguard Stakeholder group were established to ensure lifeguard services could be rolled out safely, ensuring any dependency issues were resolved. These groups were subordinate to and fed into the Silver team. Nine tests were developed to ensure lifeguard services could be rolled out safely including: Government restrictions allowing people to use the beaches creating a legitimate need; Government rules allowing practices that would facilitate the responsible delivery of a service; capacity existing for testing of staff; Trustee and ET approvals in place; resources being available including people, equipment and infrastructure; support teams to be mobilised and sustained for the duration of any deployment; social distancing could be maintained between the teams and the public; appropriate PPE was available; and teams remained willing to work based on their assessment of risk.

At a Gold meeting on 27 May 2020, it was proposed to look at extending the service beyond 70 beaches. This proposal was subsequently approved by Trustees on the basis that the initial 70 beach model was now proven. Plans were put in place to rollout to an additional 100 beaches by early July, providing cover on c. 170 beaches for the peak season. Work was then undertaken to identify the additional beaches and ensure they could be lifeguarded safely. The rollout of those beaches took place in the period June to August alongside the ongoing rollout to the initial 70 beaches.

### Agreement and Communication of these decisions

The RNLI worked with the relevant landowner/occupier to discuss which beaches could be covered.

Initially, the landowner/occupier was informed that the service was suspended. The RNLI then discussed the proposed beach cover with the landowner/occupier and if requested and possible, agreed which beach(es) would be covered and when as part of the re-introduction of lifeguarding services. In relation to Cornwall, the beach cover was agreed with the County Council. Discussions also took place with various bodies including the Police, HM Coastguard and Surf Lifesaving clubs.

### Question 1

*"I have previously written drawing to your attention my concerns about a reduced level of lifeguard cover on Cornish beaches (Pender deceased.) I understand that from a position of no lifeguard cover (Whitsun Bank Holiday) there is now some service at a number of the main beaches. It is not clear to me whether the level of service will be further increased to 2019 levels or whether there will be a reduced service for the rest of the summer season?"*

## Coverage

For the reasons set out above, Covid-19 has caused a reduction in the level of RNLI lifeguarding cover in comparison to 2019.

As previously set out in our letter dated 24 July 2020, on 24 June 2020 the RNLI announced its intention to provide lifeguard cover on more than 70% of beaches that are normally lifeguarded, by the start of July.

As we approach the end of the season, a total of 177 beaches have been provided with cover in 2020. In Cornwall, cover has been provided on 47 beaches compared with 58 in 2019, equating to 80% of Cornwall beaches that are normally lifeguarded.

## Question 2

*“Is there a published plan available to the public that sets out where lifeguard cover will be provided and specifies the beaches, if any, that will either have a reduced service or no service this year in comparison to 2019? Given the difficulties with international travel currently, and the consequent likelihood of high numbers of tourists in Cornwall, it seems to me this information needs to be made readily available so the public can inform themselves of the risks of bathing at a given beach.”*

In our letter dated 24 July 2020, we set out that there have been numerous announcements setting out which beaches would be patrolled and by what date. The RNLI’s local media team in Cornwall worked very closely with Cornwall County Council’s media department and announcements/press releases frequently appeared on Cornwall County Council’s website giving updates as beaches were added. For example:

<https://www.cornwall.gov.uk/council-and-democracy/council-news-room/media-releases/news-from-2020/news-from-june-2020/cornwall-s-lifeguard-cover-increases-but-please-be-safe-and-socially-distant-when-visiting-beaches/>

The beach safety page on Cornwall County Council’s website also gives a full list of beaches with dates:

<https://www.cornwall.gov.uk/leisure-and-culture/beaches-in-cornwall/beach-safety/>

The detail was also published on the RNLI website along with announcements on local newspapers such as Cornwall Live. Further, as stated in the Prevention of Future Death report in relation to Mr Pender:

*“There have been numerous reports on social media and in the general press of volunteers from surf lifesaving clubs and elsewhere performing rescues or intervening to prevent an incident from developing.”*

Those media reports included details of the fact that beaches were not lifeguarded.

Both Cornwall County Council and the RNLI included safety messages on social media. For the RNLI that included messages on 14 Cornwall Lifeboat station pages and 6 Cornwall lifeguard area social pages. The messages were also shared on local radio and TV.

At a national level, a beach safety campaign was undertaken by the RNLI and HM Coastguard. This was launched on 21 May 2020. The campaign made it clear that beach lifeguards could not be everywhere this summer and urged everyone to follow advice. The message was clear.

It stated the public need to be aware of dangers, take responsibility for themselves and their loved ones and remember that, in an emergency, to call 999 and ask for the Coastguard.

The campaign also stated if the RNLI's lifeguards were present on the beaches as normal, they would be preventing many incidents before they even occurred by directing people to safe swimming areas, highlighting dangers such as rip currents and advising people not to use inflatables. The campaign highlighted that people could find themselves in danger if they did not follow the relevant safety advice.

The message also stated that:

*'It is important that anyone visiting the coast understands that the beach can be a dangerous environment and you must take more responsibility for you and your family this summer...'*

<https://rnli.org/news-and-media/2020/may/21/rnli-and-hm-coastguard-launch-beach-safety-campaign>

### **Question 3**

*"Where there may be a reduced or no lifeguard cover at particular beaches, is there a published plan specifying how any shortfalls may be mitigated through the provision of additional resource from the coastguard or other emergency provider?"*

In April 2020, the RNLI started work on what steps could be taken to try and mitigate the absence of lifeguards on beaches. However, as set out above, any legal responsibility for the public's use of beaches is a matter for the landowner/occupier.

The RNLI undertook a significant number of preventive measures including:

- Providing roving patrols for unguarded beaches from nearby beaches
- Observational patrol and casualty care
- Allowing the community access to RNLI rescue equipment
- Reviewing beach signage with local landowners
- Where possible, putting out bespoke signage on A-Frame boards on the unguarded beaches each day
- Local social media and PR campaigns
- Regional media and PR campaigns supported at a local level
- Regional and local information campaigns in conjunction with the HM Coastguard
- Leaflets and information delivered to local stakeholders and partners for distribution
- On higher risk beaches, checking emergency access and reporting any concerns to HM Coastguard
- Looking for emerging situations and providing information to HM Coastguard via the non-emergency line. For example, anything that may be useful to their decision-making process such as if there was a significant chance of tidal cut off or significant numbers of people on a beach which could hamper a response or local conditions which were concerning (large rips, tidal surges etc).
- Working with local surf life savings clubs
- Co-authored guidance for local authorities, owners, managers and operators on maintaining the safety of the public and staff on coastal beaches during Covid-19. The guidance outlined the planning and practical steps to reduce risk from drowning and water-related injury.

Partner organisations also took measures to prevent drowning. By way of example Cornwall County Council gave grants to Surf Lifesaving Clubs, via the umbrella organisation, to enable them to provide kit on beaches that would normally be lifeguarded by the RNLI.



The RNLI believes that it and its partners including the County Council, HM Coastguard and the Police put out a significant and widespread number of press releases and/or details on websites, informing the public that there was limited lifeguard cover, confirming which beaches had cover, the dates of that cover and providing a link to the RNLI website which set out all this information.

Further, beach safety education has not been confined to this summer and the current circumstances. Considerable time, effort and resource have gone into water safety education by many organisations over the years. Specific to the presence of lifeguards is the swim between the flags message and that the absence of flags means no lifeguards.

The RNLI entirely aligns itself with and supports your desire to prevent the recurrence of future deaths by drowning on Cornish beaches.