

LEAGUE CRICKET CONFERENCE LEGAL UPDATE 2010- Series 1

With this Article coinciding with The Conference AGM, I thought it may be apt to look at some of the more important happenings in the Law over the last 12 months and how they may affect Cricket Clubs. I have divided this Article into Sections:

Access Rights-

1. This remains problematic for Clubs whose grounds do not immediately abut Public Highway, but instead require access over what is "third party" land, and the Club enjoys no Legal Right of Way in their Deeds over such third party land. The first question in these cases is to *ascertain the status of the land over which the Club requires access*

2. There are two important pieces of legislation which can cause a Cricket Club problems, if they have to pass across "Third Party" land. The first is Section 34 Road Traffic Act 1988 which states a person "without lawful authority" cannot use mechanically propelled vehicle (this term is wider than just cars, and would include a Roller) over Common Land, Moorland or any other Land not being a road and for the avoidance of doubt, a road does not include a footpath, bridleway, restricted byway. To do so without Lawful Authority is a Criminal Offence. Where "the Third Party Landowner" gives consent, this amounts to a Lawful Authority. The problem arises where there is no consent. The Courts have held that where "the Third Party" land is NOT Town Village Green, a presumption of Lawful Authority can arise where, using the Cricket Club as an example, the Cricket Club has "as of right" used the "Third Party" land separating the Public Highway from their Ground for access and agrees without force (has not had to remove obstacles preventing use), without secrecy (access has been exercised openly, such that the Third Party Landowner must have been aware of the activity and simply ignored it) and without permission (the Third Party Landowner did not give approval to this arrangement) for a continuous period of 20 years up to the present date. This "implied Lawful Authority" can be expensive to prove, as more often than not, one is faced with having to obtain a Court Order. The second piece of legislation is Section 15 Commons Act 2006 which relates to where the Third Party Land is Town Village Green. The effect of the Section is that a land owner cannot under any circumstances drive across land registered as Town/Village Green save in one exception. A large number of Applications have been made across the Country by Local Residents since this legislation came into force to protect land from "the threat of the bulldozer" by registering land as Town Village Green. The requirements to register land as Town Village Green are not that onerous, the applicants having to show that the land in question has been used by the local neighbourhood for "lawful sports or other pastimes" openly and without permission for the previous 20 years up to the application, or for 20 years including as at 6th July 2007, before ceasing and an application is made within two years. Recent examples of activities which have been held sufficient to enable land to be registered has been kite flying and dog walking over Third Party land. If your Cricket Club requires access over such Third Party land which has been openly used by others, beware that the effect of registration of the land as Town Village Green, could prevent your Members and Opposition Players passing over it with vehicles. The only exception as referred to on page 1, would be if the Club could show that they had enjoyed at least 20 years long use for a period immediately prior to the Legislation being introduced

Good Practice - where a Cricket Club owns the freehold to its ground or a long Lease, and the ground does not abut the Public Highway, check your Deeds to establish whether you have the necessary

Rights of Way over the intervening Third Party land. If there are no Rights, then it is necessary to consider the status of the Third Party land and whether application should be made to the Land Registry for a claimed Right of Way based on at least twenty years long term user. You will need long standing Members of the Club to be able to swear a Declaration confirming user

Chancel Repair Liability-

1. Over the last 12 months we have seen an increased activity by Dioceses acting on behalf of Parochial Church of England Councils, in seeking to register against a Third Party's Land at the Land Registry, an entitlement to recover from a Current Land Owner Chancel Repair Liability

2. Chancel Repair Liability is a historic entitlement to claim from a Current Owner of Freehold Land (called a Lay Owner) a sum of money to be used for the upkeep of the Chancel (the East wing of a Church) because either the land in question had been formerly awarded to the Incumbent of a Parish Church in lieu of a tithe under the Enclosure Acts of the 17th and 18th Centuries or because it was Glebe Land dating back to the Dissolution of the Monasteries in 1535-1537. There are around 5,200 Parishes in England and Wales which contain some Land coming within either of these categories. It is not beyond the realms of possibility that there are Cricket Clubs who own the Freehold to their ground who are in fact "Lay Owners" due to this ecclesiastical link

3. Many will have heard of the case of Aston Cantelow and Wilmcote with Billselley PCC v Wallbank, which re-ignited the controversy after the Wallbanks were held to be liable for Chancel Repair Liability totalling £95,260. Faced with such a claim could ofcourse make a Lay Owner insolvent, for once Land is "tagged" with a Chancel Repair Liability it can dependent upon the likely liability, make the land unmarketable. There also remains the more immediate question of how the Lay Owner meets the Liability?

4. Even more worryingly there is a 1935 case Wickhambrook PCC v Croxford which provides that Chancel Liability is "personal and several". If this remains "good Law" its implication is that the Church could seek to recover the entire Chancel Repair Liability from the owner of any **part** of the former Rectorial Land. That Owner would then be faced with having to recover the liability from the other owners of the Rectorial Land

5. The 10 Year Rule which requires the Church to register their entitlement for Chancel Repair Liability at the Land Registry by 12th October 2013, will not benefit the existing Lay Owner, because the Church will only lose their ability to register it against Land IF the land has changed hands for monetary value after 12th October 2013. Land Owners such as Cricket Clubs who continue to own the freehold to their ground beyond the 12th October 2013 will not be able to benefit from this Rule

6. Where a Lay Owner is made the subject of a Chancel Repair Liability, application can be made under the Ecclesiastical Measures Order 1923 to "compound" the liability- this means applying to the Diocese for making a one off payment to the PCC. The application is both time consuming and the calculation is complicated. It is understood that the Wallbanks in the above case have considered this.

7. The Liability does not append to Cricket Clubs which own a lease to their ground.

Good Practice - For £17.63 one can carry out a Chancel Check Search to establish whether your Club Ground is in a Parish where there is land the subject of Chancel Repair Liability. Where the Search indicates that there is, Legal Indemnity Insurance can be taken out to cover the risk that a Cricket Ground comes within such land the subject of Chancel Repair Liability. Premiums are usually around £80.00 as a one off payment.

Employment

1. We have seen two European Court decisions which will have an impact on Employers when it comes to an employee's entitlement to "**enjoy**" paid annual leave. The issue revolves around the scenario of an employee who has pre booked annual leave and is then ill at the time of the annual leave.

2. The two decisions *Stringer v HMRC* and *Pereda v Madrin Movilidad* now present us with the principle that where an employee is on sick leave at the same time as their annual leave, unless the employee consents otherwise, the sick leave overrides the annual leave and the paid annual leave can be taken at a later date or even carried forward to the next year.

3. This can be best shown by the following example- ABC Cricket Club employs a full time Bar Steward. He is entitled to 24 days annual paid leave two weeks of which must be taken the first two weeks in November. The Steward is signed off work for 6 weeks with liver problems in October, which partly co-insides with his annual leave. By being off work due to illhealth, he cannot be said to be able as the Regulations state to be able to "enjoy" his paid annual leave- he can therefore insist that this paid annual leave is carried over to the next year

Good Practice - Clubs which employ staff, whether it be to play cricket or in an administrative capacity must be aware of the implications of these decisions. Keeping a Personnel File on each employee is requisite together with ensuring that each employee has a signed Contract. A record of absences do to ill-health should be kept in a personnel file

Landlord & Tenant - I have some good news here!

1. The last quarterly concentrated on this area where a Cricket Club leases a ground. It explained that the Ground Landlord will usually want to exclude the renewal provisions in Part II of the Landlord and Tenant Act 1954 - this is called "Contracting Out"

2. "Contracting Out" is only possible where the Lease is for a "FIXED TERM. However as a result of the case of *Newnham LBC v Thomas Van Staden*, a Lease which is say for '10 years and thereafter from year to year', cannot be a Contracted Out Lease, even if the Landlord has got the Tenant to sign documentation or for pre 2004 Leases, there is a Court Order of Contracting Out. Many Leases have been previously drawn up as being for a fixed term and then from period to period after the expiry of the fixed term. It will come as a nasty shock to the Landlord and a nice surprise for the Tenant that in such circumstances the Tenant has got Security of Tenure. Unless the Landlord can shown that the Cricket Club Tenant has been at fault under the terms of the existing Lease (eg persistently

late paying rent / breach of repairing obligations) or is prepared to pay compensation to the Club if the Landlord can prove one of the five non fault grounds, the implication is that the Cricket Club Tenant can as a result of this decision, demand a new Lease on substantially the same terms as the past Lease

Good Practice; - where as a Cricket Club , you have a lease to your ground- check what the Lease to see what it states is its Term (duration).

Personal Injury

1. There are two Legal Principles. Firstly that those who put on sporting activities owe a Duty of Care to their Participants. Secondly that Participants acknowledge that there is a degree of risk of personal injury by participation or as Latin Scholars would term "Volenti Non Fit Injuria"

2. It is subject to these Principles that the Courts have had to assess on a case by case basis whether Injury suffered by participating sportsmen is actionable by the sportsman. Over the last 18 months we have seen three cases- the most recent being Urens v Corporate Leisure and Ministry of Defence. This was a First Instance decision but follows two Court of Appeal cases Poppleton v Trustees of Portsmouth Youth Activities Committee - 2008 (participant jumping from a climbing wall); Parker v Tui Limited - 2009 (tobogganing)

3. The failure in each case of those who organised the sporting activities to carry out an effective Risk Assessment could not be held to be conclusive evidence of a breach of duty of care, notwithstanding that the Management of Health & Safety at Work Regulations 1999 requires that an assessment is carried out. In each of these cases, the participants must have been aware that there was an element of personal risk, but chose to 'close their mind to it'. This In Uren, the Court held to be pivotal and grounds to dismiss his claim.

4. In each case it is for the Court to decide whether each Organiser of a Sporting Activity (say the Cricket Club) has taken reasonable steps to ensure the safety of the participants, against a backdrop that each participant must acknowledge that there is a risk of injury (being hit by a cricket ball) .

5. So what are the reasonable steps that a Club should take? This will depend on each participant's ,

- Ability to play the Sport
- Experience in the Sport
- Age

6. In my personal Judgement, the younger and or more inexperienced and or more elderly, the Participant, the greater the Duty of Care must be.

Good Practice - Clubs must ensure that they are:

- a) comprehensively insured, should they be faced with such a claim.
- b) publically advise their players to have personal injury insurance to cover the risk that they suffer injuries through the playing of cricket
- c) ensuring that all players are wearing adequate protection- the helmet rule for Under 18 Players is

now commonly followed- but perhaps all players should be encouraged to wear one?

d) preparing pitches which are fit for purpose for playing a typical game of cricket.

BUT QUERY- the large proportion of Clubs who hire a pre prepared ground from a third Party?- where do they stand in all of this? In my personal Judgement, it is these Clubs who could be at risk, and in addition to the above Good Practice, **they should be checking that the Ground Authority which prepares the ground, has itself adequate Insurance under Occupiers Liability Legislation, should injury be suffered by a Participant due to a sub standard prepared pitch.**

Remember; Ground Authorities are anxious enough to ensure that a Club has adequate Public Liability Insurance- re injuries to third party members or damage to their property,

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