

Liability for Outdoor Swimming Events



From our review online, the following are the main potential ways in which parties can be exposed to liability in relation to organised outdoor swimming events:

1. An employer or self-employed person falling within the remit of section 3 Health and Safety at Work Act 1974 (HSWA). Then, guidance will need to be used to determine whether they are at fault.
2. Duty of care under common law and this duty has been breached, resulting in harm (this could apply to anyone e.g. qualified swim teacher)
 - a. Event organisers are considered to owe a duty of care to those directly or indirectly involved in the activities.
 - b. Occupiers are also considered to owe a duty of care under The Occupiers' Liability Act 1957. This duty does not apply to visitors who willingly accept risks.

STA and its members

Following our review, our view remains that there is a risk under both points above that the STA and its members could be exposed to liability in relation to accidents that occur at events organised by its members. However, we set out later in this note some factors that can mitigate the risk of a potential claim under the HSWA.

Moreover, the draft responsibility statement available at the end of this note is also designed to exclude liability to the fullest extent possible, and also attempts to address the actions of non-STA members who organise events.

Non-STA members organising events

Non-members organising events could also be deemed to have a duty of care owing to their involvement of creating the event and encouraging participation. Please note, for your reference, the legal concept of duty of care is wide-ranging:

A requirement that a person acts towards other and the public with watchfulness, attention, caution and prudence that a reasonable person in the circumstances would.

If an organiser fails to meet the appropriate standard of care they may be considered negligent.

Additionally, there is a risk relating to non-STA members contacting the STA concerning their liability, and relying on STA forums for creating such events. We have, therefore, updated the responsibility statement to exclude liability as far as possible in such circumstances.

Participants with qualifications (non-organisers)

Participants at the event with qualifications are not necessarily automatically placed under a higher legal responsibility than other non-skilled participants at the event. Please note, however, this will be subject to any steps the relevant participant takes to assume a duty of care, e.g., encouraging swimming under their supervision. In the absence of such conduct, the risk to the participant is diminished.

For completeness, a distinction should be drawn for liability of the emergency services such as HM Coastguard, however, this is beyond the scope of this advice note.

Health & Safety Executive

Section 3 of the HSWA imposes general duties on employers and the self-employed to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that persons other than themselves or their employees are not exposed to risks to their health or safety.

Some factors tending towards investigation:

- There was a clear undertaking or employer with duties under the HSWA; and
- Swimming and/or water activity was actively encouraged; or
- The affected person was a child or other vulnerable person cared for as part of a work activity; or
- There was evidence of hazards that are uncontrolled or unmanaged (this includes hazards the duty holder was aware of and those they should have been aware of had they carried out a suitable and sufficient risk assessment); or
- The activity and the competence of the affected person required a level of training and/or supervision and that training/supervision was either not provided, or was inadequate.

Some factors tending away from investigation:

- There was no duty holder or undertaking (or it is difficult to define duties) for example a beach or other natural feature where the public have open access; or
- Swimming and/or water access was either not encouraged or was actively discouraged; or
- The affected person was not involved in a supervised activity under the control of a duty holder such as a school or club; or
- Evidence suggests that the affected person (or their parent or guardian) was able to make a risk-based decision and took a risk they were made aware of or should have been aware of and causation was due to individual choice or error; or
- The nature of water and underwater hazards was made clear through unambiguous signage; or
- Supervision and training provided to the affected person were appropriate.

STA should be mindful of such factors when organising any outdoor swimming events or advising any potential organisers.

STA Responsibility Statement

SWIMMING TEACHERS ASSOCIATION (STA)

RESPONSIBILITY STATEMENT

Please note, there are risks involved in relation to outdoor swimming, for example, a chosen location that appears safe on the face of it can be dangerous for more casual swimmers. Moreover, a safer location one day, may be dangerous on another occasion, for example due to adverse weather conditions and differing water levels. Organisers of outdoor swimming events and participants are, therefore, encouraged to be mindful of hazard information around locations and the decision to participate in any swim must be taken by the individual swimmer.

Outdoor swimming presents a unique risk of serious injury or harm and are not limited to drowning. If you are in any doubt about the safety of a swim or your ability to complete it, you should not take part or encourage participation. Swimmers and organisers of outdoor swimming events must not rely in any way on the STA or its members for advice or information, including (but not limited to) in relation to organising events, participating in swims, and any assessment of liability.

While the STA is eager to help facilitate a mutual passion for outdoor swimming, it is not able to assume legal responsibility to its members or others. All members and non-members must be solely responsible for making their own assessment as to the risks involved in any particular swim.

Furthermore, the STA bears no responsibility in relation to any social swim events organised using STA groups, or the locations written about or featured in any of our marketing material, including but not limited to anything published on our social media or our website.

To the maximum extent permitted by law:

- The STA;
- each individual acting on behalf of the STA; and
- any person involved in a STA social swim,

exclude any liability for personal injury, death or other harm or loss to its members or any other person or organisation as a result of their negligence or other breach of legal duty.