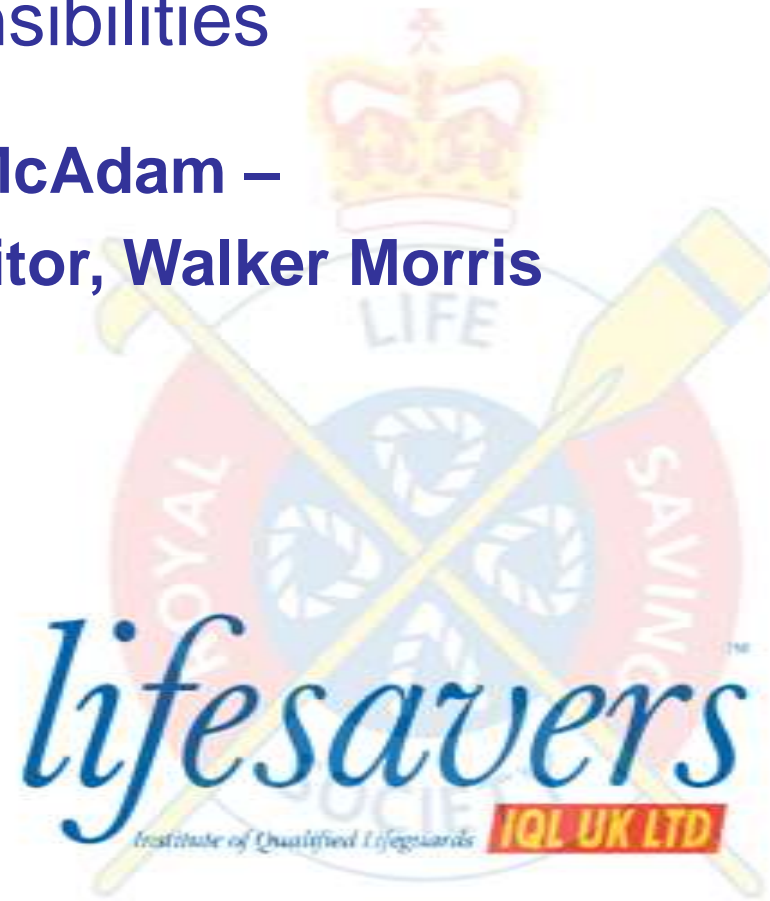




The Industry View of Lifeguarding Responsibilities

**Craig McAdam –
Associate Solicitor, Walker Morris**





Case Study One – A Fatality





Based on (several) true stories...



- 2 lifeguards poolside
- School holidays - very busy
- 6 year old child drowns
- No one (apparently) sees anything
- The police investigate



Facts

- 1 part time, 1 full time lifeguard
- 5 minutes elapsed before alarm raised
- At time of incident 1 lifeguard reprimanding boisterous youths
- Other on mobile phone to girlfriend
- CPR administered incorrectly



Legal liability of the organisation

- Health and Safety at Work Act 1974

Section 3(1)

*'It shall be the duty of every employer to ...ensure, so far as is **reasonably practicable**, that persons not in his employment, who may be affected thereby, are not exposed to risks to their health or safety'*



- Manslaughter

Corporate Manslaughter and Homicide Act 2007



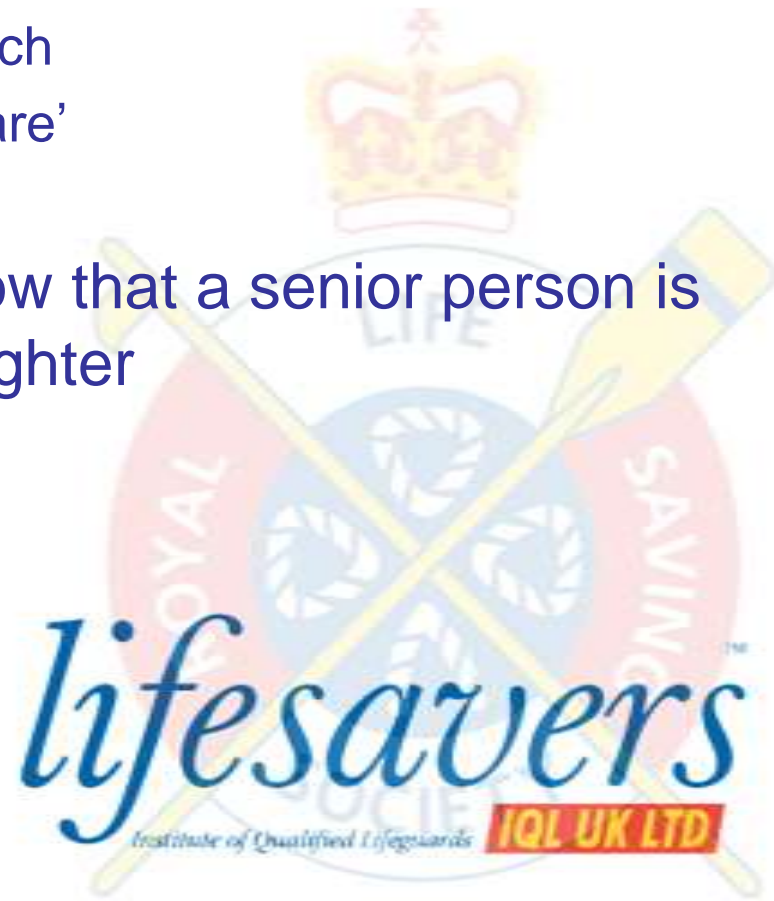
lifesavers
Institute of Qualified Lifeguards **IQL UK LTD**





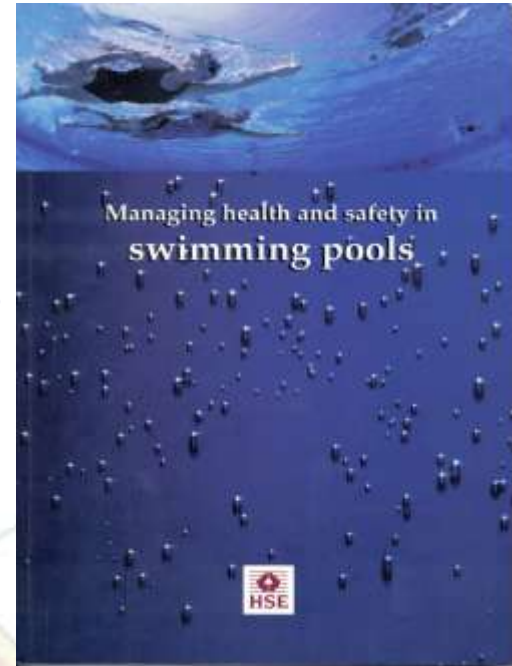
Corporate Manslaughter and Corporate Homicide Act 2007

- An organisation is liable;
 - if the way in which its activities are managed or organised
 - constitute a gross breach
 - of a 'relevant duty of care'
 - which causes death
- No requirement to show that a senior person is also guilty of manslaughter



Legal liability – relevant issues

- Training
 - Frequency, timing, suitability, Training Assessor
- Management (by DM or other?)
- Delegation
- Compliance with guidance
- Compliance with Health and Safety law



Legal liability of individuals

- **Employees**

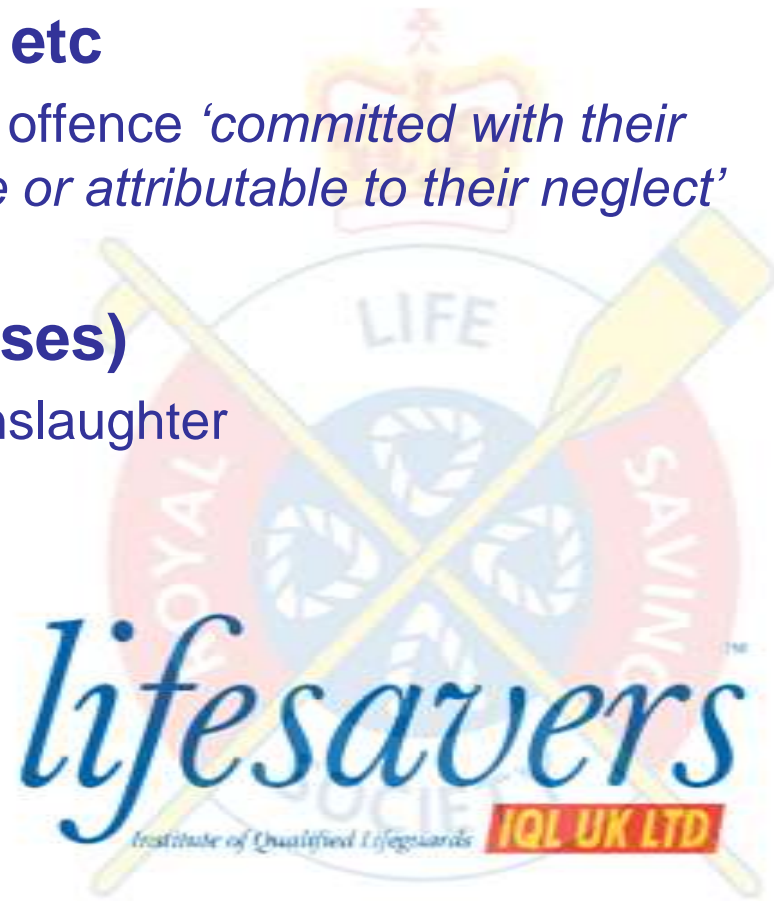
- must take reasonable care for own health and safety and that of others (section 7)

- **Directors, managers etc**

- are liable for any H&S offence '*committed with their consent or connivance or attributable to their neglect*' (section 37)

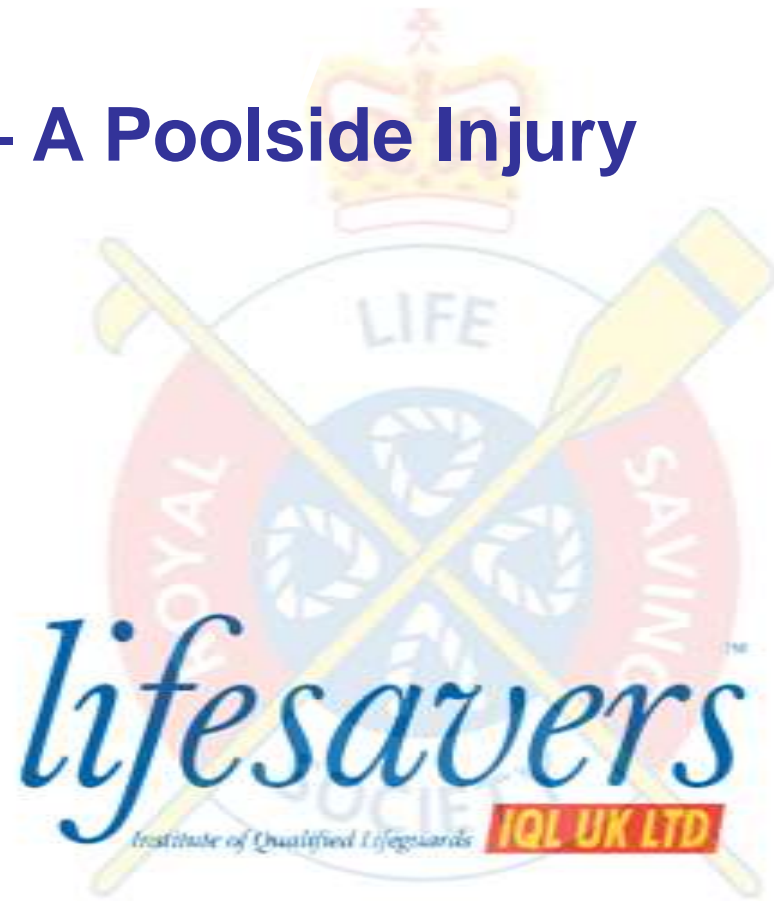
- **All (most extreme cases)**

- Gross negligence manslaughter





Case Study Two – A Poolside Injury



Background

- 16 year old slipped on steps
- Badly cut leg on broken tile
- Tile has been broken for 2 months
- Steps were taped off initially
- Tape removed – unclear by whom
- DM memo to management requesting repair
- Director's email response *'budget constraints mean this cannot be addressed until next financial year'*





Legal liability

- **Organisation**

- fail to do everything reasonably practicable to ensure health and safety of public (Section 3 HSWA)

- **Employees**

- Fail to take reasonable care for own health and safety and that of others (section 7 HSWA)

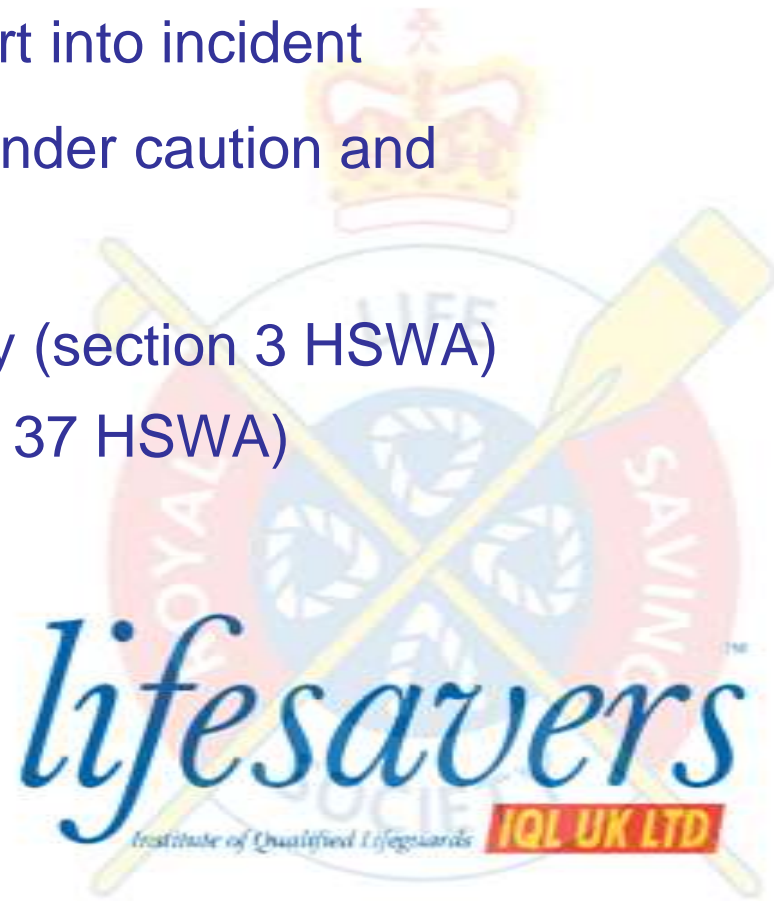
- **Directors, Managers etc**

- liable for any H&S offence '*committed with their consent or connivance or attributable to their neglect*' (section 37 HSWA)



Investigation history

- RIDDOR report submitted
- EHOs arrive to investigate
- Lifeguards provide statements to EHO
- DM hands over his report into incident
- Director is interviewed under caution and makes admissions
- Prosecution of Company (section 3 HSWA) and of Director (section 37 HSWA)





Understanding is essential for good investigation management

- Interview witnesses
 - Voluntary statements
 - Statements under compulsion
- Inspect and copy documents
- But NOT legally privileged material
- Seize physical evidence
- Interview **suspects** under caution



Simple Do's and Don'ts

DO ✓

- Understand the law
- Know your rights
- Co-operate
- Take legal advice
- Protect legal privilege
- Remain calm and considered

Don't X

- Obstruct
- Destroy evidence
- Lie
- Pressurise others
- Be pressurised by investigators/insurers
- Panic

