

## **Teleconference 7 April 2017**

### **Participants**

Frances Kelly HSE  
Cameron Adam HSE  
John Cousins, MOUNTAIN TRAINING  
Mark Rosser chair AAIAC  
John Hamilton, SAAF  
Steven Morgan Sport Wales  
Adrian Clark Outdoor Education Advisers Panel (English / Welsh equivalent of SAPOE)

### **Summary of discussions**

- 1) Mike advised that the group has good support and consists of representatives from both industry and the education sector, and from all three home nations.
- 2) There are no firm plans in place and the group would appreciate support from HSE to develop a scheme if it was available.
- 3) Mike explained that at a basic level the notes from their meeting on 24 March indicated the desired direction of travel, i.e.
  - any new arrangements must provide current levels of assurance
  - current levels of financial investment should continue
  - the scheme needs to be more flexible to allow for the evolving nature of adventure activities
  - the scheme should continue to apply to under 18s only
- 4) The group has estimated that it might take 3 – 5 years to develop a scheme, however they believe that with help it might be possible to do it more quickly
- 5) The group indicated that they were considering the possibility of a proposal for them to replace HSE as the AALA, and that they believed this to be a non-statutory set up
- 6) There was a discussion about the meaning of statutory versus non-statutory. Frances and Cameron provided a description of the difference (see further clarification below)
- 7) Cameron advised that, we need to continue to meet HSE's deadlines and will submit a paper to the HSE Board in May, which will explain that this is one of the options being proposed
- 8) Cameron advised that the current financial subsidy could not be guaranteed
- 9) The group requested sight of the survey results to inform their decisions – Frances agreed to arrange this after the Board Meeting (either by webinar or face to face)

### **Clarification of what is meant by Statutory and non-statutory and implications**

Statutory means that something is required by law. It is currently a criminal offence to provide defined adventure activities to children under the age of 18 without a licence. Anyone caught doing so could be prosecuted and, if found guilty, they could be fined or imprisoned. (This has never happened).

A non-statutory scheme would mean that there was no criminal act associated with not having a licence. It would be voluntary to take part in the scheme.

This does not mean that businesses would not need to abide by Health and Safety legislation, which is statutory and therefore compulsory. Anyone operating a business must ensure the safety of their workers AND any non-workers (in this case children) affected by their work activity. The only difference is that there would be no legal duty to hold a licence.

If a non-statutory scheme were to be introduced, its success would rely on service-users demanding that the business has 'approval' as a condition of doing business with them. In other words the system would be market led. Demand for approved centres would outstrip demand for those who opted out.

HSE could support a non-statutory scheme in two ways, i.e. by recommending:

- a) that providers obtain approval as a way of demonstrating that they are complying with the Management of Health and safety at Work Regulations 1999, and
- b) that service users demand that the service is approved, as a way of demonstrating 'due diligence'; in selecting an appropriate place to take the children, in compliance with Section 3 of the Health and Safety at Work etc. Act 1974

If HSE were to stop being the AALA, and it was assigned to an industry group, the legislation would still be intact. There would still be a legal obligation to hold a licence, so HSE support would not be necessary.

The legislation as it stands cannot support the following

- 1) The inclusion of any criteria outside of health and safety. Quality could not be included in a statutory scheme because the law does not require it.
- 2) Cross border arrangements with Northern Ireland. This is because the current legislation does not apply in NI.