

THE LEGAL AND INSURANCE ASPECTS (UK) OF MAT SAFETY IN SPORTS WITH PARTICULAR REFERENCE TO MARTIAL ARTS AND JUDO.

There is an accident at the Club – is the victim going to put it down to being 'part of the game' or could others be at fault and therefore be held liable?

Generally, activity organisers are able to handle situations that do not have legal involvement, however when as a result of an injury, a lawyer is consulted, the Club and supervising staff/instructor(s) have to view the position very seriously.

We are not considering here such cases as slipping over in the showers, tripping on a stairway etc – these common risks can be adequately covered by a modest insurance premium. What needs to be considered is the situation when a participant is injured during activities on a mat and alleges that the mat is wholly or partly the causation of the injury(s).

There is a basic and well-established concept in law - namely **the duty of care** which is owed by the sponsors of any such activity. The practice of sports, martial arts in general and judo in particular is no exception. Indeed, due to the vigorous and eclectic nature of martial arts and judo, it could well be held that the duty of care **particularly towards newcomers and minors** is especially great. Very few novices have much idea what it is all about and may need considerable guidance. Minors have less capacity to assess risk and those responsible act **in loco parentis** (in place of a parent). No one taking up a new activity should be asked to run unnecessary risks and those who allow them to do so may well be held to be in breach of their duty of care.

Apart from criminal negligence which is outside the scope of this article, the risk being run by those who fail in their duty of care is that as a result, they risk being sued for negligence in civil law. Resultant damages would be assessed for pain and suffering and also the financial value of any loss due to injury sustained.

In order to be eligible for damages as a result of negligence, it is necessary to establish:

- that a duty of care is owed
- that there has been a breach of that duty of care
- that there has been injury resulting from that breach of duty of care

If the injured party consults a lawyer, it is likely that an action for damages will be advised if for no other reason than at least the lawyer is likely to be paid a fee even if there is no eventual action! In addition, if the complainant is granted some legal aid, his cost worries are reduced.

If you are responsible in any way for an activity involving the use of sports mats, it is unavoidable that at any moment while the mats are being used, an injury may occur as a consequence of which you could face an action for damages. The complainant will of course

have to establish that something has happened outside the normally accepted risks. In judo for example, there would not be a successful action for assault or damages as a result of merely being thrown by someone of similar ability in normal practise conditions - **volenti non fit injuria** (the voluntary assumption of risk). If however an impact with the mat results in injury, then in a consequent litigation, there would be a point at issue as to **whether the mat on which the impact occurred was suitable for the activity**. The suitability of the mat(s) could also be called into question in non -impact injuries especially to the knees and feet. Rotational injuries to the knee and broken/dislocated toes are often caused or aggravated by excessive gripping of the foot on a mat that is **too soft**. Low friction bases have frequently been another cause of injury since they more readily allow gaps to open between individual mats.

Such accidents can be very serious indeed and in extreme cases have resulted in loss of life. In many cases broken necks, prolonged concussion, displaced vertebrae, major dislocations and severe knee derangements have caused permanent disablement and of course may well result in the injured party having to give up all activities of a sporting nature.

If you are in charge of a sports club, instruct or are in any way responsible for its activities, you will be well advised to ensure that you have insurance cover against such eventualities. If you are not so covered, then the only sensible advice that can be offered is **either** stop the activity immediately and permanently **or** obtain insurance, having suspended activity until cover is operative.

Displaying a notice disclaiming responsibility vis a vis negligence has no effect in law, does not lessen your duty of care and can be counter-productive. It proves beyond any doubt that you were aware of the dangers.



Arguably, the biggest risk an insurer takes in covering the activities (especially combat sports) of a club is facing a claim resulting from serious personal injury. In the case of a small claim caused by a minor injury involving a couple of days off work, the insurance company may well pay without being too difficult. However in the case of serious injury, the situation will be very different indeed.

If there is an allegation that sports mats were implicated in a serious injury and the claim is to be pursued through the law courts in an action for damages – what is the position?

"There is insurance cover" - you say but is there? If the claim is against you, your insurers should be advised immediately. If the insurers accept the claim is covered, they will handle it on your behalf and

run any resulting case through their own lawyers and at their expense. If they refuse liability under the policy e.g. due to breach of policy conditions, you will be left to run an expensive legal defence **on your own financial resources**. In addition, you have to consider your time and worry.

During such an action for damages, the point is arrived at when counsel is presenting the case that incapacity has been caused or exacerbated by inadequacy of the mats provided. At this point, the attention of the court will be on the mats and their suitability for the activity.

It will not be surprising to find that the court has to hold considerable enquiries into the purpose and nature of the mats and each party will present its own expert(s).

It will be revealed in evidence that in the case of **combat sports excluding judo**, there has been a British Standard BS1892 Sect. 2.10 since November 1990 which has now been replaced by a re-draft currently referenced as **BS1892 Sect. 4 2003**. In the case of **judo and other sports activities** using mats, the relevant standard is now defined by the European Standard **BS EN 12503, 2001** and consists of **7** parts covering **12** different mat types. These British Standards often form part of the specification in a purchase contract.

It is inevitable that the court will enquire as to whether the mats conform to the relevant Standard. Many other factors of course will be taken into account such as whether the mats were acquired before the publication of the relevant Standard, whether the Club has been advised of the Standard by its National Governing Body and indeed whether it is affiliated to the National Governing Body which presumably has a duty of care to contribute to the Standard and publicise its existence. There will of course be many other questions relating to equipment such as: Were there unreasonable gaps between the mats? Was the total area of mats adequate for the numbers participating, etc? **Was the accident foreseeable?** This is where the relevant Standard is so critical since if the mats are known to be below requirements, then it would surely be held that resultant injury was foreseeable. Being unaware of the relevant Standard could call competence into question.

It is perhaps worth observing that very few persons in a position of responsibility would admit to being less than sufficiently competent. However how many consider that they know the correct 'density' for a mat of a given thickness? How many believe that children or beginners should use a softer mat? The answers and other **commonly mis-understood issues** might surprise you! They can be found in other articles to be published soon.

Apart from issues of competence, overcrowding, poor supervision etc, it will either be shown that the mats themselves were in conformity with the relevant Standard (or at least were acquired with reasonable assurance that the mats were so) or it will be revealed that the mats did not accord with the relevant Standard.

In the case of the latter and if the medical evidence indicated that the injury was wholly or partly associated with the mat conditions, the almost inescapable

conclusion is that the court will award at least a percentage of the claim against any defendant. Even a nominal or a relatively small percentage of a claim awarded for damages could be a sobering experience. In recent times, serious injuries to young people have given rise to claims of several million pounds. Just 10% of a modest claim of say £100,000 would be £10,000 and added to this, it must not be forgotten that the costs could well be as much again or even more. A claim of say, £20,000 made against an insurance company will not find them amused. If liability and continuing cover is accepted, the next premium will be unfriendly and in any event, cover may be suspended until the mat arrangements meet the appropriate requirements.

It must be mentioned here that failure to conform to a British Standard does not **of itself** constitute an action for negligence. In litigation however, you may have to explain why your choice of mats in effect ignored the established scientific requirements.

How many insurance companies know that there are recognised standards for the particular equipment that the insured party is using? Probably not many – that is however, until a substantial claim is made **when the existence of the relevant Standard will quickly come to their attention**. A glance through the small print of an insurance policy will surely reveal reference to the effect that '... the insured shall take all reasonable precautions to avoid claimable injuries....'

In such a situation and if the mats are not to the relevant Standard, it is certain that the insurance company will seek to refuse the claim leaving the organisation and possibly the instructor, financially liable. If the insurer's decision was disputed by the defendant(s), further legal fees would need to be spent pursuing the claim with regard to the meaning and intent of the insurance contract with little chance of success and certain further costs.

A legally aided plaintiff could afford to pursue the case way beyond his own means and in any event a party injured in the above circumstances will certainly find a lawyer to take the case on a contingency basis (i.e. the fee being a percentage of any damages awarded). T.V. adverts abound.....

Just as alarming for a defendant are the rapidly escalating amounts which the courts are prepared to award in such cases.

Defences to an action of the type above include but are not limited to:

- volenti non fit injuria
- the injury was unforeseeable
- there was contributory negligence by the injured party

If you could be vulnerable to a claim, what then should be done? First and foremost, when and if new mats are being purchased, **ensure that they conform to the physical requirements of the relevant Standard**. How will you know this? You cannot test the mats

yourself so get an assurance **in writing** from the supplier that they do so conform. In some situations there is reference to flame retardance but this is totally irrelevant for injury claims of the type outlined above. The purpose of a sports mat is to provide a suitable performing surface for the sport and provide as much shock absorption as is compatible with this function.

If you are responsible in any way for the provision or supervision of matted sports facilities and if you are not sure whether or not your existing mats conform to the current and appropriate physical Standard(s), then ask the company which supplied the mats. If you do not receive adequate assurance or have no idea of the equipments' origin, **advise your insurance company of the situation** (sample letters below). This is regarded as **disclosure** of a material fact and is required by any insurance policy. This is no time to mince words – state that the mats do not conform or may not conform to the current appropriate Standard. Invite the company's representative **in writing** (keep a copy!) to inspect the mats at the premises. This should be followed by correspondence from the insurance company acknowledging the type & condition of the mats and confirming nevertheless that you will be indemnified under the terms of the policy in the event of any aspect of a claim involving the mats. You may well find that you have to pay an additional premium – if so, pay it and remember to ask for a rebate when the mats are upgraded to the relevant Standard. If your insurer will not co-operate by giving such an undertaking, then consider insuring elsewhere with a company which is not so reticent.

Finally and for what it is worth, obtain a disclaimer covering normal practise conditions (suitably worded by your legal adviser) signed by every adult and parent/guardian of minors.

Disclaimer This article is not written by a Member of the legal profession, is presented in good faith and is the understanding of the author. It is not intended to be an authoritative statement of the Law. Specific cases should be referred to professional counsellors.

For more information about mats contact:

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The Judo & Combat Club

XYZ Insurance Co.
Anytown
Anywhere AX2 1ZZ

Date:

* delete as appropriate

Dear Sir(s),

Policy no. ABC/12345

The above policy is current with your Company.

While reviewing our liability insurance recently, it occurred to us that the mats on which our Club practise do not conform / may not conform* to the current relevant Standard as specified by the British Standards Institution.

The relevant reference is BS EN 12503 published 2001(judo only) / BS 1892 Sect. 4 2003 (combat sports excluding judo)*

Notwithstanding any shortcomings regarding the above Standard(s), will you please send us a written endorsement confirming that our insurance cover is in no way adversely affected.

You are welcome to visit the premises for an assessment of the mats during our normal practise times which are indicated in the enclosed brochure.

Thank you for your attention. Yours etc encl.

THE REPLY YOU DO WANT

Dear Club Organiser/Instructor,

Policy no. ABC/12345

Thank you for your letter of dd/mm/yy.

We have noted on your file the above information as a material disclosure and we are nonetheless pleased to inform you that we are holding you fully covered against claims for negligence under the terms of the above policy notwithstanding that your sports mats may not conform with the current British Standard(s).

We may wish to visit the premises some time in the near future. Please inform us if your practise times change.

Yours etc

THE REPLY YOU DO NOT WANT

Dear Club Organiser/Instructor,

Policy no. ABC/12345

Thank you for your letter of dd/mm/yy.

We have noted on your file the above information as a material disclosure but we are not able to comment in any specific way regarding the mats which seem to have been satisfactory to date since you have not yet made any claims on your policy. A claim alleging injury caused or aggravated by your mats would be a hypothetical situation and any award made would depend on many factors.

If our glossary of definitions and the policy conditions are not entirely clear to you, then you are strongly recommended to obtain legal advice.

Yours etc

BRITISH STANDARD
Sports mats —
 Part 7: Determination of static stiffness
 BS EN 12603-7:2001

BRITISH STANDARD
Sports mats —
 Part 6: Determination of the top friction
 BS EN 12603-6:2001

BRITISH STANDARD
Sports mats —
 Part 5: Determination of the bar friction
 BS EN 12603-4:2

BRITISH STANDARD
Sports mats —
 Part 4: Determination of shock absorption
 BS EN 12603-4:2

The European Standard EN 12603-8:2001 has the status of a British Standard

EN 12603-8

BRITISH STANDARD
Sports mats —
 Part 4: Specification for combat mats
 BS 1892-4:2003

BRITISH STANDARD
Sports mats —
 Part 3: Judo mats, safety requirements
 BS EN 12503-3:2001

Orders for all BSI, international and foreign standards publications should be addressed to Customer Services. Tel: 020 8996 9001. Fax: 020 8996 7001. Standards are also available from the BSI website at <http://www.bsi-global.com>.



By **Debbl Marco**

DAILY EXPRESS JAN 2003

A VILLAGE has been ordered to take down its playground swings because they are too tall.

An edict from Brussels states that the height of children's swings must be no more than three metres. But the three swings breach the limit by 60cm (23.6in) and must be removed.

The parish council in Great Somerford, Wiltshire, faces a bill of £1,500 to replace the equipment with a modern two-seater, or £2,500 for a four-seat set.

Council chairman Toby Sturgis said: "These are just barmy EU regulations. How much safer do we have to make things for children? Generations of children have played on those swings with no trouble at all."

The parish council is unable to raise the ground around the frame base, as steps are not allowed in playgrounds. And if the poles supporting the triangular frame were cut, the seats would then swing too close to the sides.

European Standard BS EN 11 76 is not enforceable by law, but failing to comply to the EU's recommendations would leave the parish council liable to legal action if a child were injured.

Parish councillor Paul Whitmarsh, whose five-year-old son Luke uses the swings, said: "We've never had a playground area without

regulations included in European Standard BS EN 11 76, introduced in 1999, are:

- The total height of a swing's frame must be no greater than three metres;
- The distance from the seats to the frame at the side must be 20 per cent of the length of the chain, plus 20cm;
- The distance between the seats of the swing seats must be 20 per cent of the chain length plus 30cm;
- Seats must be no closer to the ground than 35cm.

swings is like a pub without beer." The swings' inadequacies were picked up during an inspection by playground equipment manufacturers Wicksteed Leisure last month.

The company says that many playgrounds are likely to be affected. Standards officer Rob Davis said: "Not all of them will have to be removed. Some can be altered and still be within the limits. The standards that have been brought in during the past 10 years have significantly improved the level of safety in playgrounds."

Claims culture

FINANCIAL TIMES DEC 2002

Compensation costs are spiralling out of control

Britain's actuaries are worried about the rising cost of compensation claims. The insurance companies that employ them often end up paying the bills and then incur the wrath of customers when they charge higher premiums. Their concerns are justified, however, since a more litigious society could impoverish everyone except lawyers.

The cost of compensation now tops £10bn a year in Britain, according to a report published by the actuaries this week. At about 1 per cent of gross domestic product, the level is still less than half that in the US. But it is rising the UK by 15 per cent a year, while claims are falling in the US after legal firms to curb excessive awards.

These figures raise fears of a US-style compensation culture. There has been a rise in US cases and awards for

ing to claim against than neighbours or employers. The police compensation bill has doubled in three years to £30m, while pay-outs to the armed services are up fourfold since 1992 - one soldier is suing for the stress of seeing a colleague killed on duty. The National Health Service has set aside £4.4bn in reserves for claims, twice as much as five years ago.

The individual's right to compensation is an important one and the threat of litigation provides an incentive to avoid negligent behaviour. But it also has less welcome consequences, such as defensive medicine with excessive tests and the asbestos bonanza that is bankrupting many companies in the US with pay-outs to people who have suffered no physical damage. In the UK...