

KEY LEGAL CONSIDERATIONS BEFORE ANY RETURN TO SPORT

With people's attention increasingly shifting to what life looks like after lockdown, the sports industry is actively working on delivering sporting activity as and when restrictions start to lift.

Onside are working closely with international and national sport governing bodies, event organisers and stakeholders across sport during this time, including helping with "Return to Sport" plans.

The key legal considerations in England are:

Health and Safety

- **Coronavirus Act 2020** - Schedule 22 provides the UK Government with new and significant discretionary powers regarding events taking place in the UK. It remains open for rules to be relaxed but also tightened. Certain information must be provided to anyone attending events.
- **The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020** - provide certain restrictions on movements and gatherings, including (at the date of this note) a prohibition of gatherings of more than two people except in certain circumstances.
- **Health and Safety at Work Act 1974** and **The Management of Health and Safety at Work Regulations 1999** - place general standards on any employer in relation to health and safety of its workforce, including conducting risk assessments and documenting written policies.
- **Personal Protective Equipment at Work Regulations 1992** - employers have duties concerning the provision and use of appropriate personal protective equipment (PPE) at work. This can include items such as safety helmets, gloves, eye protection, high-visibility clothing as well as respiratory protective equipment. Any PPE must be fit for purpose where there is a health risk to employees.

Employment

- **Employment Rights Act 1996** - employees cannot be subjected to dismissal or detrimental treatment regarding working practices in circumstances of danger (which would include coronavirus).
- **Equality Act 2010** - individuals who may be unable to work for a coronavirus related reason are protected from direct and indirect discrimination. Various categories of employees may be required to self-isolate (for example, a pregnant women under the Management of Health and Safety at Work Regulations 1999).

Data Protection

- **Data Protection Act 2018** - an individual's health information obtained (and possibly shared) through health screening will constitute special category personal data under GDPR/Data Protection Act. Safeguards and exemptions will need to be worked through, some form of disclaimer and/or privacy notice prepared and appropriate policies implemented.

Duty of Care

- Those involved must also consider their common law duties of care as well as those arising contractually to: (i) employees required to be at the event/training; (ii) participants and coaching staff; (iii) stakeholders and (iv) fans (as and when they can attend live action).

- A common law duty of care generally exists if the three-fold test in *Caparo Industries v Dickman [1990] 1 All ER 568* is satisfied, as follows:
 - the damage which occurs is foreseeable;
 - there is a sufficiently proximate relationship between the parties; and
 - it is fair, just and reasonable in all circumstances to impose a duty of care.
- A person who owes a duty to take care at common law will breach that duty if they fail to exercise reasonable care (that a reasonable man (i.e. the man in the street) would take).
- The breach of the duty of care must cause the loss (the chain of causation cannot be broken).
- By way of example, boxer Michael Watson sued British Boxing Board of Control (BBBC) for negligence having sustained serious injuries during a fight with Chris Eubank, successfully arguing that BBBC had failed to ensure that there were adequate medical facilities in place ringside (even though BBBC's rules imposed mandatory safety requirements on promoters).

UK Government Guidance

- Published guidance on coronavirus should be taken into account as it develops as it will inform duty of care considerations and adherence will help mitigate the risk of being sued for negligence.
- Guidance is only persuasive but could present a reputational risk if interpreted too liberally. Cheltenham Festival, for example, was held in accordance with the Government's guidance but has faced criticism for contributing to the spread of the virus.
- Being informed of public and media mood and understanding what other sports are doing will be critical in taking proportionate action.

This note has been prepared on 14 May 2020. Given the live and rapidly evolving nature of events, we will provide further updates as and when any key legal consideration changes.

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