

I am writing in reply to your report REGULATION 28: REPORT TO PREVENT FUTURE DEATHS (1) and wish to address various points in your report.

This statement is for the assistant coroner, Mrs Jones only. I do not wish it, or any part of it, to be disclosed or forwarded to any other party without my direct consent.

The first minor mistake I would like to address is that the accident did not occur in Bavaria as stated in your report (a canton of Germany) rather in Tirol a canton of Austria, not Germany.

Next I would like to address your comment "There was no liaison between the rafting company and the water management company" .

First of all the company is not a water management company rather a company whose purpose is to generate hydro electric power for profit.

Next, I have worked in the rafting company which I now own since 1993. While working as head guide for the company. I repeatedly asked the then person in charge of the company if we could gain information as to the dam levels or more importantly the "planned levels" when we had a trip on the river. A bigger problem for us was actually the river section having too little water and on arrival at the put in point we would have to cancel the trip or drive to an alternative. The information I received was that the hydro electric company could not provide us with this information as the dam is remotely operated by a computer network in Germany depending on multiple factors. In short - they didn't know themselves! All attempts to liaise with the company in the past had resulted in their inability to provide us with information.

This has NEVER been a safety issue as the raft guides ALWAYS make the GO/NO GO decision when they see the actual river levels right before the start of the tour on the river bank. We DO inform ourselves using the online water volume reports available on the internet . This is only ever used as a guide - for example if there is obviously way too much or more often way too little water we will cancel or change the trip straight away. On the day of the incident this online check was made several times during the hours prior to the trip and immediately beforehand also. The river levels were found to be normal for the time of year and also the same as the day prior when we had also done exactly the same trip with another group from the British army at approximately the same time. We know this river section VERY well. We compare the online data from the previous days and then apply current weather conditions and forecasts to give us a good idea of what conditions to find when we get to the put in and make the dynamic assessment.

Another point we consider that adds to the safety of the trip is that the Hydro companies under EU law are not allowed to make rapid changes in water levels - this is primarily for environmental protection reasons. It does provide an added safety factor to our trips as we know there should be no sudden surge in water levels (at least due to a man made influence) rather that the water levels will rise or fall at a rate which gives us more than enough time to abort a trip safely where necessary. In my 22 years experience working on this river section I have never heard of the need to abort a trip for this reason.

A separate event was the so called "stowage discharge" that the Hydro plant made late in the afternoon on the day of the incident. Primarily I must categorically state that this discharge occurred after the incident and also after we had performed the rescue and all guests and rafting equipment had been removed from the river. I personally observed a dramatic change in colour of the water, the large volume of driftwood and the change in smell of the river when I began to transport the drivers from the point where we had exited the river back to the put in where their vans were parked. During the reanimation attempts on private Lomas by my guides and then the professionals from the helicopter crew I was personally coordinating the head counts and collection of the 2 soldiers that were still missing but on the river bank further upstream at the time. I was directly at the river several times also when the last raft was carried up the bank and NO evidence of the stowage discharge had occurred during all of this time. Approximately an hour after the entire group had exited the river, everyone was accounted for and we were returning to our base did I first see signs of the discharge. I can vividly remember wondering why the river was now so dramatically different. This is FACT. I do not know how accurately the Hydro plant keeps its records but if they can provide evidence for exactly when they discharged, how they made the discharge (rate of flow, volume change etc), how long the discharge takes to get from the dam to the put in point then this can be compared to the exact time I made the call to the rescue services (which occurred as soon as I observed private Lomas floating head down in the water - approximately between one and 2 two minutes after the start of the trip).

Since the incident I have become aware of the possibility of such discharges and steps have been taken so that the rafting companies are now informed FROM THE HYDRO PLANT COMPANY well in advance so that we can plan around such an event - most importantly prevent tours from taking place during a discharge. We have internally made the decision in the regard of safety to do no rafting trips downstream of these storage tanks on the same day they are planned to be released.

To summarise:

1. Multiple online river level checks WERE made prior to the trip.
2. No telephone contact was made with the dam owners as we had prior knowledge that they could not give us information as to future dam levels (when our trips are planned).
3. The raft guides made the GO/NO GO decision on direct inspection of the river immediately prior to the trip as this is always THE safest way and is the industry standard. All of the raft guides have a great deal of experience of this river section. All of the raft guides had ran this river section multiple times in the days immediately prior to the incident at very similar water levels.
4. I had no prior knowledge that it was possible for the hydro company to make this "stowage discharge". In my opinion such a discharge should never be allowed during the rafting season and during the times of day we are permitted to raft. Our company had a government permit to raft this river section at this date and time. The correct way would be for the hydro company to inform the local government of such a release and get a permit for it. At the time of the release the local government should close the river section and then re-open it afterwards. The situation here has been improved since the incident in that the rafting companies become an Email from the hydro plant owners well in advance of such a discharge. This allows us to cancel or move a planned trip in advance of such an event and should prevent a discharge happening during a raft trip in the future. As I stated earlier the discharge on this day happened well after we had completely exited the river

with all rafts and guests and had absolutely NO INFLUENCE on the incident whatsoever. I would like to make an analogy to further explain this situation. Should a bus company that has a permit to take guests down a given road have to call before every trip to ANY and ALL persons who may plan to roll a large amount of timber down the road without warning, without informing the road users and without closing the road to traffic? How are we as a company supposed to have knowledge of ANY business upstream that is about to dump large quantities of potentially dangerous material into the river without notice? It is clearly the responsibility of the Hydro plant to ensure that their discharge is conducted in a safe manner and that they inform all potentially affected individuals of their actions.

"THE DYNAMIC RISK ASSESSMENT CARRIED OUT DID NOT IDENTIFY A CHANGE IN RIVER CONDITIONS"

- The raft guides assessed the river directly before their safety talk and directly prior to starting their trip. There was no evidence of stowage discharge whatsoever. The river level, water colour and lack of any driftwood all indicated the river to be at a very similar level and condition as it had been the previous day (when we had run the same trip with a similar group from the Army). All rivers in Austria rise in the afternoon as the heat of the sun melts more and more snow. The highest "peak" level differs from river to river but is generally somewhere between 8pm and midnight. This natural rise in water level IS taken into account by the guides during their GO/NO GO assessment. At the start of this trip the water level / condition was deemed to be safe by three extremely experienced and highly qualified white water professionals and also by myself. The raft flip occurred very shortly after the start of the trip and therefore the river levels could not possibly have risen by anything other than a fraction of centimetre after the GO decision was made. This evidence can be confirmed by the statements of all three professional guides and myself. I would also like to make it quite clear at this point the level of experience and quality of the raft guides assigned to this trip on the day in question. Neil Newton Taylor (the guide who gave the first safety talk to the entire group in native English) is THE highest qualified and most experienced white water guide/instructor/examiner/rescue technician that I know of worldwide. Period. Only this year he won another award: Rescue 3 Instructor Trainer of the year award at the recent Rescue 3 Europe Technical Rescue Conference. We are not talking about your normal average raft guide here, rather an instructor in white water safety of the highest calibre. He is also used as an expert in white water incidents worldwide. The guides always make an individual assessment before having a discussion amongst themselves before coming to their GO / NO GO decision. I myself am a highly experienced Austrian and International Rafting Federation raft guide, instructor and examiner and was present at the time the guides made their decision and back them up 100%. A further point to note here is that the same 3 raft guides ran the exact same river section, at the same time in the same conditions 4 times in the previous 6 days (once immediately the day before) which further backs up their knowledge and experience of the river at the same level and conditions as on the previous days and allowed them to make a very accurate assessment. Neil himself went through the wave that flipped Daniel on the trip the previous day and his raft DID NOT flip. Again further backing up the validity of their assessment.

"THE RAFT EXCEEDED THE PERMITTED NUMBER OF PERSONS IN WHITE WATER GRADE 4+ CONDITIONS WHICH PREVAILED AT THE TIME"

The river could in NO WAY be classed as grade 4+ at the time of the incident. It was/is a much easier stretch of white water than this. As far as I know ALL of the white water professionals present at the

time of the trip made statements as to the fact that the grade was a maximum of 3+. The grade of the river during the storage discharge would be different I am sure but irrelevant as: 1. The discharge occurred well after the trip had finished and 2. If the discharge had occurred prior to the put in we would have cancelled the trip immediately as it is illegal and unsafe to raft with such a large amount of driftwood in the river. The rafts were manned with a crew which gave an optimal power to weight ratio. Every guest have more than adequate space to sit and their own foot straps. The guide had the entire normal back area PLUS the guest space in front of him on the side that he prefers to guide from free and unobstructed with a choice of 5 foot straps for optimal guiding. These 15ft NRS rafts are considered in the industry to be some of the best for running the very hardest white water and the loading of them with 6 or 7 persons to be the optimal configuration. The expert witness for the prosecution during the trial of Daniel confirmed this. In my opinion and it is also the opinion of all of the top guides in the industry that these boats are SAFER with 7 guests than with less. The guides could have quite easily have taken some of our 10 man rafts on this trip - but they are much heavier, take longer to turn, are less manoeuvrable, take longer to accelerate and/or brake. The guides made the correct decision in the interests of safety on the rafts that they chose for the number of people. I personally back up their decision 100%. The raft loading was either way not illegal as the river grade was not class 4 or more.

" THE BOAT WAS LAUNCHED TOO CLOSE TO A STOPPER AND CAPSIZED WITHIN SECONDS OF BEING LAUNCHED"

First of all the hydraulic water formation where the raft capsized was NOT A STOPPER. It was very, VERY clearly a WAVE. A stopper is a hydraulic water formation where the water flows over an obstacle and due to water level, river bed form and angle of attack (vertical falling motion) causes a vertical rotation resulting in the water actually recirculating and flowing up stream. They are easily recognisable by the boiling white foamy water forming behind the obstacle and the foamy water nearest to the obstacle flowing back towards the obstacle (upstream).

A standing wave on the other hand also forms behind an obstacle but has some of the water and energy transferred upwards (forming the wave crest or peak) before flowing downwards and downstream. Generally as the water level flowing over an obstacle increases the hydraulic changes from a stopper into a wave.

On the day and time of the incident this hydraulic was definitely a wave. Waves are know in the industry to be safest of the white water hydraulic formations as they will not hold a swimmer. Swimmers going through a wave will be flushed through it.

At lower water levels this particular hydraulic can form a Stopper, all be it a weak one. At higher levels it actually becomes a SAFER water formation in that it forms into a Standing wave and NOT a stopper!

As to the use for the put in point:

In Austria we have very stringent safety regulations for rafting. A part of these regulations requires that we ONLY use specific designated entry and exit points on the rivers. These points are assessed and defined by the government. In short we HAVE to use this entry point when running this river section. It is a government and expert approved entry point. We have a permit to use this entry

point. All of the local raft companies using this section agree that it is a safe and optimal place to start the trip. Literally 1000s of private kayakers choose to use exactly this put in point each and every season (the kayakers are not restricted by law as to which put in point they use).

This river section has an extremely good, actually I would go as far to say an exceptional safety record and is highly regarded and loved by the guides who work day in and day out on the rivers for this reason. Raft flips and capsizes occur extremely rarely here. Do not forget - our guests are paying us to be thrilled and take part in a "white water rafting" event. Crashing through chaotic unpredictable large waves is the very definition of white water rafting.

Furthermore every single guest on every single raft trip (no matter how easy or difficult) is informed that the raft can and may capsize (flip). This information is given on dry land before the trip and every guest has the option to opt out of the trip. As a part of a very detailed flip drill that is explained to the guests they are informed that if the raft does flip they will all fall into the river and that they MUST swim by themselves back to the raft and hold the safety line while the raft guide goes through the procedure of climbing onto the raft and re-flipping the raft. The importance of swimming as hard and fast as possible immediately after a flip is explained and emphasised. They are also informed that there are more reasons why it is possible that they can fall into the river (being knocked by a wave, pushed by another guest etc) and that if this happens they are also required to swim back to the raft. Additionally they are informed that if they for some reason find themselves unable to swim they should take a specific safety swim position, stay calm and wait to be picked up. Private Lomas received all of this information but unfortunately never informed us that he could not swim, and worse still had been independently proven not to be able to swim and had failed his swim test. He was asked a minimum of three times at different occasions if he could swim and lied to the people asking him. He was even given the option by his guide to exit the trip and take the bus back if he didn't wish to continue on the trip. His decision and the decision of the army not to inform us that he was a PROVEN non swimmer put the lives of my guides at risk, put the lives of all other guests in the trip at risk it also directly cost him his life. He did not swim back to the raft as instructed after the flip. He did not stay calm and assume the safety position either. Rather he went into an immediate, flailing panic stricken state and at some point very soon after the flip swallowed water unable to even keep himself upright. One of the other guests even swam over to him but was unable to help him (most likely due to his panicking state) and told him he would have to fend for himself before swimming to the bank and exiting the river.

Further points of note:

1. Neil ran this wave at a very similar level the day before and his raft did not capsize.
2. We have never had a flip on this river section in our company in the 22 years of my experience to my knowledge.
3. The wave at the put in at the beginning of the tour has up until and since the incident never caused any problems whatsoever.
4. Rafts can and do capsize from time to time during white water rafting due to the chaotic nature of the water. All guests are informed of this possibility before every trip and all guests have the option of cancelling their trip if they do not feel comfortable with accepting this risk.

Coroners Concerns

1. The army have been using our rafting company since the early 90's without incident. The rafting sections we use are agreed with the contact at the REME centre prior to the arrival of the groups. The army could decide to do whatever trip they wish all the way down to the children's trip suitable for 6 years olds. The Landeck gorge is most often used as it offers adventurous, safe rafting and lies in the middle of the range of difficulties we offer. All of our tours are described online, there are flyers available and we are open to provide any information the guests require 24 hours per day at the end of a phone line or email. We have had other military groups that come to us that require a risk assessment and of course we always provide one to the specifications they require. This only ever happens with military groups and may I add quite infrequently. We have never been asked for risk assessment forms by private groups or individuals. We would supply them of course if asked.

2. As described above I believe the 3 guides did correctly dynamically risk assess on this day. The river was the same level as the day previously. The weather was warm and stable their crew and numbers very similar to the day before. The river was NEVER a grade 4+ at the time of the put in. Their decision was VERY professional and correct.

3. As stated above the river was not at a grade 4+ state at the start of the trip. The boats chosen were the best rafts for any river at any grade and were optimally loaded even for a river section of class 4 or above. The expert witness for the prosecution at the court case in Austria confirmed this.

4. It was NOT a stopper rather a wave. The raft was at maximum speed and had more than enough time and space before reaching the wave to reach that speed and make corrections to the boat angle. The raft went over the wave at a perfect angle. The wave then unexpectedly dropped off on the left side of the raft and peaked on the right side causing the raft to flip sideways, slowly, facing downstream. This unexpected, chaotic wave behaviour could never have been predicted by the raft guide. It is a very unusual occurrence -the first I have ever seen or experienced in my 22 years of raft guiding. It was due to the chaotic nature of white water and was not due to the any mistake in the raft guides decisions or performance. This has been proved in a court of law where Daniel for proved to be innocent of all charges made against him. We have to use this put in point by law. The put in point has been assessed and approved by the government and is used by all companies rafting this section of river. The wave did cause the raft to capsize. The distance from the put in to the wave was more than enough to get the raft up to maximum speed in relatively smooth water (it only take 3 or 4 paddle strokes to do this). There are multiple other places on this trip and on all others rafting trips where the rafts are going through continuous wave trains - ie one large wave directly after another where the guide does not get the luxury of as long a run up in relatively smooth water prior to going through the wave as is the case at this put in.

5. Again if the British army wished to do two trips and use one as a training trip on a very easy section they could have booked this without any problem. The trip was agreed upon and booked via telephone by the REME base. We have been rafting this section with the British army for around 20 years without incident. It is not required by the laws in Tirol to do a minimum grade of river (such as 2) prior to doing a more difficult tour. The army clients on exiting the trip the day before were asked personally by myself what they thought of the tour and had answered me that they had had fun but were expecting it to be much more difficult after the seriousness of the safety talk they had received.

The guests were heavily drilled on land prior to the trip - much more than is taught or legally required. The judge in the Austrian trial praised the guides for their conduct and safety standards which were in his opinion well above those required by law.

6. I know of NO rafting company worldwide that makes a water confidence test prior to their raft trips. This is not required by Austrian law and is not taught by the International Rafting Federation. It is certainly not an industry standard. Now that I know the British army are required to pass a swimming test I will be requiring proof of this to be presented in the future for every participant in order to hopefully eliminate anyone lying to myself and or my guides about having passed such a test or that they can swim when they evidently could not. Furthermore I have instructed all of our guides to further emphasise the importance of staying calm and the swimming requirements during their safety talks in the hope of further preventing swimmers getting into an unnecessary state of panic. I was informed that all of the British army participants HAD passed a swim test and this information was passed onto the guides that day. They were under the impression that all participants HAD been tested as swimmers!

7. Safety kayaks are not required on any river under Austria law. We do use safety kayaks in our company in particular when we only have a single raft on a trip or are doing the harder river sections in high water. On the day of the incident we had three rafts each making safety cover for the other two. No request was made by the guides for the addition of a safety kayaker. We do use safety kayakers even though we do not have to by law. We also double guide our rafts (2 guides on a single raft) when we only have one raft on a trip at river grades above grade 3 - this is also not required by law but we do it in the interests of safety - not all companies are as safety conscious as we are!

8. I take it this fault is the lack of non slip seating on the raft. I know of not a single raft used in Austria that has non slip seating. The rafts are supplied without it and used worldwide as an industry standard without it. It is another nonsensical requirement that I firmly feel would actually make rafting more uncomfortable for the guests, not add any safety whatsoever and in actual fact make rafting more dangerous as it would not prevent guests falling out but would restrict movement and make pulling swimmers back into the raft more difficult due to the added friction. In addition we tried adding non slip seating to the area around the guide in order to try and improve his guiding but it was immediately removed after a short test period as it was found to be highly uncomfortable and restricted dynamic raft guide movement. We will not be adding non slip seating precisely for these reasons. It makes rafting more dangerous and not safer and is not the industry standard.

9. This is correct there was no obligation. I did not even know that such an act could take place in the 22 years of rafting and kayaking on this section. Thankfully this problem has been resolved in that the TIWAG are now obligated to inform us of any discharge well in advance and have done so since the incident in 2012. This gives us more than enough time to cancel or re-plan trips on this river section.

To conclude:

Our company has VERY high safety standards. I personally am continuously checking equipment, replacing equipment, checking standards, getting feedback from our guests and am still personally involved in training and examining Austrian raft guides to the International Rafting Federation

standards. We strive to keep the standards as high as possible. Safety is our utmost priority and always has been.

Immediately after the tour we had multiple meetings and discussions between all of our guides reassessing safety standards and procedures. After much analysis we could not find any flaws in our decisions or judgements made on that day. Of course I have only just found out this year (three and a half years after the incident) that private Lomas was a non swimmer. That he hid this fact from us. That the army had informed me that all of the participants had to have passed a swimming test immediately prior to the trip and that indeed private Lomas had failed his latest test. The army either failed to detect they had a non swimmer in their group OR they knew about it and had tried to smuggle private Lomas onto the trip. I find it extremely hard to believe that no-one knew other than private Lomas that he had failed this test. Either way private Lomas knew himself that he could not swim and had failed his latest test. He did not inform us of either of these facts despite being asked on multiple occasions if he could swim, having many opportunities to back out and not go on the trip, being fully informed that the raft can and may capsize at anytime during the trip and if and when it did he would be required under his own power to swim back to the raft. I am convinced that peer pressure and the fact that he didn't want to look foolish in front of his squad mates was the reason he did not admit his inability to swim to us. Daniel Traxl gave private Lomas, under no pressure what so ever, in a calm manner the option to stop the trip and sit in the bus and drive back if he wanted to. He made the decision very clearly that he wanted to continue on the trip. The wave that actually caused the flip was clearly visible from the bank at the put in so he could see exactly what he was about to undertake prior to making his decision to continue. My final conclusion is that private Lomas did not die because the raft flipped. Rafts flip every week here in Austria during the season and they flip in all other countries where rafting is carried out too including the UK. Private Lomas died because after the raft had flipped he could not swim back to the raft, he could not stay calm and went into a state of uncontrollable panic, he could not and did not assume the correct safety position, his heart was put under tremendous stress due to a panic attack and unable to even keep himself upright he swallowed water and drowned very quickly after the raft flip. Private Lomas was legally not allowed to take part on the trip as he was a proven non swimmer. My guides did all they possibly could to ensure his safety and even put their own lives at risk to rescue and reanimate him and can be nothing but commended for their actions. I would like to be informed as to at which point in the army's system this failure to check that private Lomas had failed his swim test occurred and who's responsibility it was. Why was I lied to at the very start of the trip by the British army and told that all members had passed a swim test? Why are the effects of peer pressure and possible pressure from the army for private Lomas to take part in this trip not addressed in your report?

As far as steps taken to prevent further occurrences of this incident. My primary concern is how to prevent non swimmers being sneaked onto trips. How to deal with the possible effects of peer pressure and make it as easy as possible for people who really do not wish to go on the trips due to fear and / or some reason they should not be going (such as the inability to swim) to drop out of the trip without losing face.

Having the knowledge that the British army have to have this valid swimming qualification I will be requiring in future evidence of this for every participant and not trust a verbal confirmation.

The problem with the "stowage discharge" should now be resolved as the HYDRO Company are now obligated to inform the rafting companies well in advance.

I would finally like to add that very soon after the incident and after the Army's Risk assessment and reduction team had come with whom I cooperated with completely. I wrote to one of their officers offering to discuss methods and ways to prevent further incidents in the future. To this date I have had not one single reply to this request. In this regard I am very disappointed.

Yours Sincerely

Andrew Murray, Sport Camp Tirol