

NOT
“a risk averse society”

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A RISK AVERSE SOCIETY

Introduction

We are NOT living in 'a risk averse society' as many are claiming. There is, however, a real danger that a culture of risk aversion is being imposed by those responsible for the Health and Safety of the general public. If this does happen it will lead to a significantly more unhealthy society both in terms of physical and social wellbeing.

We have a good 'Health and Safety at Work Act' which contains the eminently sensible 'reasonably practicable' test yet people regularly see nonsenses related to health and safety reported in the press and in their daily lives feel they are being pressurised to be restrictive beyond what is common sense.

This paper demonstrates that much of what is attributed to 'a risk averse society' can be rectified by fairly simple changes in procedures and practices.

The Author

Rob Wheway is a leading Children's Play Consultant having worked in play for over 35 years. For the past 17 years the majority of his work has been carrying out safety inspections and assessments for indoor and outdoor play facilities.

The facilities have been managed by all tiers of Local Authority and by Commercial and Voluntary Organisations. He has carried out the inspections on behalf of Child Accident Prevention Trust (capt), Institute of Leisure and Amenity Management (ILAM recently become ISPAL) National Playing Fields Association (NPFSA) and the Royal Society for Prevention of Accidents (RoSPA).

Rob Wheway sits on the British Standards (BSI) Committee which deals with Children's Playgrounds and is also a member of Play Safety Forum.

He has also carried out substantial observational and consultational research with children and parents who have given further insights into attitudes to risk and play.

Whilst the focus of this paper is on play and recreational activities for children and young people, the findings may well be relevant to those responsible for Health and Safety in different fields.

Throughout this paper, where brevity is desirable, I shall refer to legislation, standards and good practice generically as "guidance".

The Public is Happy with Risk

Those who keep suggesting that we are living in a 'risk averse society' are by inference blaming the public in general and usually parents in particular. They tend to speak with frustration but often offer little in terms of solutions besides urging that society have a more balanced approach to risk.

Yet, research and long experience have shown that it is not the general public or parents who are risk averse but more that those responsible for management who tend to be Risk Averse and reach for overcautious interpretations of guidance or worse still overcautious interpretation of myths about guidance.

When consulting children and parents about playgrounds, both complain that their local playgrounds are not challenging or exciting enough and they wonder why exciting equipment has been removed.

When parents take children to the playgrounds they often encourage the children to climb higher than they would on their own and they make the rides faster or higher than the children could achieve on their own.

Community and neighbourhood groups, local sports organisations, Churches, etc., are regularly frustrated by bureaucracy that appears to prevent them undertaking the sorts of activities which should be part of normally neighbourly life.

They do obviously realise that simple precautions need to be taken (for instance they know with finance, to have two signatories on cheques) but they cannot understand why bureaucracy stops them organising a street party or small play scheme so long as they take some simple and limited precautions.

The restrictions appear to go against having caring sharing communities and undermine our democracy because 'the Council (and it is usually the Local Authority) is seen to restrict and prevent rather than empower and enable'.

Legislation, Standards and Good Practice

Legislation, standards and good practice may be significantly different from each other. Some is mandatory i.e. failure to comply may lead to a criminal conviction, some is advisable and, if ignored, may be evidence of negligence in a civil case and some is merely desirable.

In addition parts of the same guidance may have a different status so for example a piece of mandatory legislation may contain advice which is of itself not mandatory – the advice may only need be to considered rather than implemented in every detail. A Standard will contain advice which any reasonable person would consider negligent to ignore. It will also contain advice which is merely desirable.

There is a general failure of those official and quasi-official bodies issuing guidance to spell out, in plain language, the status and limitations of the guidance.

Recommendation; Those issuing guidance should clearly indicate the status of the guidance implications of not implementing it both for new and existing facilities.

Failure to have Implementation Strategies

Successive governments have periodically issued new guidance and it usually contains no detailed Implementation Strategy. It usually seems that no-one has even carried out a limited 'back of a fag packet' calculation as to how much it will cost.

Two examples will illustrate

- When the Children Act came out it laid out guidance on Child/Staff ratios, space and toilet facilities, and other detail.

It soon became very clear that Social Services Departments were forcing play facilities to close because they did not, or could not quite meet the recommendations within the guidance. It also meant that the same Social Services were advising play facilities to adopt dangerous rather than safe practices. They would recommend that if a group of children came to a play facility, and this would have put the numbers above the ratio, that the Play Workers should turn away the additional children. This would mean that a group of children who are looking after each other would be split up.

The government then later realised there was a problem and rushed out a letter Local Authorities recommending that where facilities were good and that the failures to meet the guidance were relatively minor, they should not be closed down. It also pointed out that the recommendations from 'Play Link' that it was better to have a strategy to deal with a rush of children rather than lose a member of staff by stationing them on the gate trying to keep children out. The letter received far less publicity than the original guidance consequently bad advice was given for a long time afterwards.

- When the government introduced legislation in 2002 for National Care Standards they found that many homes could not comply with, or that meeting the cost of complying would mean that the value of the property would be much less than the cost of converting it. Consequently many Care Homes closed down and the government was again forced to backtrack and some common sense prevailed. It was not that the guidance was not helpful and desirable. It covered : minimum size of rooms, the need for en suite facilities, and the need for

Gender specific areas etc., the problem was that it was not achievable within the costs and time frame envisaged.

Recommendation: Those issuing guidance should either include advice on reasonable implementation strategy or advice on how a reasonable implementation strategy might be devised.

Failure to have Priorities with Guidance

The advice in guidance can range from detail which is useful for administrative purposes to that which if not implemented may risk people's lives. It is usual within guidance, to give this advice without any indication of its relative importance.

Guidance usually gives no indication of what to do where failures are minor.

The sensible approach is usually to apply the 'reasonably practicable' test of the Health and Safety at Work Act, however, as the guidance gives no permission to do this, the assumption is made that guidance must be implemented fully and this is where many nonsenses arise and many tens of thousands of pounds are wasted.

The following examples illustrate:

- Two City Councils have been informed that a type of swing 'failed the European Standard' (BS EN1176). The swings had almost certainly over twenty year's life expectancy and there was no reason to believe that this minor technical failure created any additional risk. Nevertheless, the two cities removed all those swings and replaced them.
- A Parish Council kept two playgrounds locked for weeks because the equipment 'failed the standard'. In fact all that was wrong was that the items didn't have labels with the manufacturer's name and details – a standard failure but with no risk to the children.
- EN1176 recommends dimensions for impact absorbing surfacing around playground equipment. It is not uncommon to find that this has been installed at less than the recommended dimensions. A number of Local Authorities have dug up the edges and extended the surfacing at great cost even where the shortfall was well less than 10% and therefore remedial works not 'reasonably practicable' when risk assessed.

Recommendation: Guidance should indicate the relative importance of its various recommendations and give illustrative examples of where implementation would not be 'reasonably practicable'.

If I was You, I Wouldn't Start From Here

There is an old joke about the driver of a car who asks a tramp which is the way to London. The tramp ums and ahs for a long time and then says 'If I were you, I wouldn't start from here'.

One of the difficulties of health and safety guidance is that the assumption is made that those implementing it will be starting either from a blank sheet of paper or from a common set of circumstances. This is rarely the case. Time and time again inspectors find that the circumstances of what is being inspected, does not fit the guidance. This is different from not meeting the guidance as if the circumstances do not fit then there is no way of telling whether the guidance is met or not.

The problem often comes when someone uses the standard to judge existing equipment which may have been in place for ten, twenty or even thirty years.

Within the guidance there is usually little or no advice on how to cope with these eventualities.

An allied problem is that however carefully it is written, guidance is open to a multitude of interpretations when you are in the real situations rather than those imagined in the committee room. What looks like simple black and white in the document is many shades of grey in the real world. Again guidance tends to be silent in this respect.

Recommendation: Guidance should indicate whether it is absolute or whether the principles within the guidance should be used to come to reasonable guidance based on the Health and Safety at Work Act.

Risk Assessment – a tool not a whip

Sadly those managing play facilities regard annual inspections (as recommended in EN 1176) as a rod or whip with which to be beaten rather than a tool to use. It therefore makes sense to have it done by the person who will do it the cheapest.

The majority of Local Authorities when seeking tenders for Annual Inspections of their playgrounds have no quality criteria to judge the different bids and little concept of how they will use the findings to increase efficiency.

The simplest and therefore often the cheapest reports will merely record the easily identifiable failures to meet the standard. The playground managers are therefore left with an apparent need to undertake expensive remedial works whether or not any significant reduction in risk would be achieved. The reports also tend to imply negligence where it does not exist and therefore make the managers more vulnerable in the case of civil litigation.

A more thorough inspection will carefully use risk assessment to identify whether the item is fit for continued use even though it may have minor failures to meet the standard. In this way, thousands of pounds of unnecessary remedial works are avoided and an inference of negligence is also avoided. If a remedial measure is not 'reasonably practicable' then it is not negligent to leave the item as it is.

Recommendation: Managers contracting inspectors to undertake risk assessments should have quality criteria to ensure they receive a tool to use to increase efficiency.

Guidance is a Restraint on Trade

What is generally not understood is that guidance is nearly always a restraint on trade. The government or the organisation formulating the guidance, will seek assistance from key stakeholders.

Those who can afford to send people to the regular meetings will by definition be the big players. It is in their interest to ensure that the guidance cuts out some of their competitors and as small organisations will be less likely to be represented then they will be easily the ones to cut out.

This restraint on trade is not necessarily bad, the standard for children's playground equipment, BS EN 1176, has been an excellent way of ensuring that 'cowboys' do not sell poorly built and dangerous playground equipment. It and its predecessor led to significant improvements in playground equipment.

For the companies selling equipment, it is more important that there is a common standard, so that when they tender it as on a fair and equitable basis, than the details of the standard itself.

There can however, in instances where the restraint on trade may have unforeseen consequences.

The legislation on abattoirs would appear to be a case in point where the restrictions ensured that only the large abattoirs could survive. The benefit was therefore to the large operators, excluded the small operators and crucially and the recommendations had little regard to the welfare of the animals who were necessarily transported over much greater distances. It also meant that links between local farmers, the butchers and their customers were broken which meant that the quality of the meat offered to the consumer suffered. The transporting of animals all over the country means that the risk of a localised disease would be turned into a widespread epidemic, is greatly increased.

Recommendation: Those formulating guidance need to assess whether a particular group of stakeholders are having a disproportionate effect on the guidance and should actively seek out the views of stakeholders who are not represented.

Health versus Safety

Health and Safety procedures tend to concentrate on accident, i.e. safety rather than overall health. The reason is quite simply that accidents are measurable and modifications to reduce them relatively straight forward and the results measurable. Improvements can often be noticeable in the short term.

Health affects tend to be longer term, much more difficult to measure and therefore can easily be overlooked with the result that short term safety measures may be detrimental to long term health.

This has been recognised in the field of children's play and an excellent document has been prepared by the Play Safety Forum whose members include all the major organisations concerned with children's play.

'Managing Risk and Play Provision: A Position Statement'. This states 'Children need and want to take risks when they play. Play provision aims to respond to these needs and wishes by offering children stimulating, challenging environments for exploring and developing their abilities. In doing this, play provision aims to manage the level of risk so that children are not exposed to unacceptable risks of death or serious injury'.

The statement has been welcomed by the Health and Safety Executive. It is available as a free download from the Children's Play Council website, www.ncb.org.uk/library/cpis

Recommendation: Those with responsibilities for Health and Safety need more guidance in how to make assessments about overall health effects. They need to avoid control measures which have a detrimental affect on health which is out of all proportion to any increases in safety.

Road Safety

Road Safety is a classic case of concentrating on safety at the expense of health.

What we laughingly call road safety

- Instructs Children to keep out of the way of the car
- Reminds them they must always take second place to the car
- Is primarily to avoid them damaging cars and disturbing the motorist – it is a nuisance for drivers to stop their cars every hundred yards or so to wipe children off the bonnet.

If it were to protect children on residential roads it would be the motorist who would have to :

- Slow down
- Look right and left
- Proceed with caution

The results of concentrating on safety are that parents are increasingly told to keep their children in and because they do this, the successive governments have claimed that the roads are getting safer. This is just not the truth, the roads are getting so dangerous that parents are keeping their children indoors and we are seeing an incredible rise in child obesity and Type 2 Diabetes.

A small research project carried out for CAPT discovered that 20 mile an hour zones were not sufficient for parents to feel that it was safe enough to let their children play out. It is absolutely true that a child hit at 20 mile per hour is much less likely to die or have severe injuries than a child hit at 30 mile per hour, but if the parents are not letting their children play out their health is still going to suffer.

Looked at in this light, the conclusion is that the health that the children of this country are suffering directly as a result of what is called road safety.

Recommendation: Road Safety should make the roads more safe not accept the danger of the cars and reduce the freedom of children to play out.

Stranger Danger

One of the areas where parents are accused of being risk averse is that they no longer let their children play out go on errands, walk to school unaccompanied, etc. This is often thought to be associated with illogical fears of Stranger Danger.

All experts agree that there has been no or no significant increase in Stranger Danger. We increasingly know that it is not strangers who pose a threat to children but those the children know. Therefore logically the fear of Stranger Danger should have gone down dramatically; instead the fear is rising exponentially.

My observations at residential areas in many parts of the country have shown that where vehicles cannot go through at speed, typically short cul-de-sacs or heavily traffic-calmed roads, or where there are wide verges or communal green space between the houses and the roads, there parents are happy to let their children play out.

Typically they let children as young as two and half or three years of age play on the front step with the door open and gradually as they grow older the children progress to playing next door, then in the road where they can be seen and then travel further a field.

What is interesting is that on the same housing estates where traffic can go through fast, the parents keep the children in. We can therefore discount social class, local rumours of Stranger Danger, the media, advice from

schools, or the police, as these are constant. It is therefore the car rather than the fear of Stranger Danger which is forcing parents to keep their children in.

Where children can play out parent's talk of 'keeping an eye on each other's children' so not only are there improvements in children's freedom to play but also social capital for the parents.

An explanation for the dramatic rise in fear of Stranger Danger is that if we reduce a child's range (the area they can travel unaccompanied) to a half then we reduce the potential area to a quarter. If we reduce the range to a third then we reduce the potential area to a ninth and a quarter to a sixteenth.

As we reduce the area, we increase the people who would be formally neighbours and acquaintances by the square so therefore half the child's range and the number of strangers double. The consequence is a very logical and understandable exponential rise in fear of strangers.

The solution is therefore to decrease the dominance of the car in residential roads and make it easier for the children to walk and cycle around their neighbourhood. Not only should this reduce what is perceived risk averse behaviour but also give benefits in increased health and reductions in obesity and increasing feelings and actions of neighbourliness.

Recommendation: Giving priority to pedestrians in residential roads would reduce the risk of injury and also the fear of Stranger Danger. It will also increase neighbourliness (social capital)

Neighbourly Organisations

All political parties value the idea of caring, sharing communities where people help each other. Health and Safety guidance however, can have a devastating effect on groups within the communities to continue operating.

When thinking about informal neighbourliness and also local community organisations, successive governments have assumed they need to go to 'the voluntary sector' or 'the third sector' as the appropriate stakeholders.

They therefore take their advice from the large voluntary organisations that may be called the 'contracting voluntary sector'. This sector has a well deserved reputation for providing innovative services and raises some of its money from charitable sources. This sector however does contract to provide services in return for grant aid. The needs of this sector are completely different for the small community or neighbourly organisation that do not 'deliver a service' but rather undertake activities for the sake of neighbourliness.

The contracting voluntary organisation may well welcome stringent guidance such as child/staff ratios or staff toilets as it strengthens their hand to request additional funding from their funding body usually local or central government. In this way they increase both their funding base and their quality.

For the small neighbourly organisation however, the guidance can kill off the activity they were undertaking as they cannot possibly comply with the guidance nor hope to comply within a reasonable time frame. They therefore give up.

If a neighbourly organisation wishes to run a holiday play scheme and to use the Scout Hut, the pavilion, the church hall, it may be doing it absolutely voluntarily with a very small amount of money generated by coffee mornings or bring and buy sale. If they are told they have to have separate staff toilets as a requirement of the Children Act, they clearly cannot proceed. If everyone has to have police checks, including even the person making the tea who has no supervision of children, then the delays mean that the play scheme does not happen.

There has been a dramatic decrease in these small neighbourly organisations particularly those running activities for children and health and safety requirements do strongly appear to have had a very detrimental affect.

The question we need to ask ourselves as a society is 'do we want to encourage this neighbourliness' with the possibility that there will be an increase in accidents, against the certainty that, if we do not encourage this neighbourliness, our children will grow up with a culture that rejects the idea that people in communities should help and support each other.

There is a further serious danger and that is the health and safety requirements tend to be policed by the local authority. The citizens of that authority therefore increasingly see the local authority as an enemy who stops them doing reasonable neighbourly activities rather than a friend who helps them to achieve those activities.

Health and Safety guidance is therefore having a detrimental affect on the culture of democracy within the country.

Recommendation: Those formulating guidance should assess whether it is likely to have a detrimental affect on neighbourliness within communities. The social health and wellbeing of the community needs to be considered as part of the analysis of health and safety. These views of this sector will need to be ascertained in addition to the normal stakeholder consultations.

Quality not always Desirable

Arguing against quality appears to be arguing against motherhood and apple pie, it can however have a pernicious affect.

A Local Authority may have say a hundred playgrounds, if it then decides that it has a commitment to quality and that all playgrounds must be of a certain standard, the cost implications are that many of the playgrounds will be closed down. The question then needs to be asked, 'is it better for a few children to be able to have access to really good playgrounds or for a lot of children to have regular access to playgrounds that are just reasonably ok'.

There is not a simple answer but occasionally the question is not even asked. In a way it is similar to the balance between health and safety .

There is another way in which commitment to quality has a detrimental effect and that is that it gives a righteous blackmail when those proposing guidance are discussing at what levels the guidance should be set.

It is sometimes difficult to argue for 'reasonable practicability' (as in Health and Safety At Work Act) when others are arguing that what our children need is quality. It is however true that judgements made on the basis of 'reasonable practicability' are a better way of maximising health and safety for the amount of resources expended than is a blind commitment quality.

Paperwork – less is more

Local Authorities often have safety inspection procedures that are needlessly heavy and repetitive. When there is a problem, the pressure from either the courts or legal departments or senior managers is to add yet another layer to the paperwork.

The result is that staff end up believing their job is to complete paperwork rather than make the playground safer. It is not unusual to see an inspector run onto a playground, tick twenty or thirty boxes on a form and then run off again without bothering to pick up the broke glass. They do this without any guilt because the pressure is on them to complete the paperwork rather than make the playground safe.

The masses of paperwork then go to a manager who find them very confusing and repetitive and takes an inordinate amount of time, so at times they end up filing great wads of this paperwork without ever having looked at it.

It is very often, quite a simple matter to reduce the paperwork and at the same time have a much more robust system. What it takes is a desire to use inspections as a tool to reduce wastage and increase safety rather than a burden merely to be thrown at courts to protect their backs.

Not yet risk averse but through poor management Government and their agents are creating a dangerously unhealthy culture of risk aversion.

Recommendation: *Managers of playgrounds institute procedures which are aimed at reducing risk rather than merely generating paperwork in the belief that this will 'protect their back'.*

Conclusions

Human and financial resources are being wasted and much anxiety is being caused by a failure of organisations to adopt or incorporate the common sense 'reasonably practicable' test of the Health and Safety at Work Act.

A concentration on safety at the expense of health is leading to outcomes which are not in the best interests of children in particular but the population as a whole.

This report makes some recommendations for improvements.

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