

The Coroner's Office
The Old Courthouse
Pontypridd
CF27 1JW

[REDACTED]
[REDACTED]
[REDACTED]

By email

17 April 2024

Dear Sir

Inquest into the death of Christopher Kapessa

This is The Coal Authority's (the CA) response to HMAc Regan's Report to Prevent Future Deaths dated 24 January 2024, and made under Regulation 28 of the Coroners (Investigations) Regulations 2013.

The report arose from an inquest held between 8 and 22 January 2024 into the death of Christopher Grace Kapessa, who died when he was pushed into the River Cynon which runs through land owned by the CA.

We would like to take this opportunity to restate our condolences to Christopher Kapessa's family and acknowledge the tragic nature of this case. We would also like to thank the Coroner for his report.

The Report to Prevent Future Deaths covers five matters of concern to the Coroner and this response is structured accordingly. Those matters are:

(1) The Coal Authority was aware that members of the public used the site for purposes including recreational walking. The Court found that the site was known by children as a site from which to swim, but that this was unknown to the Coal Authority. Nevertheless, Coal Authority documentation was not easily cross referenced or

accessible to inspectors to ensure that any reports that might be made with respect to activities by members of the public who might put themselves at risk were available to inspectors when conducting safety inspections.

We acknowledge the evidence was that some children knew of the area as a place to swim and this was not known to the Coal Authority.

At paragraph 74 of the Coroner's judgement he states as follows,

"I accept the evidence of [REDACTED] that searches for the location of the site within the authority's database would have been able to be cross referenced and would have identified any reports made to the authority that children or others had used the site for swimming, and that there was in fact no such awareness"

At the time of the incident there existed and had existed for many years, a 24-hour hazard report line which enabled such reports to be received, logged and acted upon and there is no evidence, as became clear during the inquest, that such reports were received by the CA. In addition to this any observations made by CA staff (outside of formal inspections) or reported by the public through other channels are recorded through the CA's online Health and Safety portal.

The CA has enhanced its documentation to make clear that Project Managers undertaking the site inspection will undertake a pre inspection review which will include interrogation of previous risk assessments and interrogation of CA systems to check whether relevant previous observations have been made by CA staff or reported to the CA by other third parties. Extracts from the Coal Authority's procedures: The Property Site Inspection Process flow chart, and the CA's Risk Assessment Guidance notes are attached for reference.

The CA is, therefore, satisfied that any reports or information provided by an employee or any third-party raising safety concerns regarding its sites will be actioned and recorded as appropriate and made available to the site's responsible inspector.

(2) No specific water safety policy relating to risk assessment or the provision of safety equipment was in place, or is currently in place.

As stated in the letter of the 17 January 2024, the CA was at that time developing a water safety procedure. This sits alongside the CA's procedure on safe working near water. The CA's overarching health, safety and wellbeing policy, safe working near water procedure and new Water Safety Procedure are all attached for reference.

In developing the Water Safety Procedure and control measures identified within it, the CA have consulted the EA on their operational arrangements and reviewed current best practice guidance in the UK, which includes information about the provision of life saving equipment and the circumstances when it might best be used. The documents listed below were considered when developing the Water Safety Procedure:

- Environment Agency Operational Instruction 733_11 Public safety risk assessment of assets in the water environment – recreation, water, and land access
- UK Drowning Prevention Strategy 2016-2026
- ROSPA Managing Safety at Inland Waterways
- Visitor Safety Group Guidance Managing Visitor Safety in the Countryside
- VSCG Managing Visitor Safety in the Historic Built Environment
- DEFRA Guide to Public Safety on Flood and Coastal Risk Management Sites

It is, of course, important that any such procedure provides guidance on assessing the viability of the provision of such equipment and does not simply create a blanket policy requiring the same.

The Coroner will recall during the evidence of [REDACTED], that extracts from "Mark Allen's Law: Water safety and drowning prevention", a document created by the Welsh Government, were put to him, and sections read, namely,

"United Utilities developed a pilot scheme with Greater Manchester Fire and Rescue Service and some of the families that had lost loved ones in drowning. This involved creating an information board with throw-lines, and of them were installed 20 across

eight sites.

However, since the throw-lines were installed none have been used but their maintenance has proved to be a 'massive challenge' with all of them vandalised including damage to the boards, the boxes broken and throw-lines stolen. Regrettably this has happened regularly."

And,

"NRW conducts Public Safety Risk Assessments on its reservoirs and flood assets and applies control measures, such as signage, fencing and barriers to exclude members of the public. However, they caution that whilst the provision of throw-lines might seem attractive and can at times be a sensible step there are very real difficulties that need to be considered. Their provision might be seen to condone entry to the water and encourage unauthorised access. Perceptions of personal risk might be lowered if public rescue equipment is provided. NRW experience vandalism and theft where they do provide public rescue equipment of this nature at visitor sites. It is expensive to adequately inspect and maintain to ensure it will always be available and in serviceable condition."

The concern over having a blanket policy of provision of equipment was also addressed in a response by ██████ in his evidence, where he stated,

"From experience on other sites generally life-saving equipment is abused or vandalized or made inoperable quite frequently"

Thus the Coal Authority's procedure states that:

Some people may regard the presence of rescue equipment as tacit approval to enter the water. Moreover, in public places, such equipment is often subject to vandalism or theft, rendering it ineffective. There are also limitations about the effectiveness of water rescue equipment in many situations including the competence of the person using it and the effect of water shock, which may render the individual being rescued unable to utilise it. For these reasons, it will rarely be appropriate to install them in places to which the public have access.

(3) The annual inspections conducted by the Coal Authority were limited in content, unclear in format and identified no clear criteria to be used for the basis of decision making.

As outlined in [REDACTED] letter of the 17th January, a new Public Safety Risk Assessment (PSRA) process was introduced during July 2020. The PSRA, its associated guidance and the e-learning package, was developed by the Authority's Safety, Health & Environment (SHE) team in collaboration with the Environment Agency and with good practice adapted to meet the specific needs of the Authority.

The PSRA provides an improved structure for classifying sites, ensuring that site visits are prioritised based on a proportionate risk assessment process and subsequent recommendations for action are proportionate and completed in a timely manner.

To support the implementation of this process, those involved in the implementation and management of the scheme were required to complete a PSRA e-learning package, and to demonstrate competence before using the new toolkit in the field. New starters to the team have been trained to ensure they are competent to use the system.

The CA is currently re-running the PSRA e-learning training for all inspectors ahead of commencement of the 2024-25 inspection programme. Further face to face workshops for inspectors are planned for the first quarter of 2024-25 to reinforce good practice and explore any opportunity that may be available to further improve the process.

(4) Inspectors were not provided with any guidance as to how to assess whether members of the public accessing the site should be safeguarded from the risks of deep and fast flowing water, and if so how. No signage was in place to warn of the specific dangers of deep and fast flowing water. No consideration was given as to whether equipment to assist in the rescue of members of the public who may have got into difficulty, such as throw lines, should be provided.

This has been addressed through the Water Safety Procedure which provides guidance on all these aspects e.g. circumstances when information/signage/fencing/water rescue equipment should be used to safeguard members of the public.

(5) Remedial work was identified to remedy aspects of the site which rendered it unsafe, but were not carried out. No system appeared to be in place to ensure that such works were carried out following inspection.

This concern has been addressed through the reviewed Public Safety Risk Assessment process as mentioned above and in Paul Frammingham's letter of the 17 January 2024 where in addition to a description of the new Public Safety Risk Assessment process, he states,

"Follow up of actions arising from the inspection of non-operational sites has been enhanced, by incorporation into a single system for the whole of the Authority's public safety operation, with clear action-tracking, management reporting and review. All remedial works identified by the Authority, or notified to the Authority, are followed up effectively."

There is now a system in place and a process to be followed which ensures that identified works are recorded, notified, remedied and reviewed, with Project Managers (who inspect sites) now having the authority to organise immediate repairs up to the value of £25,000 on their own initiative. The latter reduces the possibility that lower cost repairs, which would include additional fencing for example, can be undertaken more swiftly than if it had to go through the budget process and would remain in the immediate oversight of the inspector.

Yours faithfully

Browne Jacobson LLP

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