

Mr David Pojur  
Assistant Coroner for North Wales (East and Central)

Chief Executive

Redgrave Court

Merseyside L20 7HS

16 May 2024

Dear Mr Pojur,

Thank you for sharing a copy of your Regulation 28 report, with the Health & Safety Executive (HSE), following the inquest into the tragic death of Ben Leonard, in 2018, while on a scouting trip to North Wales. This was clearly a tragic incident and I would like to offer my condolences, and those of HSE, to Ben's parents and family for their loss.

In your report you have noted that, in your opinion, action should be taken to prevent future deaths. Whilst you have referred your report to a number of parties, you have raised two main areas of concern that appear to fall to HSE to address: that there is no independent or robust regulator who independently and proactively audits and inspects the Scout Association's arrangements for adventurous activities and that these activities are otherwise exempt from regulation by the Health and Safety Executive (HSE). Whilst more detail is provided in this response, I would highlight here that, whilst it is true that the Scout Association is exempt from regulation by HSE's Adventure Activities Licensing Authority, as are all voluntary associations providing services to their own members, it is not correct that this equates to a wider exemption from all HSE regulation and oversight.

HSE is Britain's national independent regulator for workplace health and safety. We work to ensure people feel safe where they live, where they work and in their environment by providing worker protection and public assurance.

I can confirm that the Scout Association, as a volunteering organisation with employees, is required to comply with workplace health and safety legislation and that their scouting activities are not exempt from regulation by HSE. Under the Health and Safety at Work etc. Act 1974 (HSWA) and associated regulations the Scout Association has duties to protect their employees, and others, from risks arising from their work activities. We

have powers under HSWA to enforce those duties where necessary, including by prosecution, as do our local authority co-regulators.

With regard to the provision of scouting activities, Section 3 of HSWA places a duty on the Scout Association to conduct their undertaking in such a way as to ensure, so far as reasonably practicable, that persons not in their employment are not exposed to risks to their health and safety. This duty includes protecting volunteers, scouts, and members of the public from risks that may arise from scouting activities.

The Scout Association is furthermore required by the Management of Health and Safety Regulations 1999 to make a suitable and sufficient assessment of the risks to the health and safety of persons not in their employment arising out of or in connection with the conduct of their undertaking. This is for the purpose of identifying the measures they need to take to comply with their statutory duties to protect others from harm. They are also required to make appropriate arrangements for the effective planning, organisation, control, monitoring and review of the preventative and protective measures identified.

As referred to above, HSE is also the licensing authority for the Adventure Activities Licensing Regulations 2004. These regulations require persons providing facilities for adventure activities, in return for payment, to hold a licence granted by HSE in accordance with the regulations. Persons are not required to hold a licence where facilities are provided by a voluntary association to its members and on this basis the provision of licensable adventure activities to scouts by the Scout Association or scout groups is exempt from the regulations.

The Health and Safety (First Aid) Regulations 1981 require employers to make adequate and appropriate first aid arrangements for their employees but do not place a legal duty on employers to make first-aid provision for non-employees such as volunteers or the public. However, our guidance accompanying the regulations strongly recommends that non-employees are included in assessments of first aid needs and that provision is made for them.

Enforcement of health and safety legislation is split between HSE and local authorities. Policy responsibility for health and safety regulation rests exclusively with HSE. Investigations into health and safety incidents involving scouting are allocated between HSE and local authorities according to the occupancy of a premises and the main work activity carried on there. As Ben's death took place at the Great Orme country park and nature reserve, which is managed by Conwy Council, HSE is the enforcing authority for any investigation under the Health and Safety at Work Act.

Fatal accidents arising out of or in connection with work are reportable under The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013. Where accidents involve persons not at work, the person in control of the premises where the incident took place is responsible for making the report. In the case of Ben's death, Conwy Council would have been responsible for submitting a report

under RIDDOR as they manage the Great Orme country park. Whilst HSE has no record of a report being submitted in relation to Ben's death, I understand that, at the time of its occurrence, your office contacted the local HSE office to inform them of the incident and was advised that Ben's death fell to Conwy Council to investigate. This was not correct – please accept my apology for the fact that an incorrect response was given at that time.

I have also been made aware that, following the conclusion of the 2020 inquest, this mistake was perpetuated as HSE colleagues, having identified Ben's death as requiring investigation, incorrectly informed Conwy Council that they were the enforcing authority and not HSE.

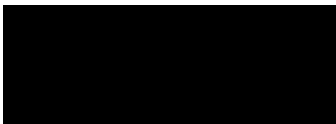
Our investigation Division have now begun an investigation into Ben's death in accordance with the [Work-related Death Protocol](#) to determine the cause, identify lessons and actions needed to prevent any recurrence and take appropriate enforcement action. I have asked the team to ensure the investigation is given priority, given the unacceptable delays that have already occurred.

If supported by the findings of our investigations, we will also look at how we intervene generally with volunteering organisations that provide activities to young people such as the Scout Association to identify lessons for the future regulation of this sector.

In addition, I am aware that prior to the inquest North Wales Police, at your request, sought advice from HSE on the application of health and safety legislation to the circumstances of Ben's death, and that the advice provided to North Wales Police was not consistent with the position set out above. I apologise for any misunderstanding this may have caused and assure you that it had not been our intention to mislead the inquest.

The error in not identifying, repeatedly, that this was a matter for HSE to investigate was clearly unacceptable and I would like to apologise to Ben's parents and family that an investigation has not been undertaken sooner. HSE will undertake an appropriate review to identify how this error occurred, and to ensure that it is not repeated. We also will be writing directly to Ben's family to offer them an apology.

Yours sincerely



Chief Executive