



# INLAND BATHING AREAS

A GUIDE TO SETTING UP INLAND BATHING AREAS IN THE UK

Robert Aspey & Chris Dalton

The  
Outdoor  
Swimming  
Society



PHOTO: DAVID THOMPSON

“

*There are many ideal inland bathing areas but landowners often have a default no-swimming policy. We hope, through this guide, to help turn that around.*

”

Robert Aspey & Chris Dalton  
Outdoor Swimming Society (OSS) Inland Access Group

## ABOUT THE AUTHORS OF THIS GUIDE

This guide was written by Robert Aspey and Chris Dalton, who lead the Outdoor Swimming Society (OSS) Inland Access Group, and with the support of Swim England. The OSS Inland Access Group was set up in 2013. The broad aims of the group are to share knowledge and help people to maintain and increase the amount of inland water accessible for outdoor recreational swimming. The group has a dedicated Facebook page for discussions, advice, and help with access to inland water for swimming. Helpful guides and information on this subject are available to download in the Files section. To join the group, see Contacts at the end of this guide.

[www.outdoorswimmingsociety.com](http://www.outdoorswimmingsociety.com)



“

*What a hugely inspiring project this is: practical, democratic & joyful at once. The OSS has for a decade now sought to open both our minds and our waterways to the possibility of swimming outdoors, in rivers, lakes and seas.*

*And how it has succeeded! Tens of thousands of people have taken to the open water who would never have thought to do so before. Now here is a guide that shows us how new “inland beaches” can be brought into being: sites where anyone can swim just for the sake of swimming.*

*We might think of such places as a kind of new commons: accessible to all, where simple and unworried swims can be taken, new friendships can be made, and the sheer pleasure of swimming under the sky can be experienced by anyone who wishes to feel it.*

*This is the real deal: a politics of place that mixes the gnarliness of legislation with a belief in the value of self-reliance and the possibility of joy in nature.*

”

Rob Macfarlane, Outdoor Swimming Society Patron

“

*We all need places we can be free and go on adventures, but public land has restricted access to swimmers far more than it has legislated against climbers and walkers. This guide will help change that; the Outdoor Swimming Society is making sure we all have places to take ourselves, children and grandchildren for a free outdoor swim. If you value swimmers freedom, join them.*

”

Ranulph Fiennes



PHOTO: DOMINICK TYLER

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# ABOUT THIS GUIDE

Over the last decade, the huge increase in popularity in swimming outdoors has led to a resurgence in demand for inland bathing areas. The term ‘inland beach’ generally refers to a fairly level grassed area and/or sand along the edge of a lake, reservoir, or riverside, with gentle sloping entry into the water for easy access, where families can swim, paddle, and have fun, without having to drive to the coast.

Inland bathing areas are plentiful and have remained popular in many countries in Europe and North America. In particular, France, Germany and Switzerland have hundreds of inland bathing areas. In England and Wales there were once many informal inland swimming locations where hundreds of families would swim and bathe on warm sunny days, but since the 1950s they have, with a small handful of exceptions, all been shut down.

Happily this is now on the turn, with new beaches at Rutland Water and Swan Pool having been established in recent years. This guide is intended to help more people create similar facilities in their area. The rise in swimming popularity, coupled with the desire of many public bodies and landowners to give outdoor swimmers the same access to their land as walkers, climbers and cyclists, means inland bathing areas are seeing a resurgence.

For anyone interested in establishing a safe and enjoyable beach in their area, this guide outlines the different models that beaches are taking, and gives

clear practical and legal guidance on how to set them up, with case studies.

This guidance is for all owners and occupiers of land on which there is a pond, lake, river or reservoir, including councils, water park operators, and local water supply authorities. The legislation and case law referred to is relevant in England and Wales.

Generally, access to the water would be free (where a charge for access is applied, additional measures are needed as explained in the section on Legal Duties). Charges for car parking (if arriving by car) and the sale of food and drink at an on-site café are normally the only costs visitors might incur.

This document is not intended for people or organisations setting up commercial operations, such as triathlon training lakes (of which there are now many in the country) – the legal requirements of that are different.

There are many ideal inland bathing areas but landowners often have a default no-swimming policy due to concern about legal responsibility for accidents. The loss of amenity puts English and Welsh families at a disadvantage compared to citizens in the rest of Europe and North America where safe river, lake and reservoir swimming opportunities remain abundant. It can also lead to swimmers taking risks in more dangerous waters, such as fast-flowing rivers, stagnant pools, and tidal waters with fast-flowing tides and rip currents. We hope, through this guide, to help turn that around.



PHOTO: DAVID THOMPSON



PHOTO: DOMINICK TYLER

## THE BENEFITS OF INLAND BATHING AREAS

- » During warm weather, local family-friendly inland bathing beaches provide ideal locations for individuals and families to spend a day getting healthy exercise swimming and relaxing by the water.
- » As they are local they don't involve long drives on overcrowded roads to the coast, especially welcome on hot summer days, or the cost of accommodation.
- » They are usually free apart from car parking charges.
- » Bathing has little or no environmental impact and it encourages people, especially children, to spend more time getting healthy exercise because they are having fun – which, in turn, helps to reduce childhood obesity.
- » Bathing places draw people together, encourage a sense of community and provide opportunity for exercise, sport and relaxation in a fun and safe environment.
- » The water in inland lakes and reservoirs retains its heat and can stay warm into late September. They are often safer and warmer than the sea, with no tides, waves or rip currents.





PHOTO: VIVIENNE RICKMAN-POOLE



## HOW TO ALLOW SWIMMING

There are four models of inland bathing areas that allow swimming, but all carry different financial, practical and legal responsibilities. These are:

- » Unsupervised access;
- » Managed bathing facility:
- » Non-lifeguarded;
- » Lifeguarded;
- » A club – a non-lifeguarded facility where swimmers sign a declaration that they are swimming at their own risk (outside the main thrust of this guide but mentioned here for completeness).

Each of these is outlined in this guide, with case studies.

# THE UNSUPERVISED ACCESS MODEL

**O**n the unsupervised access model, landowners are not technically providing a bathing facility; instead they are giving safety advice (via signage on site about wild swimming safety) to people who choose to swim. The Environment Agency and many of the national parks allow people to swim at their own risk, signposting any unusual or hidden risks for swimming at a lake, reservoir or river. Possible dangers include locks, sluices, weirs, hidden obstructions, or sudden change of water depth near the shore.

The section *Inland bathing areas and the Law* explains more on site signage, based on a site risk assessment.

## CASE STUDY: CHURCH STRETTON RESERVOIR

**T**he National Trust (NT) have a reservoir on their Carding Mill Valley site in Shropshire where mainly children used to swim in the holidays. The NT initially put up signs prohibiting swimming, and NT wardens kept telling the children not to swim, but as soon as the wardens left the children would go back in the water. The NT realised they were not going to be able to stop the children swimming, and they did not want to stop them having fun. In a ground-breaking move in around 2010 they carried out a site risk assessment, and installed Wild Swimming Safety signs, throw lines, and buoys indicating where the depth exceeds 1.4m. This is now a very popular free wild swimming reservoir that draws more people to this NT site, where they spend money on car parking and the café. This is an excellent model of good practice on how to manage wild swimming.

Find it at: [wildswim.com/church-stretton-reservoir](http://wildswim.com/church-stretton-reservoir)



An example of good signage at an unsupervised site.



# THE UNSUPERVISED ACCESS MODEL

## CASE STUDY: SPARTH RESERVOIR

**S**parth Reservoir is a feeder to the Huddersfield Narrow Canal, located in Marsden, Huddersfield. It is owned and operated by the Canal and River Trust (formerly British Waterways). In March 2017, five-and-a-half years after local swimmers began negotiation, firstly with British Waterways and then the Canal and River Trust, new signs giving advice on safe swimming went up at Sparth Reservoir.

Although swimmers had used the reservoir for decades, in 2011 British Waterways put up a “no swimming” sign at the Reservoir. Bylaws that prohibit swimming in the canal network were cited on the signs, which British Waterways said were “for the benefit and safety of members”.

Regular Sparth swimmers conducted a long campaign helped by the OSS Inland Access Group, which included ‘splash mobs’ and press interviews, lobbying, a community risk assessment, a successful grant application to the local council, discussions with the operators in meetings and emails.

The outcome was agreement that swimming is allowed in the reservoir. New custom-made signs were designed in collaboration between the local community and the Canal and River Trust. The signage describes the history of swimming at Sparth, explains the risks, and gives advice on how swimmers can keep themselves safe. A community-run Facebook group enables swimmers to find others to swim with, organise litter-picks and events, and raise safety concerns.

Find it at: [wildswim.com/sparth](http://wildswim.com/sparth)



# THE UNSUPERVISED ACCESS MODEL

## CASE STUDY: SWAN POOL

**S**wan Pool in West Bromwich, Birmingham, is a large body of water in Sandwell Valley Park, an oasis of green in the middle of the West Midlands urban conurbation.

The pool had been used for wild swimming for many years, but Sandwell Council installed signs prohibiting swimming for what they deemed to be safety reasons. In 2014 a local group of people who had been regularly swimming there, for both recreation and competition training, campaigned with the help of a local councillor and the OSS Inland Access Group to remove the swimming ban. They were successful; in 2015 the council removed the ban and installed wild swimming safety signage. It is now a very popular wild swimming venue. One of the key points that finally swung the argument in the swimmers' favour was the support of a locally elected councillor. The councillors are the decision makers and the council staff have to carry out their wishes.

Find it at: [wildswim.com/swan-pool-sandwell-valley-country-park](http://wildswim.com/swan-pool-sandwell-valley-country-park)

## CASE STUDY: THE LAKE DISTRICT NATIONAL PARK

**W**ild swimming in most of the tarns, lakes and rivers of the Lake District has been practised for generations with no specific restrictions.

Due to the increasing popularity of wild swimming since 2000, the park authorities met with wild swimming groups in 2013 to agree on the best way of encouraging safety amongst all the users of the lakes (canoeing, sailing, boating, and swimming). This resulted in the adoption of official wild swimming guidance – a model of good practice that could be used by other landowners.

As well as online guidance, the park authorities issue leaflets and have installed signage encouraging safe wild swimming in the park. They now positively encourage wild swimming, stating 'Swimming in tarns, lakes and rivers is great fun, however it's important to stay safe'.

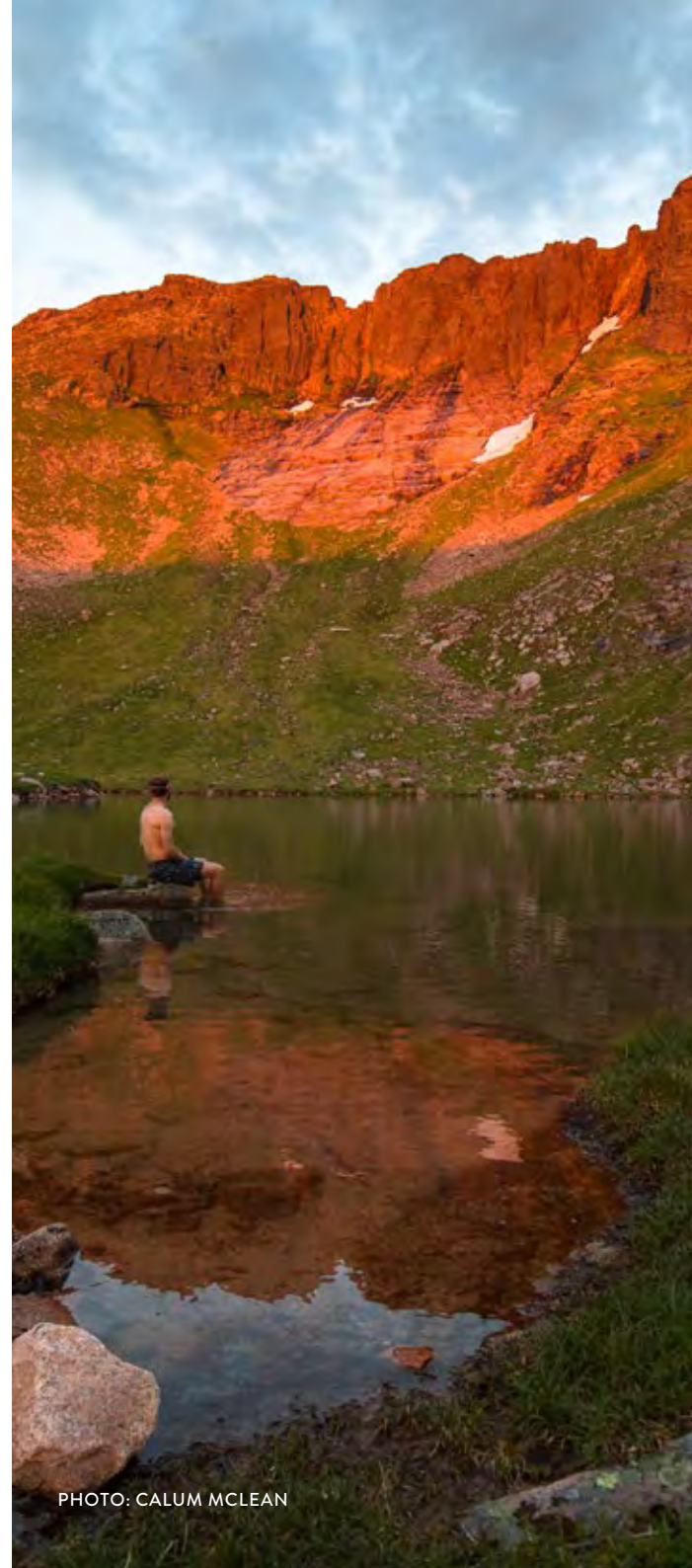


PHOTO: CALUM MCLEAN

# MANAGED BATHING FACILITIES

At managed bathing facilities landowners manage the site in some way, for example by providing a buoyed-off area of a lake, reservoir, or river for bathing, with or without lifeguards.

## LIFEGUARDED OR NON-LIFEGUARDED HSE GUIDANCE?

The type of bathing facility offered should be based on HSE guidance, HSG179 Managing health and safety in swimming pools. This publication provides guidance for those who have any involvement with the operation and management of health and safety in swimming pools. The guidance is aimed primarily at swimming pools but also covers segregated areas of rivers, lakes, the sea, and other non-standard facilities where swimming is encouraged (see paragraph 6). The guidance's relevance depends on the circumstances at each non-standard swimming facility. While much of the guidance may not be relevant, the following sections should be read carefully:

- » General management of health and safety
- » The practicalities of managing health and safety

Please note, this guidance does not apply to areas where swimming is not encouraged and which are not maintained as swimming facilities. If people choose to swim in places like ponds or lakes then it is normally reasonable to expect them to take responsibility for their own safety.

Paragraphs 186 to 193 help determine whether a facility should be lifeguarded or non-lifeguarded.

## RISK ASSESSMENTS

A risk assessment is central to the effective management of health and safety, and the concept features in several sections of this HSE guidance. An assessment of risk is nothing more than a careful examination of factors that could cause harm to people, to establish whether enough precautions have been taken to prevent harm, or whether more precautions need to be taken. As part of the risk assessment, pool operators will need to consider all the hazards and risks associated with the facility. The Royal Life Saving Society (RLSS) is an organisation that can undertake professional risk assessments for bathing areas.

Note, Swim England only have operation and management procedures that apply to open-water swimming competitions, not recreational bathing beaches, so the relevant guidance is the above HSG179.

HSG179 is issued by the Health and Safety Commission. Following the guidance is not compulsory and you are free to take other action, but if you do follow the guidance you will normally be doing enough to comply with the law.

Health and safety inspectors seek to secure compliance with the law and may refer to this guidance as illustrating good practice.



# MANAGED BATHING FACILITIES

## MANAGED INLAND BATHING: NON-LIFEGUARDED

A non-lifeguarded facility may be chosen where a risk assessment has indicated this would be suitable following implementation of measures highlighted in the risk assessment. These types of facilities often, but not exclusively, have a maximum water depth of 1.5m (4 foot 11 inches) as this is seen as less of a risk than deeper water.

## CASE STUDY: FRENHAM GREAT POND

Frensham Great Pond is a natural lake situated between Farnham and Hindhead, Surrey. The area is made up of a large area of heathland, together with some coniferous and mixed woodland. It is owned by Waverley Borough Council, which allows managed non-lifeguarded swimming through the use of signage giving safety advice, the latest water-quality readings as a registered bathing area, and restricting the maximum depth to 1.4m. Due to its limited area and popularity with families it is really only suitable for recreational swimmers.

Find it at: <https://wildswim.com/frensham-pond>



PHOTO: DOMINICK TYLER



PHOTO: VIVIENNE RICKMAN-POOLE



PHOTO: DOMINICK TYLER

## MANAGED INLAND BATHING: LIFEGUARDED

A lifeguarded facility may be chosen where a risk assessment has indicated this would be suitable following implementation of measures highlighted in the risk assessment. These types of facilities often have a maximum water depth exceeding 1.5m due to the presence of lifeguards to manage the increased risk.

Depending on the findings of a risk assessment and how the lifeguards manage the bathing area, possible options can include:

- » Have one bathing area demarcated by a line of buoys, with the depth slowly increasing from nothing out to a maximum depth of, say, 6ft (1.83m).
- » Demarcate the paddling area from the swimming area (especially if the maximum depth exceeds 1.5m) with a line of buoys, to make it easier to keep young kids and non-swimmers in the shallower paddling area.
- » Have two separate bathing areas along the shoreline: a paddling area and a deeper swimming area.

It should be noted, however, that it is vital lifeguards are properly trained and equipped and appropriate action plans in place. It may increase liability over unsupervised access if only the illusion of safety is provided.

## CASE STUDY: RUTLAND WATER BATHING BEACH

With no official inland bathing waters in the English Midlands, the OSS identified an obvious demand for such a facility. In 2009, Robert Aspey, the newly appointed OSS Inland Access Officer, approached several public and private landowners with the idea of creating an inland bathing beach similar to those he had discovered while travelling in Central Europe. These landowners proved to be very risk averse and nervous, so progress was slow.

However, in the autumn of 2010 he approached the visitor operations manager at Anglian Water Services with this idea, and was well received. Then, with the backing of Anglian Water Services, Swim England, and Leicester-Shire & Rutland Sport, he put together a joint proposal document for a bathing beach along the north-east shore of Rutland Water. Rutland Water is situated in a rural part of the East Midlands. As one of the driest and warmest parts of England in summer, and with several large cities within a 40-mile driving distance, it is an ideal location.

In 2011, to prove there was a real demand for such a facility, Anglian Water Services consulted the local population and found overwhelming support for a bathing beach. This then became part of the development strategy for Rutland Water.

Several organisations including the RLSS worked together producing risk assessments, operating procedures, getting approvals from the Anglian Water Services board, and organising lifeguarding.

From an environmental perspective approval was required from the head of water quality and the head of water treatment at Anglian Water Services, and also from Natural England (as Rutland Water is an SSSI site). All these approvals were then granted. Anglian Water Services undertook a water-quality risk assessment which did not throw up any problems regarding people swimming in the water.

The area designated for the beach was cleared of overgrowth, and sand was delivered to form a beach area beside the water.

The bathing area was clearly defined with floatation buoys linked by a rope and secured firmly to the bank side at either end. It covers an area 140m long by 20m wide measured from the shoreline. The line of buoys can be moved to suit varying water levels. There is a gradual slope out from the beach to a maximum depth of about 6ft (1.83m). The lifeguards are beach trained and it was determined no demarcation was needed between the paddling and swimming areas. This has worked well in practice.

Find it at: <https://wildswim.com/frensham-pond>



PHOTOS: RUTLAND BEACH

This facility cost approximately £20,000 in 2014 for the infrastructure works (creating a sandy beach, signage, etc.) with car parking charges paying for the lifeguarding. There is existing car parking, toilets, café, and a visitor centre nearby.

Rutland Water is ideal for people living in the Midlands, as they face a drive of over 100 miles to get to a seaside beach, where it is often colder, tides and waves make it less safe than an inland beach, the roads may be blocked with traffic, and the accommodation is often fully booked up. Inland water bodies are nearly always warmer and safer than the sea.

The beach and swimming area opened to the public on 5th July 2014 to overwhelming praise and is now a hugely popular family-friendly bathing facility. The beach is open all year, but the paddling and swimming area is only open when it is lifeguarded during the summer.

For help with setting up a managed bathing facility like Rutland Water Bathing Beach, the landowner (councils, water park operators, local water authorities, etc.) can contact Anglian Water Services. The RLSS or SLSGB can help with advice including details of beach lifeguard training, risk assessments, and operating procedures.



*There are other examples of managed lifeguarded inland bathing areas in England, such as Hampstead Heath Ponds and Cotswold Water Park Bathing Beach, but these make a charge for entry.*

# MAKING A SUCCESSFUL INLAND BEACH

## CHOOSING THE IDEAL SITE

- » A lake or natural-looking reservoir is ideal as there should be no current. If using a river, pick one with a very slow-moving current, possibly upstream from a weir to give enough depth, or where a natural deep pool has formed in the river.
- » It should slope gently into the water with no sudden changes in depth, which allows kids to paddle near the shore, getting deeper further out for older children and adults to swim.
- » Water of a minimum depth of approximately 1.2-1.5m is deep enough for swimming, 1.8m being ideal. This is important so people can have a good swim away from the kids' paddling area, and provides interest for all.
- » Sand can be laid along the shoreline for kids to play in, with a grassed area behind for people to sit, relax and picnic, with some trees to provide natural shading.
- » A natural bay along the side of a lake can look ideal if present, but is not essential.
- » Check the water for any obstructions, weeds, etc. Remove these or select another site.

## MONITORING WATER QUALITY

If water looks clear and clean it is usually of good quality. However, it is wise, especially if you are providing a managed bathing facility, to take some initial water samples (in line with the bathing water directive) from the proposed bathing area just to make sure the water is suitable, and at regular intervals when the bathing area is open. The bathing beach could be registered as a designated inland bathing water with the Environment Agency by submitting an application to the Department for Environment, Food and Rural Affairs. If designated, the Environment Agency will develop a bathing water profile and put plans in place to monitor and protect the bathing water.

Blue-green algae can occur during hot weather, and appears as a bright green/blue scum on the surface of the water. This is not tested for; you should keep a visual check for it, and advise against swimming while it is present. Some guidance on how to control blue-green algae can be found at <http://nora.nerc.ac.uk/19957/1/BarleyStrawtocontrolalgae.pdf>.

Weil's disease is not tested for. Although incidence of human infection in the UK is minimal, it is worth providing signage advising people not to go into the water with open cuts, and to wash or shower afterwards. It is most likely to be caught from entering stagnant water, with a much lower risk in clean lakes, reservoirs, and rivers where the current dilutes it.





# MAKING A SUCCESSFUL INLAND BEACH

## SAFETY

The accident data produced by the Royal Society for the Prevention of Accidents (RoSPA) shows that inland open-water swimming is one of the safest aquatic activities. The figures show that it is not quite as safe as indoor swimming but significantly safer than sailing, kayaking, canoeing, angling, jet skiing, and scuba diving. See Figure 3 at: <http://www.rospa.com/rospaweb/docs/advice-services/leisure-safety/inland-waters-risk-assessment.pdf>

Learn to swim – this is a skill all should learn as early as possible.

The OSS gives detailed safety advice aimed at swimmers at: <https://www.outdoorswimmingsociety.com/category/features/survive/>

The River and Lake Swimming Association (RALSA) have produced an excellent wild swimming safety guide that can be download free at: <http://www.wild-swimming.com/uploads/WSGsigns.pdf>

Children under the age of 14 must be supervised by parents or guardians at all times, even if lifeguards are present. Lifeguards are not child minders.

In addition to trunks or a bathing costume, swim shoes are recommended to protect feet from sharp surfaces. Shorty or full wet suits give buoyancy and warmth. Wearing a brightly coloured swim hat makes you more visible.

The Outdoor Swimming Society's Swim Responsibility Statement clearly sets out the position on safety and applies to all unsupervised recreational swimmers as follows:

*'The Outdoor Swimming Society recognises that open water swimming is an activity with a danger of personal injury or death. Participants in these activities should be aware of and accept these risks and be responsible for their own actions.'*

The situation regarding formally organised groups under supervision and commercial activity may be different. See publications by Swim England: The Management of Open Water Swimming Events and British Triathlon – Organised Open Water Swimming.

## EMPLOYING LIFEGUARDS

If, after following the guidance in HSG179, the lifeguarded option is chosen, the RLSS (<http://www.rlss.org.uk/professional-qualifications/>) or the SLSGB (<http://www.slsgb.org.uk/education/graduate-lifeguard/>) can advise on the number of lifeguards and supervisors required and undertake a site audit.

The two alternative qualifications for inland water lifeguards are:

1. RLSS NBLQ (National Beach Lifeguard Qualification) with additional site-specific training for inland water;
2. SLSGB Inland Waters Lifeguard, or their Beach Lifeguard with the inland water module in addition.

## PUTTING UP SIGNAGE

This is covered in the following sections of this guide:

Managed Bathing Facilities (which details the guidance in HSG179, and gives case studies with signage)

Inland bathing areas and the Law



# INLAND BATHING AREAS AND THE LAW

## FULFILLING YOUR LEGAL DUTIES AS A LANDOWNER / OCCUPIER

A key consideration for those thinking of setting up an inland beach on their land will be the steps that they need to take to stay on the right side of the law.

Like many other activities, people face risks when they go swimming. What does the occupier need to do to ensure that he or she is not legally liable in the unlikely event that an accident occurs?



The law in this area is actually the same general law that applies when people visit your home. The key points are these:

1. As occupier of the land, you owe a legal duty of care to all visitors who come on to the land.
2. The duty can be broken down into three parts:
  - (i) To take such care as in all the circumstances of the case is reasonable,
  - (ii) to see that the visitor will be reasonably safe,
  - (iii) in using the land for the purposes for which he or she is invited or permitted by you to be there.
3. 'Reasonably safe' doesn't mean completely or perfectly safe – it isn't your duty to wrap them in cotton wool. Generally, people know that swimming comes with risks. Nonetheless, they need to be able to be safe from any special dangers that a person wouldn't usually come across when swimming.
4. No duty to a visitor arises in respect to risks that are willingly accepted by the visitor. When a person goes swimming, they are treated in law as willingly accepting all of the risks that would be obvious as arising from going swimming.
5. As a result, there is no duty on the landowner or occupier to prevent visitors from being exposed to those risks, or to give warnings in relation to those risks.
6. If there are unusual or special risks that would not be obvious to a reasonable person, then it is the duty of the occupier to make the visitor aware of those unusual or special risks. This is ordinarily done with a notice.
7. There is no 'one size fits all' solution, because no two bodies of water are the same. It would be sensible to check for any special risks before opening the land to visitors and to continue checking for risks once open.

*The law is set out in the Occupiers' Liability Acts of 1957 and 1984 and applies to land in England and Wales. Separate laws apply in Scotland and are outside the scope of this paper.*

*It should also be noted that, on business premises, employers owe separate duties to their employees and visitors. Where a charge is made for swimmers to use an inland beach, this may result in the land being treated as business premises.*

## INLAND BATHING AREAS AND THE LAW

### WHAT RISKS WOULD BE TREATED AS BEING OBVIOUS TO A REASONABLE ADULT?

The courts have identified the following risks as being obvious to a reasonable adult:

1. The risks arising from swimming generally;
2. The risks arising from swimming in cold water or deep water;
3. The risks arising from diving into shallow water;
4. The risk of cramp from swimming after eating;
5. The risks arising from the presence of mud or sludge on the bottom of a pond.

In these circumstances, occupiers would not generally be expected to take any additional steps to ensure the reasonable safety of visitors. It should be obvious that, for example, swimming comes with a risk of drowning, and diving into shallow water comes with the risk of injury.



## INLAND BATHING AREAS AND THE LAW

An important case in 2001 illustrates these principles. A man had drowned while swimming in deep, cold, murky water in a pond at a National Trust property. His family brought legal proceedings against the National Trust, arguing that the National Trust ought either to have prevented the man from swimming, or to have warned him of the risks arising from swimming in the pond. This argument was roundly rejected by the Court of Appeal.

In deciding that the National Trust owed no legal duty to warn visitors of the risks of swimming in the pond, or to prevent them from doing so, the Court of Appeal stated:

*It cannot be the duty of the owner of every stretch of coastline to have notices warning of the dangers of swimming in the sea. If it were so, the coast would have to be littered with notices in places other than those where there are known to be special dangers which are not obvious. The same would apply to all inland lakes and reservoirs.*

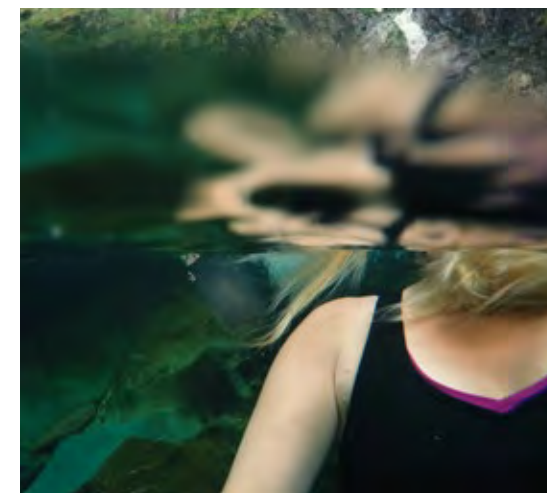
*In my judgement there was no duty on the National Trust on the facts of this case to warn against swimming in*

*this pond where the dangers of drowning were no other or greater than those which were quite obvious to any adult such as the unfortunate deceased.*

*That, in my view, applies as much to the risk that a swimmer might get into difficulties from the temperature of the water as to the risk that he might get into difficulties from mud or sludge on the bottom of the pond.<sup>1</sup>*

As the risks that the man assumed when he went swimming in the National Trust's pond ought to have been obvious to him, the National Trust had no duty to warn him of those inherent risks or prevent him from being exposed to them.

This legal principle is known by the Latin expression *volenti non fit injuria*: if someone willingly and knowingly places themselves in a position where harm might result, they will not be able to bring a claim against another party if suffering injury as a result.



TOP PHOTO: PETER HANCOCK

ABOVE: VIVIENNE RICKMAN-POOLE

(1) A copy of the full judgment is available here: <http://www.bailii.org/ew/cases/EWCA/Civ/2001/189.html>

## INLAND BATHING AREAS AND THE LAW

### UNUSUAL RISKS THAT WOULD NOT BE OBVIOUS TO A REASONABLE ADULT

Where the occupier is aware of unusual risks from swimming at a particular location that would not be obvious to a reasonable person, then the occupier is under a duty to make visitors aware of those special risks.

By making the visitor aware of those special risks, the occupier puts the visitor in the position of being able to decide for himself or herself whether or not voluntarily to accept those risks. In general, if the visitor, in full knowledge of the special risks, proceeds to swim then he or she is treated as willingly accepting those special risks. As a result, the occupier would owe no further legal duty to the visitor in relation to those special risks.



## EXAMPLES OF SPECIAL RISKS THAT WOULD NOT BE OBVIOUS TO A REASONABLE ADULT

It is impossible to give an exhaustive list of special risks that would not be obvious to a reasonable adult. However, some examples include:

1. Hidden objects near the surface of the water that might cause harm if an individual swam into them;
2. Known impurities in the water that may cause illness or other harm to a swimmer;
3. Strong currents or water flows that would not be apparent from the water's edge;
4. Sharp objects in the water.

If an occupier is aware of some special risk, then in general the occupier will have discharged its duty of care by bringing those special risks to the attention of visitors. This will enable each visitor to make his or her own decision as to whether or not to assume those risks voluntarily.

In addition, it is good practice for an occupier to take reasonable steps to discover whether there are any additional special risks which might endanger visitors. This is not to say that occupiers must, in the words of the court, '*make the premises so safe that users could not injure themselves even if they acted with complete disregard for their own safety*'<sup>(2)</sup>. It simply means that occupiers will often know the state of the land better than others and be best placed to check for risks. This could involve the

occupier walking along the shore of the body of water or going for a swim. It could also involve getting feedback from any visitors who have identified risks themselves.

This will also apply to any risks relating to activities incidental to swimming – including walking to and from the beach, getting changed and drying off. It should be obvious that walking on uneven ground carries a risk of tripping. However, if the ground is heavily potholed, or particularly boggy, that might constitute a special risk of which warning should be given.

The normal method of making visitors aware of special risks is by erecting and maintaining signs that make visitors aware of those special risks before they are exposed to them. There will need to be enough signs reasonably near to the edge of the water that visitors will see one before entering the water. Equally, the text of the signs will need to be sufficiently legible and the wording sufficiently clear that visitors will be able to read the warning and understand the risks.

For inland bathing areas in England and Wales it will ordinarily be sufficient for the warning signs to be written in English. Where possible, it is good practice to use signs that include pictures as these can ensure clear communication of risks.

(2) O'Shea v Royal Borough of Kingston upon Thames [1995] P.I.Q.R. P208



## INLAND BATHING AREAS AND THE LAW

### IS A CLEAR WARNING ALWAYS ENOUGH TO FULFIL THE OCCUPIER'S LEGAL DUTY?

It will ordinarily be sufficient to fulfil the occupier's legal responsibilities to give a clear warning of the special risks that arise from an inland beach that would not be obvious to a reasonable person. The reason is that making the visitor aware of the special risks will ordinarily be sufficient to enable the visitor to be reasonably safe.

Only in exceptional cases – for example, if an inland beach presented such a significant level of danger to visitors that even making the visitor aware of the risks would not enable them to be reasonably safe – would the occupier be required to take measures to prevent visitors from swimming.

Examples might be if the water were known to be badly infected with a dangerous substance, or where currents are especially strong and a real danger even to very capable swimmers.

### CAN CHILDREN BE TREATED AS VOLUNTARILY ACCEPTING THE RISKS?

Children below a certain age will not be capable of properly understanding the risks that they face by entering open water, and therefore are treated in law as not being capable themselves of voluntarily assuming those risks – even where those risks would be obvious to a reasonable adult.

Where children are with parents or guardians, the primary responsibility lies with them to ensure that children are properly supervised and that the risks associated with swimming are properly managed. The occupier's duty in this case is to make the parents or guardians aware of any special risks so that they can supervise accordingly.

However, the situation would be different if children were regularly swimming without parents or guardians, and if the occupier knew this or could reasonably have found it out. As explained above, children cannot be expected to appreciate, and therefore assume, the risks that adults can. If this is the case, an occupier would have to take additional steps to protect the children against the general risks of swimming. These might include employing lifeguards or erecting fences. An example of how a bathing area mainly used by children could be managed is illustrated in the Case Study for Church Stretton Reservoir on page (8) of this guide.

In all cases where lifeguards are not present it would be prudent to make the following points clear on notices close to the water:

- (a) Children below 14 years of age and older children who are not strong swimmers must be closely supervised at all times by a responsible parent or guardian; and
- (b) Lifeguards are not present at the inland beach.

In 2016 an incident occurred in which a five year old boy, who was not able to swim, drowned after being left unsupervised by his mother and step-father for over two hours at Bosworth Water Park. Signs at the site made it clear that the bathing area was not life guarded and that all children must be supervised by a responsible adult at all times. The operator of the water park, which remains open, had therefore fulfilled its legal duties and no action was taken against it. In contrast the boy's step-father was prosecuted and imprisoned for his failure to supervise the boy appropriately.



## INLAND BATHING AREAS AND THE LAW

### DO LIFEGUARDS NEED TO BE EMPLOYED TO PROTECT AGAINST THE RISKS?

**A**s the occupier has no legal duty to protect swimmers against risks that would be obvious to a reasonable adult, it follows that there is no legal duty to hire lifeguards at an inland beach.

It is, however, important not to create the false impression that lifeguards are working at the inland beach if they are not. If people mistakenly think that lifeguards are present then this may give them false comfort when deciding to go swimming. For this reason, it would be prudent to make clear to swimmers, by notice, that the inland beach does not have lifeguards.

Please note that if you do choose to employ lifeguards at the inland beach then this will trigger some additional legal responsibilities; for example, the need to ensure that they are appropriately equipped and qualified, and that there are sufficient lifeguards for the area of water covered.

### CAN I VALIDLY EXCLUDE MY LEGAL LIABILITY TO SWIMMERS, EITHER BY AGREEMENT OR BY NOTICE?

In general, occupiers cannot restrict or exclude liability for death or personal injury sustained by visitors.

However, if the visitors have access to the land for recreational or educational purposes, rather than business purposes, an occupier can restrict or exclude its liability.

As a result, where no charge is made for swimmers to use the inland beach for recreational purposes, it will ordinarily be possible for the occupier to exclude legal liability to swimmers by including on its signs a clear statement to that effect. For these to be effective, the notice must be sufficiently prominent that swimmers will see the notice before swimming. An example of the wording to be used might be:

The landowner and occupier exclude any legal liability (including for personal injury or death) to swimmers and other visitors to this land for recreational or educational purposes.

This should provide added protection against the risk of a claim being made against the occupier in the event of an accident at the inland beach. It would be prudent to include a notice of this nature at the entrance(s) to the inland beach and close to the water, such that it would be clearly visible to any swimmer prior to entering the water.

If a charge is made for swimmers to use the inland beach, or where access is granted to swimmers as part of some wider business purpose, then it is unlikely that the occupier will be able to validly exclude legal liability to visitors. However, this would not affect the limits on the duties owed to swimmers voluntarily assuming obvious risks involved in swimming, as explained earlier in this section.





# INLAND BATHING AREAS AND THE LAW

## INSURANCE

Unless access to the land is granted for business purposes, an occupier is not legally required to obtain insurance. However, it might offer some comfort to obtain public liability insurance to protect against any claims that may arise. In practical terms, an insurer could well insist on you taking certain steps, including erecting signs. The level of premium paid may depend on whether these steps are taken.

There may also be an obligation under any property insurance policy you hold to inform the insurer that the land is being used for public swimming.



PHOTOS: DOMINICK TYLER

# CASE ILLUSTRATIONS

In *Ratcliff v McConnell* (1998) (<http://www.bailii.org/ew/cases/EWCA/Civ/1997/2679.html>) two students at a college climbed over the gate of the swimming pool for a late-night swim whilst the pool was closed. One of the students dived into the pool and sustained serious injuries, hitting his head on the bottom.

The Court stated that:

*The relevant danger here was what [sic] if someone dived into the pool they might hit their head on the bottom if there was insufficient water to accommodate the dive. That is a danger which is common to all swimming pools. There is no uniformity in shape, size or configuration of swimming pools. It seems to me that it is a danger which is obvious to any adult and indeed to most children who were old enough to have learnt to dive.*

The Court concluded:

*In my judgment it is quite plain that the plaintiff was aware of the risk and willingly accepted it. Accordingly, I would hold that the defendants were under no duty towards him.*

The Corporation of London had decided not to allow adults to swim in the Mixed Pond on Hampstead Heath outside of the normal hours of operation (and without lifeguard supervision), as it had been advised by its legal team that the Corporation may be liable to prosecution under the Health and Safety at Work etc. Act 1974 (as the land would be treated as 'business premises'). This decision was judicially reviewed by the swimming club.

In *Hampstead Heath Winter Swimming Club v The Corporation of London* (2005) (<http://www.bailii.org/ew/cases/EWHC/Admin/2005/713.html>) the facts of the case were considered along with the judgments of *Tomlinson* and others. In quashing the Corporation of London's decision, the Court stated:

*The swimmers will be under no compulsion or pressure to incur the risks involved in self-regulated swimming. They will do so of their own free will. The criminal law respects the individual freedom upheld by the House of Lords in Tomlinson.*

*The Corporation's grant to the Club of permission to swim unsupervised in the Mixed Pond will not of itself render it liable to prosecution under section 3 of the 1974 Act.*

The landmark case *Tomlinson v Congleton Borough Council* (2003) (<http://www.bailii.org/uk/cases/UKHL/2003/47.html>) covers the duty under the 1957 Act. In this case a young man, a visitor to Brereton Heath Country Park, was hanging out on a sandy beach at the lake in the park when he decided to cool off. He ran into the water and dived. Unfortunately he hit his head on the sandy bottom of the lake and broke his neck. He considered that his injuries were caused by the state of the premises and therefore a duty of care was owed by the occupiers.

The case was initially brought under the 1984 Act because, as the park pursued a policy of forbidding swimming, Mr Tomlinson became a trespasser – although initially a visitor – when he entered the water to swim. However, the House of Lords considered duties to visitors and trespassers in their judgment.

The House of Lords judged that the dangers of the lake were completely obvious and that:

*It follows that in my opinion, there was no risk to Mr Tomlinson due to the state of the premises or anything done or omitted upon the premises. That means that there was no risk of a kind which gave rise to a duty under the 1957 or 1984 Acts.*

However, the Court contemplated the matter further because Congleton Borough Council had taken it upon themselves to destroy the beach to make bathing more difficult and unpleasant in the mistaken belief that this was necessary to avoid liability.

*I think it will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land. If people want to climb mountains, go hang gliding or swim or dive in ponds or lakes, that is their affair.*

...

*It is of course understandable that organisations like the Royal Society for the Prevention of Accidents should favour policies which require people to be prevented from taking risks. Their function is to prevent accidents and that is one way of doing so. But they do not have to consider the cost, not only in money but also in deprivation of liberty, which such restrictions entail. The courts will naturally respect the technical expertise of such organisations in drawing attention to what can be done to prevent accidents. But the balance between risk on the one hand and individual autonomy on the other is not a matter of expert opinion. It is a judgment which the courts must make and which in England reflects the individualist values of the common law.*

...

*My Lords, for these reasons I consider that even if swimming had not been prohibited and the Council had owed a duty under section 2(2) of the 1957, that duty would not have required them to take any steps to prevent Mr Tomlinson from diving or warning him against dangers which were perfectly obvious.*



# DEFINITIONS

*Below are definitions of several terms used throughout this leaflet, drawn from relevant legislation and common law.*

**Owner:** a person who legally owns land.

**Occupier:** a person who controls land or building(s). On private land the occupier will normally be the owner or tenant. On common land (historical land which has remained largely untouched and which is subject to the rights of other people to graze animals etc.), there may be multiple occupiers.

**Premises:** includes land and any fixed or moveable structures on it.

**Visitor:** a person who visits a place by invitation or by right.

**Trespasser:** a person who enters onto land without permission, invitation or right.

**Exercising the statutory right of access:** persons making use of the statutory right of access under the Countryside and Rights of Way Act 2000 (CROW) or under the Marine and Coastal Access Act 2009 (MCAA).

**Open access land:** land mapped as such under the Countryside and Rights of Way Act 2000 (CROW). This includes areas of mountain, moor, heath, down and registered common land, and land dedicated under section 16 of CROW.

**Coastal margin:** land mapped as such under the Marine and Coastal Access Act 2009 (MCAA). This includes the establishment of a continuous footpath along England's coastline and a permanent right of access to a margin around the coast.

**Right of way:** a highway that gives the public a right to pass and re-pass any land, including privately owned land (on foot, horse, cycle or other vehicle, depending on the way's status). The use of a public right of way may be temporarily or permanently restricted by a Traffic Regulation Order issued by a Highway Authority or a National Park Authority.

**Volenti non fit injuria:** the principle that if someone willingly and knowingly places themselves in a position where harm might result, they will not be able to bring a claim against another party if suffering injury as a result.

## ABBREVIATIONS

OSS – Outdoor Swimming Society

RALSA – River and Lake Swimming Association

HSE – Health and Safety Executive

ROSPA – Royal Society for the Prevention of Accidents

RLSS – Royal Life Saving Society



# DISCLAIMER

The information in this leaflet is given in good faith to the best of the author's knowledge at the time of writing. No legal liability is accepted nor duty of care assumed for the use of this information.

Whilst every effort has been made to ensure the accuracy of the information presented here, anyone who decides to swim in open water should remember that this is not entirely without risk. Neither the author nor the publishers will be held legally or financially responsible for any accident, injury, loss or inconvenience sustained as a result of the information or advice contained herein.

Whilst every effort has been taken to ensure the accuracy of the information in this leaflet at the date of publication, every situation is different and the information should not be used in place of professional legal advice and the OSS can accept no liability if it is used as such.

Open water swimming is an adventure sport and the courts generally apply the principle that voluntary acceptance of risks by participants prevents a successful claim against others who have not committed any culpable act.

If a swimmer is injured in an accident it is usually accepted that any claim against the owner or occupier should be defeated by the defence that the injured person willingly accepted the risks (the traditional Volenti non fit injuria principle).

Despite this, the OSS understand that every situation is different. This guidance gives general advice to the swimmer and owner or occupier, summarising the key pieces of legislation affecting liability. Definitions used throughout this leaflet are summarised. Swimmers are, as individuals, responsible for assessing and managing any inherent risks that are ordinarily part of the activity – including unknown depths, unknown underwater obstructions and water quality. Indeed, this is part of the challenge of open water unsupervised recreational swimming. There should be no expectation in a swimmer's mind that an occupier or owner would be responsible or liable for such risks, or for the safety of swimmers on the land.

## REFERENCES, RESOURCES AND FURTHER READING

[HSG179 Managing health and safety in swimming pools](#)

Managing Visitor Safety in the Countryside by the [Visitor Safety in the Countryside Group](#)

[ROSPA drowning figures](#)

[Lake District National Park wild swimming guidance](#)

Wild Swim Map  
A worldwide crowd-sourced swim map  
[wildswim.com](#)



**WILD SWIM**



# CONTACTS



**The Outdoor Swimming Society** can offer general advice regarding access to inland water for outdoor swimming:  
Web: [www.outdoorswimmingsociety.com](http://www.outdoorswimmingsociety.com)  
Email: [inlandaccess@outdoorswimmingsociety.com](mailto:inlandaccess@outdoorswimmingsociety.com)



**The River and Lake Swimming Association:**  
Web: [www.river-swimming.co.uk/](http://www.river-swimming.co.uk/)



**Swim England**, which is the national governing body for swimming in England:  
Web: <http://www.swimming.org/swimengland/>  
Email: [facilities@swimming.org](mailto:facilities@swimming.org)



**The Royal Life Saving Society**  
Web: <https://rlss.org.uk/>



**The Surf Life Saving Society of Great Britain:**  
Web: [www.slsgb.org.uk](http://www.slsgb.org.uk)  
Email: [mail@slsgb.org.uk](mailto:mail@slsgb.org.uk)

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“

*This guide comes at a crucial time, as outdoor swimming is on the rise and access to our landscape and its waters is ever more precarious. It succinctly makes the case for swimmers' rights and access to inland waters, and provides clear guidance for land owners who are able to grant it.*

”

Jessica J Lee, swimmer & author of 'Turning'

“

*Improved access to inland water is so vital in showing why outdoor swimming matters. Swimming's benefits, both physical and mental, are all the more acute when a dip is taken outside. The idea of more places being safe and accessible to all isn't just appealing, it's essential for showing why the great outdoors is there for all of us to share, enjoy and be part of.*

”

Joe Minihane, swimmer & author of 'Floating'

“

*This initiative is pretty exciting for all us keen outdoor swimmers who can't get to the sea. There's so many lakes and rivers in Britain it would be great to swim in, and it's fantastic that Outdoor Swimming Society are leading the charge. Things can change! This is how! Bring it on.*

”

Jenny Landreth, swimmer & author of 'Swell'

The  
Outdoor  
Swimming  
Society

[www.outdoorswimmingsociety.com](http://www.outdoorswimmingsociety.com)