

Samantha Perkins  
Secretary to HM Senior Coroner for Berkshire  
Coroner's Office | Directorate for Economic Growth &  
Neighbourhood Services  
Reading Borough Council  
Reading Town Hall  
Blagrove Street  
Reading  
RG1 1QH  
Sent via email

**Date:** 24 January 2022

Dear Samantha,

**Environment Agency Response to Regulation 28 Coroners (Investigations)  
Regulations 2013 Report following the Inquest into the death of Jordan Shaun  
Mhlanga-Veira at Reading Town Hall on 4th November 2021**

On behalf of the Environment Agency, and particularly those staff involved in the Inquest and the writing of this response, I would like to send our sincere condolences to Jordan's family at this tragic time.

I address the following Matters of Concern that you asked us to consider–

**Matter of concern 1. *Whilst it is not a matter for the coroner at an inquest to recommend particular safety measures, I ask that safety measures at the site be reviewed urgently, to include consideration of warning signs, position of throw ropes, and consideration of buoys in the water (at the point where it becomes deep). I appreciate that many of these measures will contain both advantages and disadvantages, and this will be a matter for debate amongst the appropriate agencies<sup>1</sup> referred to in this report.***

1. Our response has been prepared following discussions with the National Trust. The National Trust is the landowner at Cockmarsh Field, Cookham and

therefore controls the access point by which members of the public are able to enter the Thames from 'the beach' at the location in question. As such, the National Trust has health and safety responsibilities towards those persons, which may include warning signs and rescue devices based upon risk assessment.

2. The Environment Agency is the navigation authority for the River Thames, the Medway, the River Wye and for Anglian Waterways (Ouse, Nene and Stour). We are also harbour authority for Rye Harbour. Our primary function as a navigation authority is the regulation of the waterways in accordance with the applicable legislation.
3. For the purposes of this response, we concentrate on our responsibilities in relation to the River Thames. The Environment Agency is the navigation authority for the whole of the non-tidal part of the Thames, ending at the tidal boundary at Teddington Lock, at which point the navigation authority becomes the Port of London Authority. The main navigation powers for the Thames are set out in the Thames Conservancy Acts 1932-1966 ('TCA'), and in the Thames Navigation Licensing and General Byelaws 1993 ('the Byelaws') which are made under the TCA. Also of relevance is the Inland Waterways (Environment Agency) Order 2010, an overarching piece of legislation covering Thames, Medway and Anglian waterways.
4. As navigation authority for the Thames, we have a duty to manage water levels (s73 and s76 TCA). We also have various powers (but no duty) to remove obstructions in various places along the Thames (s104-107 TCA) to ensure navigation is not interrupted.
5. Under Byelaw 63(b) it is an offence to bathe in the Thames where the Environment Agency has put up a sign forbidding it. However, our powers to erect a sign in our capacity as navigation authority are limited to circumstances connected to navigation itself, not recreation. For example, under Byelaw 63(b), we could erect a sign to prohibit swimming in order to prevent interference with the public right to navigate the Thames, but not to prohibit swimming generally.

6. Similarly, the Environment Agency has limited powers to cordon off sections of the Thames. We may restrict the general public's right of navigation, under section 79 of the TCA for purposes connected with maintaining a navigable waterway - for example, in order to carry out repairs to locks or weirs. However, we do not have the power to cordon off an area of river to create a swimming area. In any case, we would be reluctant to cordon off sections of the river as it could be seen as an encouragement to swim, suggesting the area is safe for swimming.
7. We are not generally the riparian owner of the bed of the river Thames and so our ability to place buoys or other items connected the riverbed are bound by our navigation powers, not influenced by our ownership of the riverbed. We are not the riparian owner of the section of riverbed next to Cockmarsh Field.
8. In relation to health and safety, there is a duty placed on the navigation authority under the Health and Safety at Work Act 1974 to (within the parameters of its powers and duties as navigation authority), ensure that those that navigate the waterway are not exposed to risks to their health and safety 'so far as it is reasonably practicable'. Every vessel navigating the Thames must be navigated with care and caution and at such speed and in such manner as not to endanger the lives or cause injury to others (s97 TCA).
9. It is part of the Environment Agency's general obligations with respect to water "generally to promote", "to such extent as it thinks desirable", "the use of waters and land for recreational purposes". This duty to promote recreation must be consistent with the Environment Agency's duties under the law, for example, consistent with the duties of a navigation authority to maintain the public right of passage along the river (s7(4) Environment Act 1995) and our duties under the Health and safety at Work etc. Act 1974 ('the HSW Act').
10. For the reasons stated above, the Environment Agency has very limited capacity to introduce safety measures in relation to swimmers entering the water at Cockmarsh Field.
11. The Environment Agency nevertheless takes very seriously the matter of water safety in relation to its land and assets. We are a member of the National Water Safety Forum, which is hosted by the Royal Society for the

Prevention of Accidents ('RoSPA') and supported by the Royal Life Saving Society UK ('RLSS UK'). We support and follow its published guidance, 'Managing Safety in Inland Water Sites'

<https://www.flipsnack.com/rospacatalogue/rospa-managing-safety-at-inland-waters.html> , guidance which was drawn to the attention of the Coroner, by [REDACTED], during Jordan's inquest. The guidance provides valuable advice for those in control of sites where members of the public have access to water.

12. We publish advice for the public on how to stay safe while visiting waterways: [www.gov.uk/government/publications/staying-safe-around-water](http://www.gov.uk/government/publications/staying-safe-around-water) . We run information campaigns to raise awareness of water safety around our assets and landholdings. We focus our attention on those assets which are known to be popular swimming or canoeing spots, for example, Teddington Lock. For example, in June 2021, in partnership with local representatives of other agencies with water safety roles and responsibilities on the river Thames – Royal Berkshire Fire and Rescue Service, Thames Valley Police, Royal Borough of Windsor and Maidenhead Council – we carried out a patrol in the Boulton Lock and Ray Mill island areas of Maidenhead, engaging with members of the public about the risks posed by swimming in the Thames and other waterbodies.
13. The Environment Agency is also an active member of the HSE approved Visitor Safety Group <https://www.visitorsafety.group/>, [which also works in this area of public safety. Other members of the group include the National Trust and British Waterways.](#)
14. The Environment Agency will continue to work with the National Trust so far as our powers and duties as a navigation authority allow, to ensure the safety of the public visiting the Thames.

**Matter of concern 2. Consideration should be given to approaching safety in relation to non-tidal waters in the same or similar way that tidal waters are dealt with. Whilst some proportionality will of course be required, it may be that there is some predictability to areas of particular danger in inland waters,**

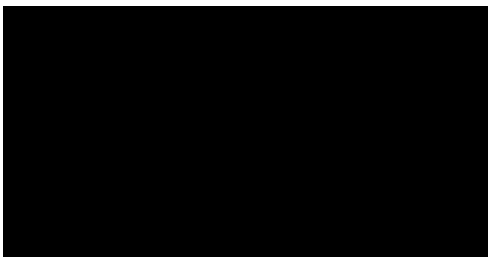
***for instance where these are regularly used by members of the public (as was the case here), and with reference to weather, and bank holidays.***

1. We note the Coroner's comment that there is *'currently no statutory framework around safety measures applied to inland waters'* and we do not feel that this is the case. There is established legislation and case law concerning public safety, which applies to all waters, both tidal and non-tidal.
2. The Environment Agency is responsible for safety on waterside assets it owns, operates or occupies (such as locks, weirs and bridges). In the case of Cockmarsh Field, the scope of our role is as navigation authority for the stretch of river. We do not own or occupy the land and have no assets positioned there.
3. Under criminal law (the HSW Act and associated regulations) employers are under a duty to ensure, so far as is reasonably practicable, that in the course of carrying out their undertaking (their work), members of the public are not put at risk. This includes the management of land and assets that are owned or occupied by that employer. Specifically, section 3(1) of the HSW Act establishes a duty on an employer to -  
*'conduct his undertaking in such a way, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health and safety'*.
4. Where the Environment Agency owns or occupies a site and it therefore forms part of our undertaking, we are under a duty to assess the risks our assets and landholdings pose. We do this by carrying out a public safety risk assessment which identifies measures to take to reduce risk to its staff and to the public. The risk assessment will address factors such as popularity of use and the factors which influence that popularity, such as weather and bank holidays. It will also take into account factors that may be influenced by the tidal or non-tidal nature of the water body. Taking all relevant factors into account, we then take all steps that are reasonably practicable and that we are empowered to take, to reduce and control those identified risks. Reasonable steps might include, for example, putting up warning signs on a weir to warn against or inform of the risks to swimming or canoeing. We continue to inspect regularly those assets to ensure the provided risk control

measures are well maintained and remain appropriate. Depending on the levels of risk associated with a particular asset, we also review our public safety risk assessments at suitable intervals.

5. In addition to our duties under the HSW Act, under civil law the occupier of land or an asset has responsibilities under the Occupiers Liability Acts of 1957 and 1984 ('the Acts') to ensure the safety of visitors and the uninvited to those premises. The Environment Agency adopts a wide definition of 'occupier' and 'occupation'; if we are responsible for the maintenance of an asset, or if we are the landholder (subject to any lease or licence) we arguably have sufficient control of the area to fall within the remit of 'occupier'. As such, we may have a duty under the Acts to take reasonable steps to keep people visiting the area safe and/or to ensure they do not suffer injury on the premises by reason of the danger concerned.
6. There is a large body of case law which considers the balance between responsibilities of owner/occupiers of land and those of persons entering upon land to undertake, in some cases, dangerous activities. I refer the Coroner to Tomlinson v Congleton Borough Council and Others 31 July 2003, Staples v West Dorset Council 1995 and Duff V East Dunbartonshire Council and Others [1999]. The case law points to an approach towards safety, whereby people take on a degree of responsibility for their own actions when carrying out potentially dangerous activities.
7. We note the Coroner's comment that further consideration should be given to developing water safety. Policy decisions on the matter of inland and coastal water safety are the responsibility of central government, including the Cabinet Office and the Department for Environment, Food and Rural Affairs.

Yours sincerely



Chief Executive