

Golfer loses an eye... *was this avoidable?*

Health and Safety expert, Jon Allbutt, examines the evidence in the recent Scottish court case where **a man lost the sight of one eye while playing golf**, and offers advice on how to avoid it happening again

The conclusion of a recent court case in Scotland has been widely reported. The judgement, by Lord Brailsford, contains some important information for golf clubs and golfers.

The case concerns an accident where a golfer lost the sight in one eye as a result of being hit by a golf ball. Player A played his tee shot and saw that it was going left towards another part of the golf course where a group of golfers were walking from a green to their next tee. Golfer A said that he shouted "Fore" and three out of the fourball group took avoiding action but it was unclear if, in fact, the fourth, Golfer B, did take sufficient avoiding action.

The Judge stated that Golfer A was 70% negligent as he was over confident and failed to exercise good judgement before playing his shot; the golf club was 30% negligent because they did not carry out a risk assessment and they failed to provide signs and guidance, but that Golfer B was not negligent as he was an inexperienced golfer and may not have known what to do on hearing the shout of "Fore". And, in any case, he only had a matter

of a few seconds to decide what to do.

The experts agreed that there was no guidance by way of signs to guide the fourball from the green to the next tee and that if signs had been provided it may well have guided them along a safer route to the next tee. The experts' evidence also indicated that a deviation in the region of just 15° from the centre line of the fairway, from where Golfer A played his shot would put other golfers at risk. The teeing ground where Golfer A played his shot had no signs to give any guidance on priority.

Although not directly relevant to this case, there were, in fact, two other golf holes within range of a mis-hit tee shot from where Golfer A played his shot. It appears that it was foreseeable that a golfer on any of the three holes might be at risk of being hit by a miss-hit ball played from the teeing ground where Golfer A played his shot.

The golf club did not offer any evidence by way of risk assessments, or monitoring of play, to show that they had considered the risks to greenkeepers or golfers at this complex of golf holes.

If a risk assessment indicates significant risks to greenkeepers when they are working on the golf course it is very likely that golfers may also be at risk when they are in the same place.

It seems very likely that had the golf club prepared a golf course risk assessment, and provided some guidance on safe routes and perhaps also a local rule for priority, it may have avoided the judgement of 30% negligence in this case.

I find that golf clubs seem to be uncertain and confused about what they need to do and are unwilling to accept that sound judgement and good common sense by their professional team (the greenkeepers), and golfers, is often sufficient when preparing a risk assessment. There is also hesitation when it comes to deciding on what 'reasonable actions' are needed to eliminate, or reduce, the risks of injury.

In my experience, if there is some doubt as to what actions are needed to reduce a risk, a period of monitoring of the work, or golf, or both, will soon provide the evidence needed. Monitoring is a valid process providing it is not open ended and the results are duly considered. However, it is also acceptable that monitoring can be extended for an additional period in order to gather additional data. Where it seems likely that seasonal conditions on the ground are a factor then monitoring could be extended for several years, but there would need to be justification for this and it is not used as an excuse for not making a decision!

Actions to reduce risk can be

as basic as providing signs and/or written guidance or local rules. However, it could be that there may need to be physical alterations to the golf course and these could range from subtle changes to the shape of a fairway, to moving greens and tees, re-grading steep slopes, moving trees or other costly actions. It is very important to remember that such actions must be proportionate to the degree of risk identified.

In addition to the risks of civil actions being brought against the golf club there are also risks of criminal action in the form of enforcement notices, or prosecutions, being taken under health and safety legislation.

Most golf clubs have some understanding of their duties under health and safety legislation, not only for their employees, but also to golfers and the public. However, it is also important to note that in this case the judgement against the golf club was made under Section 2 (1) the Occupiers Liability (Scotland) Act 1960 which states:

"2.-(1) The care which an occupier of premises is required, by reason of his occupation or control of the premises, to show towards a person entering thereon in respect of dangers which are due to the state of the premises or to anything done

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or omitted to be done on them and for which the occupier is in law responsible shall, except in so far as he is entitled to and does extend, restrict, modify or exclude by agreement his obligations towards that person, be such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger".

There is a similar Occupiers Liability Act applying to England and Wales.

A golf club has duties to prepare a risk assessment for the golf course and to take reasonable actions to reduce the risks identified. The BIGGA/GCMA Safety Management System is available to assist with this important process and there are experienced expert independent health and safety professionals available to advise golf clubs to achieve the appropriate safety standards.

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