



Head of Standards Governance

BSI

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By Email

19 May 2020

Re: Ava-May Littleboy, deceased

**Coroner's Report under para 7, Sch 5 to the Coroners and Justice Act
2009 and regs 28 and 29 of the Coroners (Investigations) Regulations
2013**

I. Introduction

1. This letter constitutes the response of The British Standards Institution (**BSI**) to the Coroner's Report dated 2 April 2020 ("the Report"), wherein BSI was requested to take action to prevent future deaths.
2. BSI would like to express at the outset its deepest sympathy and condolences for the family of Ava-May Littleboy, the child killed in the tragic accident which is the subject of the Report.

II. Executive Summary

3. BSI's role as the National Standards Body ("**NSB**") is to facilitate expert committees to achieve consensus on industry standards and best practice and to act as the publisher of standards and specifications. Its role is similar to that of the private standards company ADIPS, which is mentioned in the Report, albeit BSI has a broader remit.
4. BSI is not a regulatory body nor an enforcement authority. It is therefore unable to advise on regulatory matters, which are a matter for HM Government. Nor is it able to compel or monitor compliance with its standards, which are voluntary documents. As such, BSI is unfortunately not the right body to take action to prevent a reoccurrence of this tragic event. More detail on the role of BSI can be found below.
5. BSI does not consider that it is able to supplant the work of the Amusement Device Safety Council (ADSC), which functions in a similar fashion to BSI in the area of amusement park machinery. Instead, any question for increased control of devices such as that involved in the accident the subject of the Report is one for regulatory authorities and the Health and Safety Executive.

III. BSI expert committee feedback

6. In order to assist the Coroner, BSI referred the Report to the following expert committees, which it considered might have knowledge and expertise relevant to this matter:
 - a. SW/136/22/2 Trampoline parks

Under the direction of SW/136/22, this committee is responsible for the United Kingdom's input into the European Committee CEN/TC 136/WG 17 Trampoline parks and tasked with establishing technical requirements for trampoline parks.

b. CEN/TC 136/WG 17

The task of the working group is to establish safety requirements for design, construction, inspection and maintenance of trampoline parks and their components. The task also includes specifying minimum operational requirements to ensure an appropriate level of safety and service when used for recreational, training, educational or therapeutic purposes.

c. CW/15 Safety of toys –

Under the direction of the Standards Policy and Strategy Committee, this committee is responsible for the development of standards within the field of safety of toys on activity toys, chemical properties, flammability, interpretations of standards, mechanical and physical properties, microbiology, phthalate plasticizers in toys, and the UK input into European standards through CEN/TC 52 (WG3, WG5, WG10, WG11, WG12 and WG13) and into International standards through ISO/TC 181 (WG1, WG6, WG7, WG8, WG9, WG10 and WG11).

7. The collective feedback of the above experts was as follows:

- a. The standard BS EN ISO 25649-3:2017 (Floating leisure articles for use on and in the water. Additional specific safety requirements and test methods for Class A devices) might be extended to cover the device which caused the tragic accident the subject of the Coroner's Report.
- b. Even if it did fall within that standard, however, or if a separate 'air trampoline' BSI standard was developed, the concerns would still arise unless there was also a statutory requirement to report a 'breach'.
- c. The other committees did not consider the equipment to fall within their scope.
- d. Instead, the proper route to preventing future accidents is by regulation.

8. BSI concurs with the committees that the issue is one for regulation, not voluntary standards. The balance of this reply will expand further on that point.

IV. The role of BSI

9. BSI's role as the NSB is established by Royal Charter. BSI has several governing documents (available online):

- a. BSI's Royal Charter and Bye-laws 1981;
- b. A Memorandum of Understanding (**MoU**) of 20 June 2002 between the United Kingdom government and BSI in respect of BSI's activities as the United Kingdom's NSB;
- c. BS 0: 2016 'A standard for standards – Principles of standardization' (**BS 0**)

10. Article 1.2 of the MoU provides that BSI's role as the NSB should be interpreted to include the management, co-ordination and understanding of:

- a) "British Standards" and "other standardization products";
- b) participation by BSI in European and international standards bodies, and other international activity undertaken in the interests of BSI as the United Kingdom's NSB;
- c) promotion, marketing, distribution and information activities concerned with British Standards, BSI's other standardisation products, and standardisation generally;
- d) support any corporate infrastructure activities intended, wholly or in part, to enable paragraph 9(a) to (c) above.

The Director of Standards has the primary responsibility for the activities set out in paragraph 9(a) to (d). BSI's present Director of Standards is Dr

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11. BSI develops and distributes standards in response to the needs of UK stakeholders, which include UK Government and business. Standards are technical documents representing good industry practice. They are voluntary documents drafted by independent experts.

V. Standards committee structure

12. Under Section V of the Bye-Laws, BSI has established a strategic policy committee, "SPSC" (Standards Policy and Strategy Committee) to advise on the preparation of standards.

13. The present composition of SPSC is set out on BSI's website at <https://www.bsigroup.com/en-GB/about-bsi/governance/Learn-more-about-SPSCs-members/>.

14. Each individual standard is the responsibility of one technical committee, under the overall authority of SPSC (cl 28 of the Bye-Laws). A technical committee may be responsible for more than one standard, and may establish subcommittees to deal with individual standards or other discreet areas of its work. The committees referred to in section III of this letter above are examples of technical and sub-committees under SPSC.

VI. Status of Standards

15. The defining characteristic of standards is that they are voluntary, agreed by industry experts and users, including manufacturers, health and safety representatives, regulators and consumer groups. They do not have the status of legislation or regulation (unless specifically referred to in a statute or regulatory instrument, which is extremely rare though not unknown), although they may be used as one means of demonstrating compliance in appropriate circumstances. They may also become privately enforceable between individual entities by being incorporated into a contract.

16.Paragraph 4.14 of BS 0 provides:

Voluntary status

British Standards are voluntary in that there is no obligation to apply them or comply with them, except in those few cases where their application is directly demanded by regulatory instruments. They are tools devised for the convenience of those who wish to use them. In certain circumstances the actions of third parties might have the effect of making the application of a standard a commercial necessity, e.g. in a contract, but BSI has no control over these actions and is not a party to them.

17.Paragraph 9.2 of BS 0 provides:

Relationship with the law

Standards are always subordinate to the law. It is important that they are drafted so as to avoid any confusion between the provisions of a standard and requirements imposed by law.

In general, it is not acceptable for standards to contain provisions that are already requirements imposed by law, nor to contain any statement recommending or requiring compliance with the law. It is also not advisable to quote legislation, and no attempt should be made to offer any interpretation of the law. Advice should be sought from BSI staff if circumstances arise where this appears to be necessary.

Reference to particular legislation is permissible where it is relevant and potentially helpful in applying the standard. Lengthy lists of legislation should be avoided as there is a risk that the user might believe any such list to be definitive and exhaustive. The user's attention should be drawn to the possibility that any reference to legislation might become out-of-date during the lifespan of the

standard, and no reliance should be placed on it as being a definitive statement of a user's legal responsibilities or potential liabilities.

Particularly for the purpose of preventing anticompetitive effects or impeding innovation [see 9.1f)], whenever possible, provisions are expressed in terms of performance rather than design or descriptive characteristics.

18. All BSI published standards include the following statement:

This publication does not purport to include all the necessary provisions of a contract. Users are responsible for its correct application. Compliance with a British Standard cannot confer immunity from legal obligations.

19. BSI is therefore not in a position to draft standards which would compel operators of machinery such as the trampoline in the Report.

20. Instead, it would effectively be duplicating the existing work of ADIPS. We note that ADIPS' website (<https://adips.co.uk/about/>) describes its role in the following terms:

The result is the Amusement Device Inspection Procedures Scheme (ADIPS) the national scheme for inspection and certification of fairground rides and amusement devices.

ADIPS inspection is carried out by registered inspection bodies (IB's) whose capability to perform competent and independent inspection is assessed and monitored on an ongoing basis.

ADIPS certification is known as a Declaration of Operational Compliance (DOC). Look out for this; it's your guarantee that a device has been certified as safe to operate by an independent and competent IB.

ADIPS is managed and administered by the Amusement Device Safety Council (ADSC) which is made up of representatives from all

major industry trade associations. It is operated by ADIPS Ltd.; a not-for-profit company

21. The ADSC thus serves a similar role to BSI, in a narrower context.
22. According to the Report, the trampoline in this case was inspected but a DOC was not awarded, because the device was considered to have a fundamental defect.
23. The Report then notes that the scheme operated by ADIPS is voluntary and not linked to regulatory control, either under HSE or by the Local Authority withholding planning consent for the running of the fairground. There was accordingly nothing stopping them claiming compliance separately and setting up the trampoline.
24. BSI reiterates that it would not be able to create a compulsory scheme to augment or replace that of ADIPS. On the contrary, any British Standard and accompanying certification/assurance scheme, either run by BSI's own testing house (which is an entirely separate business to BSI's work as the National Standards Body) or a third party testing house, would have the same status as ADIPS, namely it would be a voluntary scheme, and would not constitute the only means of compliance with H&S or local authority consent.
25. The use of such standards might be made compulsory by means such as the owner of the land on which the trampoline was installed including a condition requiring certification in a contract for the use of the land, local authorities making certification a condition for granting permission for the commercial activity which involved the trampoline, or by the Health and Safety Executive. However, BSI would not have any part in implementing or enforcing such requirements. This is a matter for HM Government and the HSE.

26. BSI believes that this letter and attachments constitutes a full reply to the Coroner's Request. If, however, the Coroner has any further questions or requires clarification, BSI would be pleased to assist.

Yours sincerely

██████████ **BA/LLB (Hons)**
Head of Standards Governance

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