STEVE GREENFIELD

'A GAME FOR ALL SHAPES AND SIZES': SAFEGUARDING CHILDREN FROM SPORTING MISMATCHES

Introduction

Sport is an increasingly important area of society both inside and outside of the school environment although as has been noted this has not always been the case. Until the early 1990's Physical Education was largely marginalized as a school subject within the state school system in the UK (Houlihan & Green, 2006). Increasingly specific sport in the United Kingdom, for children and young people, is delivered through sports clubs beyond the formal school environment. This provision may be within junior sections of adult clubs or dedicated youth sports clubs. In the United Kingdom different Governments have more recently seen sport as a vehicle to promote a range of different policies. Ongoing and lifelong fitness and positive psychological health are the most obvious but sport may also link to attainment (Department for Education, 2013). Greater interest in sports policy is also emerging at both a European and International level with the prospective of a 'Rights' based approach developing.

At the same time as Governments are promoting sport many of those involved in the delivery whether as paid professionals (teachers or coaches) or unpaid volunteers are increasingly concerned about the legal consequences of those under their care being injured (Greenfield, 2013b). Coaching as a practice is becoming increasingly professionalised in the UK though this process is not without its critics. The safety of those playing sport is fundamental and this is more problematic in those games where there is physical contact and an element of risk taking. The revelations around a number of high profile cases of sexual abuse of young people within the sporting environment has led to the introduction of a wide range of policies and processes (Greenfield, 2013a, 2013b). Welfare has consequently become a high priority for all those involved in the provision of sport from the Governing Bodies downwards.

Professional rugby is subject to ongoing criticism that it is becoming overly physical, with consequences for player injury, as power and strength have become important features arguably at the expense of skill. The condemnation of junior rugby is that it is just too dangerous (Pollock, 2014). Contemporaneously academic research has explored the concept of *relative age effects* whereby birth date privileges participation, one explanation for which is physical maturity. Junior rugby may therefore be very difficult for smaller younger players to engage with. This piece discusses the potential for liability for injuries caused within junior rugby taking into account the current parameters to existing liability and the potential influence of relative age effects.

Liability for mismatched size: Mountford v Newlands School

This is a rather odd case; the injury that was a broken elbow, happened in 1997 and the claim took some 8 years to reach court. This obviously creates problems for witnesses trying to recall events and surprised Waller L.J. The injury occurred

during a 7 a side U15 rugby match between two schools and governed by the Guidelines issued by the England Rugby Football Schools Union (ERFSU). The essence of liability in *Mountford* was the failure to properly determine Rule 5 of the Junior Rugby Guidelines of the ERFSU which stated that: 'Players should not normally be allowed to play other than in their own junior age grouping'. The interpretation of this rule was considered and specifically whether it contained an absolute prohibition for players participating either down or up an age group. The fact that boys could play up an age group gave weight to the notion that the rule did contain some flexibility supported by the 'not *normally*' (my emphasis) wording. This flexibility might well be required if a child for educational reasons was placed in the year below his normal age. The question then moves to how the rule should operate in practice. The trial judge determined that:

> "On this basis what SK *(the schoolmaster)* should have done was as follows: (a) he should have been aware that Rule 5 was material and consciously applied it; (b) he should have known and thought about RK's age; (c) he should have considered whether, in the case of RK, there was on the face of it any sound reason to disapply the norm so as to allow RK to play down; and (d) if so, he should have carried out a risk assessment before permitting that." (*Mountford v Newlands School*, para 7)

Accordingly the school master, who was not even aware that the child was overage, should have applied the rule. The size/weight disparity was considerable 5'11" to 5'2" and 13-14 stone compared to 7 stone. However it would be possible to find this type of difference within that same age band and the injury was not a consequence of the greater size. Neither was the injury caused by foul play. The claimant could have faced suffered the same injury from the same sized player the only difference being he would have been in the same age band and therefore not subject to Rule 5.

On the face of it the case seems limited to a failure to properly apply the relevant rules and therefore of little general interest, though it is a Court of Appeal decision. However tucked away in Waller L.J.'s judgment is a line that suggests that there could be occasions where a reasonable coach should consider weight/size differentials within an age band:

> "… only that if boys were within the correct age bands then the physical size would not preclude the larger boy playing. There will be some boys who grow more quickly and **subject to them not being so large that they will be dangerous,** (my emphasis) they should be allowed to play in their age group…" (*Mountford v Newlands School*, para 14)

The question would then be as to what would amount to '*so large that they will be dangerous'* and whether this is to be determined by state of maturity, weight, strength or some other measurement or combination of factors. There is also the context of each match that would have to be considered which would have to include the size of the opposition. This is problematic, as rugby has always prided itself as a sport that caters for 'all shapes and sizes', this inevitably means that each team will contain some smaller and some larger players. However the nature of rugby is that anyone may end up tackling any another player regardless of position so impact between the smallest and largest is quite possible within open play.

Mountford clearly imposes coach liability where an overage child is carelessly selected. Similarly a coach who deliberately chose an overage player to increase a team's prospects of winning rather than for the benefit of the child, that was envisaged by the discretion in Rule 5, would undoubtedly be liable for injuries caused by that player. If confined to a narrow interpretation of the rules on moving between age bands the decision is relatively straightforward it is though Waller L.J.'s dicta about differentials within age bands that is problematic.

One question is whether it is possible to observe a developing 'law of mismatches'. A number of separate areas have been identified that a coach ought to take into account in consideration of the players in his/her care. Labuschagne and Skea (1999, p. 176) suggest the following categories are relevant: skill, experience, injuries, maturity, height and weight, age, mental state, sex or sexual orientation. Most of these may coincide with age but as they note: 'Age should not be the sole factor in matching players. It is, however convenient to use age-groupings, but the other factors mentioned should be the deciding consideration, for age has little to do with the physical condition, maturity height and weight of the participant'. This seems to be set in the context of individual sports and the example they provide under 'skill' is wrestling. It is clearly more obvious and easier to take these factors into account within an individual sport. If the coach is making the individual match e.g. selecting both players then there is a much more obvious duty owed that can be fulfilled. This can be more easily translated into a team environment within training rather than competition. However the fundamental question is what is required, within a team sport, especially given the *Mountford* judgment where the coach/ educator is selecting only one of the teams. The prime consideration is the use of the recognized age bands and not permitting competition across ages. But what though of differences within age bands themselves?

The Concept of Relative Age Effects

Children are ordinarily placed into age bands both for school years and external sports participation normally with a correlation between the two. The school age band in the UK commences on September 1st so children born between that date and the 31st August the following year are placed in the same cohort. An alternative approach is to use a calendar year e.g. January to December. The latter approach is more common in the Southern Hemisphere. Within either of the systems there can be up to a full year of age difference between the youngest and oldest pupil. In the UK this age grouping is translated into eligibility for sport outside of school. The overall effect is year age groups in sport whether at school or outside although some types of schools with fewer participants may combine age bands e.g. year 7/8. There has been considerable academic interest in the concept of *relative age effects*:

> "This difference in age between individuals in a group has been termed relative age and, in educational research, has been shown to be related to academic achievement in a variety of ways." (Barnsley & Thompson, 1988, p. 168)

Original interest was focused on differences in educational achievement according to birth date within the school year. Barnsley and Thompson (1988) however identified the effect of birth date on high level sports participation in this

instance the Canadian National Hockey League. Relative age effect is classified by comparing the birth dates of the sample group, within the sport, to the general population. It has been identified in a number of different sports both contact and non-contact and within different countries (Musch & Grondin, 2001). A number of different explanations for the phenomenon have been distinguished including; competition, physical development, psychological factors, and experience. This paper is concerned purely with physical development, as this is the major problem for physical contact sports in terms of injuries. The earlier the birthdate the earlier maturity may start, ordinarily for boys the largest variations in height and weight occur between the ages of 13-15. So earlier maturity may exacerbate differences:

> "It seems entirely plausible to assume that a relative age disadvantage, coupled with a late maturation, can make it virtually impossible for a young player to compete." (Musch & Grondin, 2001, p. 155)

It is not clear if the period of increasing height growth amongst children in the developing world has leveled off (Schönbeck *et al*, 2013). However the central issue may be more around maturity in terms of strength and weight rather than just height. Height may be a more significant issue in sports such as cricket or even tennis. Whilst these sports lack actual physical contact that is present in rugby, football and hockey both cricket and tennis involve the propulsion of an object towards an opponent at high speed. It seems apparent that younger players within an age group are at a disadvantage when it comes to both team representation and a professional career. If rugby teams are comprised of the bigger (older) players then there may be a similar match. However this will not be the case if games are between different school forms or houses encompassing the younger players. This provides the opportunity for a clear mismatch in a game that is already being criticised for its physicality.

The dicta in *Mountford* suggests that extreme (and therefore obvious) physical supremacy may require some consideration by the coach/organisers. One proposal is that players could be tested for height and grip strength to govern eligibility (Nutton *el al*, 2012). The 15-year-old age group addressed by the Nutton *et al* study was selected as it represents the transition between junior to senior school rugby. They argue for a combination of maturity testing and injury surveillance to establish a knowledgebase and provide a more robust testing regime. However greater physical size on its own is not an indicator of performance advantage a view described as 'a common misconception in adolescent sport' (Krause *et al* 2013, p. 5). Interestingly a study of matches at the Rugby World Cup in 2007 found no increased risk of tackle or collision injuries between 'lighter and/or less experienced teams and heavier and/or more dominant teams' (Fuller *et al* 2010, p. 38).

It has been proposed that weight categories could be applied to eliminate Relative Age Effects in this example between young boxers (Delorme *et al*, 2014). This could be extended to establish classification based on biological rather than chronological age, however there are resource implications for this type of approach. (Delorme *et al*, 2014). Understanding the relationship between maturity and exercise has importance beyond individual and team performance and extends to involvement in exercise which in turn relates to the design and evaluation of activities (Cumming *et al*, 2009).

Conclusion

Legal claims for injuries in innovative areas are driven by advances in medical knowledge. Better understanding of the causes and consequences of concussive injury has led to both the huge group action claim against the NFL but also the introduction of new policies and protocols at all levels in some sports. For example in Rugby Union the protocol has led to players who have suffered concussive injuries being forced to miss subsequent games. The annual player injury report highlights the importance of concussion and the increasing awareness of the issue:

> "Concussion was, for the third consecutive season, the most commonly reported Premiership match injury (10.5/1000 player-hours) constituting 12.5% of all match injuries. Improving concussion awareness amongst players, coaches, referees and medical staff and the standardisation of concussion management has been the major medical focus of the English professional game since 2012 and is likely to have contributed significantly to this continued rise in concussion reporting." (RFU, 2015, p. 3)

This type of injury is an on going area of concern and Governing Bodies will need to be vigilant to ensure as much as possible the safety of the players at all levels. Similarly the more knowledge that is accrued around the importance of maturity over age the greater the requirements for teachers and coaches to apply that knowledge in team selection. Pressure to protect participants from injuries caused by mismatches in strength and weight is likely to increase because of the concussion litigation. It is foreseeable that in the future players will have to be assessed for their suitability to play contact sports based on factors other than age.

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Dr Steve Greenfield, Reader in Law
University of Westminster, London
United Kingdom
s.greenfield@westminster.ac.uk