PLAYING THE GAME: THE ORGANISATION OF PARTICIPANT SAFETY IN UK SPORT - A LEGAL COMMENTARY

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1 INTRODUCTION

This commentary examines sporting participant safety in the United Kingdom (UK), focusing on the law of England and Wales and acting as a comparative source to the Australian regulatory landscape. It provides a condensed overview of how the law balances participant autonomy, risk, and protection through common law, statutory duties, and emerging governance frameworks.

Sport inherently involves risk of injury, but UK law and policy increasingly seek to manage such risk through accountability, oversight, and professional standards (Gardiner et al., 2012; Safe Sport Project, 2025). This piece summarises the legal framework, comprising negligence law, statutory obligations, and judicial interpretation, before discussing key contemporary safeguarding reforms, chiefly, the recently published Safe Sport Project (SSP) Report 2025.

2 PARTICIPANT SAFETY AND THE LAW OF NEGLIGENCE

In England and Wales, participant safety in sport is grounded in the law of negligence. As established in the 1932 House of Lords decision *Donoghue v Stevenson* [1932] AC 562, a duty of care arises where harm is reasonably foreseeable. Courts, however, recognise that sport requires a modified standard reflecting its competitive and inherently risky nature. For example, in *Wooldridge v Sumner* [1963] 2 QB 43, as to whether a participant owed a duty of care to an injured spectator, the court held that the participant could not be negligent unless they had shown a "reckless disregard" for the spectator's safety, and acknowledged that errors of judgement during competition are inherent to sport and participants consent to ordinary risks (*volenti non fit injuria*).

In *Condon v Basi* [1985] 1 WLR 866, the Court of Appeal refined this principle finding a footballer liable for a reckless tackle, confirming that the standard of care varies by the level and nature of competition; professional athletes and coaches are held to higher standards than amateurs (Partington, 2017). Subsequent cases, including *Caldwell v Maguire & Fitzgerald* [2001] EWCA Civ

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1054, reaffirmed that liability arises only when conduct falls recklessly outside the normal exigencies of sport. More recently, the test in *Condon* was endorsed in *Czernuszka v King* [2023] EWHC 380 (KB) [60], where it was held that "within the law of negligence, the test is whether the Defendant failed to exercise such degree of care as was appropriate in all the circumstances".

Participants do not consent to negligent officiating, as illustrated in *Smoldon v Whitworth* [1997] PIQR P133. Moreover, *Watson v British Boxing Board of Control* [2001] QB 1134 extended liability to governing bodies, imposing a duty to provide adequate medical safeguards (Fairgrieve & Squires, 2019; Brown, 2023). As Lord Phillips observed in *Watson* [87], "the Board was involved in an activity which gave it, not merely a measure of control, but complete control over and a responsibility for a situation which would be liable to result in injury to Mr Watson if reasonable care was not exercised by the Board".

The defence of *volenti non fit injuria* remains relevant in English law, and with analogy to Australian practice, sporting participants are deemed to accept inherent risks of both lawful play and, in some circumstances, in breach of the rules of the game, but not reckless or negligent conduct (*Rootes v Shelton* (1967) 116 CLR 383, *McNamara v Duncan* (1971) 26 ALR 584, James, 2017; Roberts et al., 2020). Several Australian jurisdictions have codified defences that deem participants to have accepted certain risks. These statutes provide a complete defence in negligence where harm results from the materialisation of an objectively "obvious risk" occurring in a "dangerous recreational activity" (for example, s.19 of the *Civil Liability Act 2003* (Qld) and s.5L *Civil Liability Act 2002* (NSW)).

3 UK Statutory Frameworks to Protect Participants

Beyond common law, statutory frameworks impose duties on sporting organisations. The *Health and Safety at Work etc. Act 1974* requires employers, including professional sports clubs, to ensure, "so far as is reasonably practicable," the health and safety of employees (s.2(1)) and others affected by their operations (s.3(1)). The *Management of Health and Safety at Work Regulations 1999* mandate risk assessments and preventive measures, interpreted by courts to encompass sports settings (Fuller, 1995; Fuller & Vassie, 2004). The *Occupiers' Liability Acts 1957* and *1984* extend duties to facility owners, requiring premises to be reasonably safe for their intended purpose. Here, failures in pitch maintenance, supervision, or equipment can attract liability. The *Corporate Manslaughter and Corporate Homicide Act 2007* further increases organisational accountability, enabling criminal sanctions for gross breaches of duty resulting in fatalities. Collectively, these statutes emphasise structural responsibility and preventive risk management within UK sport.

4 Contemporary Safeguarding Reforms

UK courts increasingly scrutinise claims that professional athletes freely consent to dangerous conditions, recognising the economic and contractual pressures that can constrain autonomy. Such developments emphasise that while sport's social value is considerable, over-reliance on *volenti* risks normalise unsafe practices. This tension has driven a shift from reactive negligence litigation to proactive governance and safeguarding.

Thus, three core tensions can be said to have shaped the evolution of contemporary sports safety law in the UK: First, risk versus regulation–balancing competitive freedom with participant protection (Ball-King et al., 2013; James, 2017). Second, autonomy versus welfare–questioning the limits of consent in professionalised, commercialised sport (James, 2017). Finally, systemic versus individual accountability–recognising that safety failures are often organisational, requiring governance reform rather than isolated blame (Parent & Hoye, 2018; Gottschalk & Hamerton, 2024). These themes illustrate the transformation of participant safety from a private law concern to one of public governance, ethics, and institutional culture.

This shift has increasingly led towards integrated safety governance. National Governing Bodies (NGBs), clubs, and public authorities, including the Health and Safety Executive (HSE) and Sport England / Sport UK, must implement effective risk management systems, medical protocols, and safeguarding processes (Gardiner et al., 2012). Recent litigation claims concerning concussion and chronic traumatic encephalopathy (CTE) in rugby and football underscores the limits of negligence law. Claimants allege systemic failures to warn and protect players from long-term neurological harm (Kilgallon, 2024; McArdle & DeMartini, 2024), highlighting the need for preventive frameworks.

In longitudinal response, a Safe Sport expert working group led an umbrella project leading to the publication of SSP Report in June 2025. The Report calls on all National Governing Bodies across the UK and the Five UK Sports Councils to lead the sector. It proposes a UK-wide Safe Sport Framework, with independent oversight, harmonised safeguarding standards, and a central data hub for monitoring safety performance. Its phased roadmap comprises: Foundations and Stakeholder Alignment (Years 1–3); System Integration and Expansion (Years 3–5); and Long-Term Sustainability (Years 5+), and envisions a lead coordinating entity, independent complaints mechanisms, and data-driven oversight, embedding a culture of safety across the sector (Safe Sport Project, 2025).

5 CONCLUSION

The UK approach to participant safety is evolving from individual responsibility toward collective accountability. Common law recognises that sport inherently involves risk but demands that participants, officials, and organisers act within reasonable and lawful limits. Cases such as *Condon*, *Smoldon*, and *Watson* demonstrate the balance between liberty and liability (Brown, 2023). Complementary statutory frameworks, including those canvassed in this piece, embed safety obligations within organisational practice. The SSP Report 2025 represents a decisive step toward proactive governance, offering a roadmap for unified safety standards, independent oversight, and sector-wide cultural change. Ultimately, participant safety depends not on eliminating risk but on managing it responsibly with organisational and regulatory change working in tandem—UK law provides the foundation, and initiatives such as the SSP offer the means to embed a culture of care throughout sport.

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