

The Future of Contact Sport: Is Global Liability Heading in the Right Direction?

More than 5.8 million people attended the last football and rugby World Cups combined. The spectacle remains as compelling as ever, with packed stadiums, global television audiences and athletes competing on the biggest stage. Yet behind the commercial success of these tournaments, a more difficult conversation is unfolding.

Across many jurisdictions, courts are increasingly being asked to consider whether governing bodies of sports owe a duty of care to participants and, if so, whether they did enough to protect them from the long-term consequences of repeated head impacts. What began as a player welfare issue is gradually evolving into a broader debate about liability, governance and risk assessment. For international sports federations and their insurers, the questions being raised are no longer confined to any single country.

The UK has become one of the focal points of that debate. Rugby authorities have been defending litigation brought by former players for several years, while football faces separate claims relating to any long-term impact of heading the ball. In the football proceedings, former players allege that repeated heading during their careers contributed to neurological injury later in life and that the sport's governing bodies failed to take adequate steps to protect them from those risks.

Why these cases resonate beyond the UK

Modern sport is governed by international federations, national associations, leagues and clubs. Decisions made in one part of that ecosystem rarely stay there for long. A judgment in favour of claimants delivered in one jurisdiction may encourage claims in another. Media coverage and social media debate ensure that developments travel quickly.

There is also a practical challenge for organisations operating internationally. Approaches that may be regarded as appropriate in England may not necessarily align with those in South Africa, France, Australia or the United States. At the same time, governing bodies are under pressure to demonstrate consistency, particularly when player safety is concerned. That tension is becoming increasingly difficult to manage, especially as global sports require international standards, but legal and regulatory requirements are implemented at national level.

The science, the law and the public debate

Part of the difficulty stems from the fact that several separate conversations are taking place at once.

The first concerns the management of acute head injuries and concussion. On that issue, there has been continued progress over the last two decades as medical knowledge and research have developed, building on measures that were already in place. Professional

sports have introduced enhanced concussion protocols, independent on-field medical assessments, graduated return-to-play procedures and continued guidance.

The second conversation concerns whether participation in contact sport contributes to the development of neurodegenerative conditions many years later. This question sits at the centre of much of the current litigation, but it is also where the scientific and legal debates become most complex.

For governing bodies, however, the challenge extends beyond the courtroom. Public expectations are often shaped by individual stories and lived experiences rather than legal thresholds or evidential standards. In this technological and social media-driven age, the scope for misinformation has, perhaps perversely, increased significantly. As a result, organisations can find themselves responding simultaneously to purported scientific uncertainty, legal scrutiny and reputational pressure.

Similar discussions have emerged in other jurisdictions and across a range of sports, most notably in North America, where “concussion-related” litigation has already had an impact on attitudes towards player safety in several professional sports, particularly in American football.

The balancing act facing international governing bodies

All responsible organisations have player welfare as a central guiding principle. In the face of such uncertainty, it is of course appropriate for governing bodies to implement precautionary measures while research continues.

Nevertheless, such precautionary measures, if not communicated clearly, risk adding to misinformation and contributing to a misleading picture, which results in calls for all “contact” to be removed from “contact” sports.

This becomes even more challenging when different jurisdictions move at different speeds. A governing body may find itself managing one set of expectations in Europe, another in Australasia and a third in North America. Maintaining a coherent position across multiple markets requires careful coordination between legal, medical, regulatory and communications teams.

Why insurers are paying close attention

From an insurance perspective, brain injury claims raise several familiar concerns. Causation and foreseeability of risk remain critical issues. This needs to be considered in the context that, as a matter of law in the UK, contributing to any increased risk of injury is not sufficient to establish a causal connection except in limited circumstances.

Alleged injuries may not become apparent for decades, and scientific understanding is far from complete when it comes to whether contact sports have any effect on the brain over the long term. Exposure can span multiple policy periods, generations of participants and

numerous jurisdictions. Those features make this type of litigation fundamentally different from many conventional personal injury claims, and incredibly difficult to model for risk.

The international dimension adds another layer of complexity. Different legal systems can take different approaches to the questions of legal causation, limitation and damages. Equally, claimant firms are increasingly willing to look beyond their domestic markets when identifying potential litigation opportunities.

Insurers are therefore focusing not only on individual claims, but also on how governing bodies identify, assess and respond to emerging risks.

Looking ahead

Governing bodies, regulators and insurers will continue to operate in an environment where expectations evolve faster than the science reported in the media can provide definitive answers. The organisations that are best prepared for that reality will be those that view player welfare, governance and risk management as interconnected issues. While it is sensible to introduce precautionary measures, it is equally important to separate the “wheat from the chaff” and obtain the correct expert evidence before definitive policy decisions are made.

For international sports organisations, this is becoming a broader governance issue that cuts across borders, sporting codes and insurance markets. Those that are able to block out or limit the impact of “background noise” and focus on the real scientific evidence based on sound research will be able to steer a path through the litigation maze. If decisions are taken for reasons of expediency, there is a double risk of encouraging and supporting more claims and jeopardising insurance cover.

It is important to remember that dementia and other conditions that may be related to head injuries are not unique to those who played sport. Therefore, the research and funding needed to support those with dementia must be focused beyond those who played sport. Considering the risks of head injury must be balanced against the wider benefits of participation in sport, which is generally a healthy activity, mentally and physically: we are encouraged to exercise and keep fit.

Whether it is enjoying the spectacle of the World Cup with athletes displaying skill of the highest level, or participating in your local community club, sports have many benefits.

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