Browne Jacobson

Does Ossett United FC's decision open the floodgates for claims by injured sports players?

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Ossett United FC is a football club based in Yorkshire, playing in the Northern Premier League. On 12 November 2019, they lost a claim for damages brought by Rees Welsh, a semi-professional player from an opposing team. Mr Welsh had sustained a fractured ankle in a game against Ossett caused by a tackle from an Ossett player. Ossett have now suggested they may need to sell their grounds to pay the damages and costs awarded to Mr Welsh and in a statement on their website have suggested this is a landmark legal case that threatens sport participation across the UK. In a press release on their website they warn that the judgment "opens up the floodgates for all injured sports participants to successfully sue and win substantial money from the person who injured them and their club. This can then filter down to recreational sport like 5-a-side football where an individual can sue an opponent should they receive an injury during a game". Is this true?

Vicarious liability

Bringing a claim for compensation against a person who negligently caused injury is nothing new in English law. Further, it is established that a person can claim for compensation from the employer of that person if they can establish that the act causing injury was negligent, and the act was so closely connected with the employment that it would be fair and just to hold the employer responsible. This is known as vicarious liability. It is a familiar concept to all personal injury lawyers who will see it arise in a variety of different industries, the theory being an employer has deeper pockets and often the benefit of insurance. It is however a reasonably rare sight in relation to sport. One of the reasons for this is the need to show the act causing the injury was negligent. When participating in sport, there is a risk of injury which has to be accepted by participants. The level of risk is clearly dependent upon the sport, for example a participant in boxing would expect a greater risk of injury than a participant in badminton. In football, tackling to win the ball is part of the game and contact may happen. What has to be assessed is whether that contact was a reasonable attempt to get the ball or if it was ill judged or reckless. The Court will assess this and has found both ways in the limited number of claims which have actually been brought in relation to football. In 2008 Ben Collett, an 18 year old player for Manchester United reserves, was awarded £4.3m following a negligent tackle from a Middlesbrough player which fractured his leg. Paul Elliot, sustained a ruptured knee whilst playing for Chelsea in a game against Liverpool in 1992, but failed to persuade the Court the contact was negligent.

In recent years, the concept of vicarious liability has evolved to encompass a range of scenarios outside the conventional employer-employee relationship. Case law has found vicarious liability in respect of the actions of independent contractors, charities, religious organisations. The Supreme Court in the case of Armes v Nottingham CC extended the concept to foster parents suggesting the foster parents were performing their role for the benefit of the local authority and the local authority exercised a significant degree of control over how the role was performed. One can therefore see how this could be applied against governing bodies or amateur sporting organisations.

The statement from Ossett United is correct in respect of a participant at grass roots level being able to sue an opponent if they cause an injury. This is not a new concept and to succeed, the injured party would have to show negligence. As with professional clubs, that is why so few claims are brought. Given the evolution of vicarious liability, as well as suing their opponent, the injured party may also sue the governing body or club.

Insurance

The real point of interest in the Ossett case is the insurance position. Ossett relied on insurance provided by the Northern Premier League, however this only covered their legal expenses. It did not cover the compensation and legal costs awarded to Mr Welsh, which totalled almost £135,000. They were unaware and had not taken out any additional insurance coverage. Had they taken out appropriate liability insurance, they are would not be in this situation.

Similarly, if their players had player-to-player insurance, a claim against the club may not have been pursued. Arguably, depending upon the size of the sporting organisation, obtaining insurance cover for a range of possibilities may be financially onerous. On that basis, this may be an issue for governing bodies to address, to ensure their members have access to the right types of insurance at the right price.

Key lessons

The key lessons for sporting organisations arising from this case are:

1. Clubs need to be aware of the risk of vicarious liability in respect of employees, contractors, volunteers and anyone whose actions they may be said to “control”;
2. Governing bodies need to support their members by facilitating group policies that cover liability risks, not just legal expenses. Clear communication is needed with members explaining what the policies provide, to ensure there is no insurance gap. The benefit to group policies is that this drives down the cost of individual premiums;
3. Advice from a specialist broker can be invaluable in obtaining policies that cover likely sporting body risks. A broker will assess risks and facilitate the availability of suitable cover, whilst investigating the market to reduce insurance premiums.

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