



Informing Progress - Shaping the Future

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Beyond the Touchline: Navigating Liability in a Bigger, Faster Sports World

The sports industry has never stood still, but recent years have seen a remarkable pace of change, with once-amateur competition becoming increasingly professional and new mass-participation activities growing in popularity and exposure. The rising commercial and cultural significance attached to many sports clubs and organisations means the modern sporting landscape looks very different to the one ten years ago and is constantly evolving. This creates a set of liability questions that insurers and legal professionals find difficult to answer with traditional approaches.

These questions were explored in a thought-provoking session at the London offices of 39 Essex Chambers, giving FOIL members the opportunity to learn from experts in sports insurance and legal practice about how organisations are adapting to current developments. The discussion touched upon a range of sports, examining how shifting societal attitudes, heightened stakeholder expectations and greater scrutiny of duty of care are reshaping the risk landscape.

The result is a complex liability environment where exposures are broader, claims are more varied in nature and value, and risk appetites are moving in response. Using this context of evolving precedent and uncertain long-tail risk, guest speakers shared insights on what this means in practical terms for underwriting, policy wording, and pricing decisions in an area of practice showing every sign of continuing to develop at speed.

Arthur Fane, Miller Insurance Services LLP

Arthur Fane is an Account Director at Miller specialising in motorsport insurance, and he opened the session by sharing the opportunities and challenges presented by modern sports from a broker's perspective. Athletes are bigger, faster and more closely monitored than ever, and governing bodies, clubs and event organisers now face growing expectations around welfare, safeguarding and long-term health that would have been unfamiliar in the past.

Other factors, such as the profile and size of audiences, athlete remuneration packages and the physical characteristics of competitors, all contribute. Among the statistics used to illustrate the point related to rugby union, where strength and conditioning programmes have become the norm as the sport has embraced professionalism. The average forward today is up to 10 kg heavier than 20 years ago, and a typical game now sees up to 70% more tackles. The risks of injury are therefore significantly higher with bigger athletes coming into physical contact far more often.

Discussion then turned to the emerging risk drivers, with documented cases of concussion and Chronic Traumatic Encephalopathy (CTE), a progressive, degenerative brain disease prevalent among athletes in contact sports, seeing continued growth. CTE cannot be definitively diagnosed while a person is alive and represents a particular challenge characterised by long latency periods and historic exposure, sometimes across decades of participation and multiple clubs. That combination makes questions of causation and the allocation of liability extremely difficult, a problem compounded when the relevant exposure predates much of the current understanding of head injury risk.

Linked to this is the extraordinary growth in athlete remuneration and valuation, with endorsements, broadcasting revenues and private equity investment transforming the financial profile of professional sport. The effect carries significant balance sheet implications for sports organisations, with liabilities now sitting alongside assets of a scale unimaginable a generation ago. More challenging for the market are the hyper-complex and multi-layered exposures that flow from those valuations, with claims capable of reaching values that test the limits of available capacity. The uncertainty inherent in covering long-term liabilities of this kind is already prompting some insurers to withdraw cover or introduce exclusions rather than pricing risk they cannot reliably quantify.

Venue and spectator safety continues to evolve, nowhere more so than in motorsport, where faster vehicles and increasingly diversified events have raised the stakes. The potential for third-party claims is substantial, and specialist insurers have responded with highly structured frameworks that combine statutory safety regulations with detailed risk assessments and tiered policy components, allowing risk to be evaluated and covered across multiple categories rather than as a single undifferentiated exposure.

Arthur used an incident at the 2023 Indianapolis 500 to illustrate the point; a wheel sheared off a car following a crash and luckily cleared the grandstand and only damaged a car parked

behind it, resulting in a modest property claim. Had it fallen a little shorter, the same sequence of events could have produced general liability claims on a catastrophic scale, with payouts substantial enough to send shockwaves through the underwriting market. This is a useful example of how narrow the margin can be between an unremarkable claim and a massive one.

Cyber risk featured among the other threats discussed, as the digitisation of sport has given rise to high-speed telemetry, smart stadiums, fan apps and mobile payment systems. These have expanded the attack surface, and brought operational, reputational, and data exposures into an environment not historically built with technology security as a priority.

Litigation funding represents a further and growing risk to the global sports ecosystem, one that is valued at up to \$2.5 trillion, with annual live television and media rights alone estimated at \$28 billion. By bankrolling large and complex class actions, or high-profile disputes against governing bodies, leagues and clubs, third-party funding removes many of the financial barriers that once limited such claims and exposes insurers to litigation of a scale and expense that would previously have been unlikely to occur.

Finally, the evolving risks presented by terrorism and political uncertainty have brought new responsibilities for event organisers and venue owners. The resulting exposures frequently sit outside conventional policy wordings and reveal coverage gaps that specialist products are often required to address.

The discussion then looked at the key coverage considerations connected to these emerging risk drivers, what standard sports insurance policies actually cover, and where the boundaries of that cover lie.

A participant injury exclusion is common in standard general liability sports policies, and even without one, a standard liability policy will typically only respond where negligence can be established. Spectator injury sits on a different footing, with a club or venue's public liability policy usually responding in these circumstances, though this remains subject to certain conditions being met.

Hazardous activities, meanwhile, tend to be excluded from standard cover unless specifically disclosed, with sports generally categorised according to their statistical risk profile. Insurers reinforce this position with broad ancillary language designed to define precisely what is, and is not, covered, even within a single sport, closing off potential loopholes that might otherwise leave gaps.

Concussion and CTE were raised again as an emerging risks of particular concern, especially within high-contact professional sports. Insurer appetite in this area is shrinking rapidly, as injuries of this kind become increasingly unavoidable, and meeting both historical and current exposure becomes unsustainable for many carriers. The clear message for clubs and governing bodies is that the level of cover in place needs to be set out explicitly within policy documents.

Elsewhere, the conversation highlighted a notable shift in the role of D&O cover, which has moved from a routine administrative backup to a core pillar of modern governance and risk management. This shift reflects the increased complexity and scrutiny now facing the sports industry, with claims capable of originating from multiple parties internally and externally. Directors who give their time voluntarily can find themselves facing exposures disproportionate to their role, and substantial cover is therefore increasingly needed to safeguard individuals, to ensure operational continuity and to help clubs and governing bodies retain the talent willing to take on these responsibilities in the first place.

Russell Norris, McLaren's

Next to address delegates was Russell Norris, who is an Executive Adjuster - Sports & Leisure Lead within McLaren's specialist Entertainment and Contingency practice. Russell shared some interesting statistics around how average attendances in sport have developed in the past 20 years and how this has impacted the financial complexity and liability exposures of sporting events.

Premier League fixtures now attract an average of ~42,000 spectators, up by over 20%. Audiences at Premiership rugby games now exceed 15,000, which is an increase of more than 25%. The tennis at Wimbledon records a similar percentage growth, now attracting almost 40,000 spectators a day, or 550,000 across the two-week championship. These figures show there has been a massive growth in appetite for in-person sports experiences.

At the same time, many sports now attract significantly larger television audiences, with the Premier League growing its global reach by 50% from 600 million to 900 million homes and Formula One (F1) motorsport increasing its worldwide fanbase by over 60%. With this increased interest comes greater potential for financial loss, as a catastrophic incident or cancelled event can have huge consequences.

A single incident rarely confines itself to a single risk category, and liability exposures, property damage, event disruption, and business interruption can all be triggered simultaneously by the same event. This compounding effect, as much as the severity of any one element, makes modern sports risk difficult to model and price in isolation.

Russell used F1 as an illustration of the scale involved. The season requires a massive, coordinated global logistics network to move 11 teams, 22 cars, and thousands of personnel across multiple jurisdictions for 9 months of the year. All this must be achieved with very little margin for error and requires a vast network of stakeholders, each bringing specialist expertise across travel, freight, engineering, H&S, security, and event management, among other disciplines. Matching that complexity demands appropriate levels of cover across multiple lines of business, structured so that a disruption in one area does not expose a coverage gap simply because it falls between policies rather than neatly within any one in particular.

Damage to critical branding materials, damage to cars or equipment, or extreme weather events can all create scenarios representing exposure to significant financial loss. Robust risk management that includes pre-risk surveys and H&S expertise is critical.

Russell concluded by referencing two motorsports case studies where a single event almost resulted in catastrophic losses. The first related to a race on a street circuit where the steel drums used to transport and store fuel had not been dried properly when purged of their previous cargo. The resultant contamination of the fuel with water was first noted in the generators used to power the digital flag panels.

Cancelling the race was not an option, so contingency plans were initiated, with the limited time available dictating that all costs were at a premium. The contamination caused irreparable damage to medical and safety vehicles just days before the main event, so these had to be replaced. The spare race cars exposed to the contaminated fuel had to have their engines rebuilt, with charter flights used to ship in parts unavailable on site and entire workforces of engineers and mechanics working round the clock. The event went ahead – had it not, the consequences for the promoter, who acts as the recognised authority in such instances, could have been terminal.

The second case study centred on the famous manhole cover incident at the 2023 Las Vegas Grand Prix, where only eight minutes into the first practice session of the inaugural race, the massive aerodynamic downforce created by modern F1 cars sucked a metal drain cover and its concrete framing out of the ground, as it had not been properly soldered in place. The debris ripped through the bottom of the car, destroying the chassis and engine and forcing the session to be cancelled while urgent repairs were made.

Despite lobbying efforts, Las Vegas had not featured in the F1 calendar since the early 1980's and so the incident was a disaster that cost several million dollars in settling a massive class action lawsuit with furious ticket holders, infrastructure repair costs for the promoter, and prolonged logistical headaches for local businesses. This was in addition to the substantial embarrassment for the sport's governing body, whose reputation took a huge hit given it happened on opening night of their multimillion-dollar flagship event.

Unexpected things happen, but lessons must be learned from every event where issues occur to ensure there are no repeats. In this instance, a simple check was missed, and the result was almost catastrophic for the sport itself and the many stakeholders involved in organising, supporting, and participating in the event. Preparing for every eventuality is not practical, but pre-risk assessments are critical in helping pre-empt where the next problem may arise.

Spencer Turner, 39 Essex Chambers

The final session was led by Spencer Turner of 39 Essex Chambers, who brought a barrister's perspective to the practical and legal realities that sit behind many of the risks discussed in the earlier presentations. The growth in popularity of established sports, together with the

development of women's sport, and the introduction of exciting new competitions, has made the global sports industry a multi-trillion-dollar economic powerhouse. Increased commercial value inevitably brings greater regulation, which can bring increasing legal exposures and create a highly litigious environment.

Spencer began by highlighting that the starting point in any claim is to assess the nature of the conduct. Given the competitive nature of sport, a serious injury, however severe, can occur during perfectly lawful interaction and does not of itself establish negligence. The standard of care remains that which is appropriate in all the circumstances, and a claimant does not have to prove recklessness to establish liability in a sports injury case.

Incidents in sports cannot be judged by the same standards as everyday life, so the sporting context matters and the duty of care must be measured against the inherent risks, realities and intensity of the sport in question.

The outcome of a governing body's own disciplinary process alone does not determine a civil claim; the alleged failures must be identified precisely, and all relevant evidence considered on its own terms. The rules of the game, level of competition, and degree of experience are all relevant in determining if an act was a normal error of judgement under pressure or conduct that was reckless and showed a disregard for safety.

This point was illustrated by the Court of Appeal's decision in *Clark v Elbanna* [2025] EWCA Civ 776 and supported by a wide-ranging reading list provided by Spencer covering participant-on-participant liability, the duties owed by referees, governing bodies and occupiers, and the principles governing consent, vicarious liability, causation, and quantum.

To bring these principles to life, Spencer set out a fictional scenario involving a professional footballer recovering from knee surgery. The player felt under pressure from an approaching cup final and a contract renewal, but further rehabilitation had been recommended by the surgeon. Seeking an immediate return to playing, the player requests early clearance to play from the club doctor and subsequently signs a document accepting the risk. Unfortunately, he is injured again and claims his playing career is over.

Spencer used the scenario to work through a series of questions any club, insurer or legal adviser might need to answer. Did the surgeon and club doctor meet their legal duty under the *Montgomery* test by informing the player of all material risks and reasonable treatment alternatives, bearing in mind even a small risk may be material where the potential consequence is the end of a career? What was the context of the discussion? Who within a club holds the authority to clear a player to play? Are the club doctor's mistakes ones for which the club is vicariously liable? What weight does the signed waiver carry, if any, and would it fall within the scope of the Unfair Contract Terms Act?

There is also a critical challenge in proving legal causation in sports injury and medical negligence cases. What would have happened to the injury with the recommended rehabilitation? Would the player have acted differently had he been properly advised at the

time, which is a question best tested against contemporaneous evidence rather than a later account. Both medical and career evidence must be developed together, with the career evidence often overlooked in elite sports, however important it may be in revealing relevant detail.

Focus then shifted to quantum, referencing the landmark case of *Collett v Smith* [2008] EWHC 1962 (QB), in which a Manchester United trainee's career-ending injury resulted in an award of £4.5 million. The case demonstrates the breadth of evidence that can be drawn upon in valuing a career cut short, including from lay witness testimony and input from scouts and coaches to peer benchmarking, video analysis, and statistical data. Even if a claim is successful, the loss of career is still not the best outcome for the player.

Spencer closed with a set of practical pointers, which included clearly defining who can make, and who can stop, a return-to-play decision; the importance of having written procedures in place and following them; giving clinicians the information and independence they need to advise properly; explaining the risks in terms specific to the individual athlete; record what was decided and the rationale behind decisions; and, be ready should a claim arrive, and get on the front foot.

Panel Discussion

Imogen Mitchell-Webb, Partner and Head of Sports at HF and a member of the FOIL Sports SFT, joined the panel to close an engaging and informative event with some questions from the audience. The first touched upon whether organisations are resistant to buying appropriate levels of cover, to which the panel confirmed there is a real challenge in getting clients to recognise the exposure before an event occurs.

With regard to legal claims, the panel identified repeated head impact injuries, return to play decisions, safeguarding failures and the rapid rise of new alternative sports as emerging risks. The exaggeration of spectator injuries, also referred to as 'slips and trips', has also become more prevalent, with inflated claims schedules frequently served. A further risk is AI-generated and digitally manipulated documents, which are driving a major surge in fraudulent and exaggerated insurance claims.

The disparity between growing live sports audiences and the H&S protocols in place to safeguard them has heightened legal and insurance risks for stadium operators, event organisers, and sporting bodies. CCTV coverage can sometimes be insufficient to cover all attendees, and the size of H&S teams has often not expanded in line with the capacity of modern venues. There is also an evolving threat landscape extending beyond the crowd dynamics and technology infrastructure that now includes exposure to extreme weather events, public health crises and targeted security threats. Where there is no historical data to inform any risk assessments, insufficient provision of services can lead to catastrophic outcomes. An example was the violence witnessed at a recent celebrity boxing match, resulting in a police investigation and review of the venue security measures.

The discussion returned to the topic of concussion and head injuries, with the landscape expected to change dramatically should the ongoing litigation determine a breach of duty occurred. The panel acknowledged the number of cases continues to rise, with cases from a wider range of sports anticipated. Other injuries represent the potential for group litigation, with the physical performance data now available allowing better analysis of trends. It is hard to place cover in certain sports, such as rugby and football, requiring organisations to ensure best practices are employed wherever possible to mitigate risk.

Among the final questions was how insurers are responding to the growth in investment and viewership of women's sports. The heightened risk of female athletes suffering an ACL injury is well-documented, with female footballers up to 8x more likely to suffer injury compared to male players, and this can in part be attributed to different physical characteristics. However, poor equipment, inferior playing environments, and disparities in recovery times have all been identified as contributing factors.

Recovery from ACL injuries is typically 9-12 months, leaving female players, even many at elite level, facing financial hardship from the extended recovery period. Personal injury policies cover multiple benefits, but male footballers playing at an equivalent level would see their club fund the required surgery. As professionalism and investment continue to grow in women's sports, more litigation is expected. It is incumbent on sporting bodies to challenge insurers to create new products specific to women, rather than simply adapt existing ones designed for male athletes.

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