

Managing the risk in relation to Health & Safety issues

Phee v Gordon & Niddry Castle Golf Club (Court of Session 2011)

In the above case, Mr Anthony Phee was awarded £400,000 when he was struck in the eye by a golf ball negligently driven by Mr James Gordon, a fellow golfer at the club.

Mr Phee was crossing between two holes and was in the line of sight of Mr Gordon who when teeing off at the 18th tee, erred in slicing the ball off-centre by 12 degrees. Liability against the golf club was established under the Occupiers Liability (Scotland) Act 1960 which places a duty of care upon the occupier of premises to show such care as, in all the circumstances, is reasonable to see that anyone entering on to the premises is not injured as a result of dangers due to the state of the premises or to anything done or omitted to be done on them.

The premises can be outdoors and on this occasion included the golf course. The court in the Phee case found that warning signs should have been present at the golf club. There was an identifiable hazard presented by the route between the holes which took Mr Phee across the path of balls driven from the 18th tee.

It is important to note that the golf club was not held solely liable for Mr Phee's injury. Mr Gordon was also liable for providing an inadequate warning when he mis-hit the ball. Whilst the club was found 25% to blame, the percentage of attributable to Mr Gordon was much greater at 75%.

Top Tips

1. All sports clubs should consider whether they have adequate risk assessments in place.

The purpose of a risk assessment is to identify and adequately control risks to enable the activity to be safely carried out. Where risks to fellow players and the public are created, consideration should be given to adopting reasonable control measures. In the Phee case, the court identified the need for a warning sign. On a cricket pitch adjacent to a public road, fences or netting may be required to protect the public.

2. It is a principle of the law that wrongdoers are jointly and severally liable i.e. the injured party can attempt to recover all of his losses against any one or the wrongdoers he establishes fault against, even though that wrongdoer may only be liable for a small proportion of the damage.

In cases similar to Phee, the logical course would be to pursue the sports club who are likely to be insured for all the losses leaving them in turn to attempt to recover the proportion attributable to the other party at fault, namely the golfer. The golfer is less likely to be insured or to have assets which could be attached so the club may ultimately be unable to obtain a contribution from them. Sports clubs should consider with their brokers whether they have adequate insurance coverage in light of the above case and whether they should either require their members to be separately covered or even consider arranging for specialist cover to be available for members to pay for.

3. Because the sports club may find itself not only liable for injuries to its participants or the public during competitive play but also during non-competitive training, it should consider whether it has adequately assessed and controlled risks at training grounds and in training activities. In particular, the following areas may be relevant:-
 - Is there provision of suitable and sufficient protective equipment and is its use enforced by the club? e.g. gum shields, head-guards, shin pads, hand protection and so forth
 - Particular care should be taken regarding junior or inexperienced participants whose technique may be poor or who may not otherwise be fully aware of the risks and of the need to protect against them.

Voluntary Assumption of Risk

The idea that participants in dangerous activities voluntarily accept responsibility for the consequences was not an argument which carried weight in the Phee case. Mr Phee was inexperienced, having played only 6 rounds of golf and, despite claims by the defenders that he was solely at fault for his injury, the court attributed no fault to him for his failure to adequately protect his head against injury by the golf ball.

Dilemma Principle

There is the principle that when a person (A) is placed in an emergency by reason of the fault of a third party (B), then A cannot be held to have caused or contributed to his injuries if in dealing with the emergency he made a mistake or an incorrect choice in trying to protect himself. In the Phee case, the court did not accept the injured golfer was to blame because he did not adopt a more protective posture when he heard Mr Gordon shout "Fore".

New rules in April for employer's reporting injuries, diseases and dangerous occurrences

The old rule that incidents involving 3 days absence require to be reported is being replaced with a rule that the trigger will be where there has been a week's "incapacity". The definition of incapacity is unclear but presumably this means incapacity from work.

To see how we can help you, contact:



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