NEGLIGENCE AND THE COMMITTEE

John Page BA (Law) talks through the legal minefield that is current case law on negligence and duty of care in private golf clubs.

Secretary At Work: September 1998 *(reviewed August 2011)*

The part of the law, which deals with negligence between members and committees in members' clubs, is now in an uncertain state. The decision in Grice v Stourport Tennis, Hockey and Squash Club (28th February 1997) seems to have moved the goal posts or put them back in the correct place.

The facts of the case are that Mr Grice, who was 43 at the time, went to play squash and was injured on entering the clubhouse. The entry was awkward. From the car park there was a single step up on to a threshold faced with a smooth stainless steel facing, which was at the time wet and sloped downwards. The door by which he had to enter had to be pulled open by using a key. As he was trying to enter the clubhouse, his foot slipped. He was off balance and, although he did not fall, he hurt his back, which proved to be more serious than was first thought.

The first writ was, issued against the committee and permission was being sought to add (out of time) the names of Mr David Ward, the secretary, and Mr Stinton, the Chairman of the Ground and Premises Committee, to claim negligence in their case as individuals.

The following cases were discussed in the judgment at first instance and then in the appeal court.

In Robertson v Ridley and Another (1989 2 All ER 474 - 478) a member was injured in the car park, when his motor bike hit a pothole. It was stated that the chairman and secretary were responsible in law for the conduct of the members as a group (ie for observing the requirements of the statute and regulations of the running of the club).

In addition it was stated that prima facie the liability of a member of a members' club depended on the rules. In the absence of any provision in the rules or any action by an individual member, one member owes no duty to the other members for the state of the club premises.

In Shore v Ministry of Works (1950 2 All ER 228) it was stated that the committee was elected by the members and acted as agents for the members. The member's right was to use the club premises with all their defects and imperfections.

In Prole v Allen and Others (1950 1 All ER 476) there seemed to be a significant change.

The plaintiff, Mrs Prole, was a member of the Quantock Club and Institute. After attending a function on 31st December 1946 she was leaving the function by the men's exit at 10.30 pm when she fell down an unlighted stairway. She was injured and claimed damages from the committee (including the Steward of the Club, who was also a committee member).

The events leading to the injury were that early in December 1946 the Secretary and Steward authorised some alteration to the men's exit from the clubhouse by repositioning the exit steps. It was held that the fact that the defendants were all members of committee and one of them was the Secretary imposed no duty on them towards the plaintiff.

Mr Justice Pritchard, presiding, went on to consider the position of Steward. He stated that at night it was the practice to illuminate the stairway by a light which was suspended from the ceiling for that purpose. On the night in question the Steward had extinguished this light at 10.10 pm. The Steward went on to say, "It was my duty to open the club and close it; to remain on the premises until everybody had left; and to put the lights on and turn the lights off when and where necessary. It was my duty to obey instructions of the committee, to receive the instructions of the secretary, to see that the premises were in as good an order as they could be, and fit condition for use by the members of the club. It was my duty to notify the committee of any defects which would render the club not so fit."

Mr Justice Pritchard found that the Steward was negligent in failing to light the stairway. He ought to have realised for the benefit of the members who did not attend the club regularly that some kind of warning, by lighting, should have been provided. No notice had been posted about the alterations. By switching the light off when he did, the Steward had acted negligently. He had not taken reasonable care to see on that night the premises were in as good order as they could be for the use of members who might be expected to go out that way. In this way he was negligent and in breach of the duty which he admitted he owed to members of the club. It was also established that the plaintiff had a right use that particular exit on that particular night. The judge awarded the plaintiff three hundred and fifty pounds damages.

There are two very significant words used in two of these cases which are a great concern to Secretaries. Those words are ELECTED and APPOINTED. In Shore v Ministry of Works it was stated that the committee had been elected by the members and were not contracting as a separate body with individual members. However in Prole v Allen the committee had appointed the Steward as agents for all the members and thus became "an agent for each member to do reasonably carefully what he was appointed to do and in that way he came to owe a duty of care to each of the members to take reasonable care to carry out his duties without negligence". The Steward was paid a wage.

In Robertson v Ridley one appeal judge expressed doubts about the finding in Prole v Allen that the steward was liable. The other two judges disagreed. One stated that the general rule of common law was that membership of a committee of a members' club did not per se carry with it any duty of care towards the members. Since this was the general rule, the only other question was whether this rule had been modified by the rules of the club.

In Owen v Northampton Borough Council (1992 LGR 23) the scope of the negligent action of member to member widened.

The leading judgment stated,

> "In my judgment there is nothing in the case of Prole v Allen or in Robertson v Ridley upon which can be founded a form of immunity available in law to one member of the club, being an immunity based merely upon their joint membership if the claimant can demonstrate that, according to ordinary principles of law, the defendant member of the club was under a duty of care in respect of the circumstances which caused the claimant's injury and that the defendant was guilty of negligence. The cases upon which the second defendant relies are, in my judgment, no more than examples of the rules that the mere fact of common membership of a club, even coupled with membership of a committee on the part of a defendant, does not by itself give rise to a duty of care in the defendant to a plaintiff. It seems to me that it is open to the court to find that a duty of care existed where a club officer or a member of a committee takes upon himself some task which he is to perform for other members of the club in the course of which he acquires actual knowledge of circumstances which he knows gives rise to risk of injury to club members acting as he knows they will or may be expected to act if not told of the cause of danger. I do not doubt that the nature of the relationship between members of the club will often be such that it will be impossible to find that one member has undertaken any responsibility to inspect, or to inquire, or to consider whether circumstances will or may give rise to risk of injury. But there may be circumstances in which a member acquires knowledge both of an actual danger and of the fact that, if a warning is not given, the members upon whose behalf he has undertaken to perform a task will be exposed to risk of injury. In such circumstances - it is not necessary to inquire in which other circumstances - it is open to a court to find that a duty of care existed and was broken."

In Grice v Stourport Tennis, Hockey and Squash Club the court considered the club rules. The court did not have the rules as they were at the time of the accident, but it was said that the rules had not changed significantly. Rule 9 provided that the ground and premises committee would be responsible for the management of all the club's grounds. It also stated that a full time manager/steward would be appointed on a self employed contract to look after the grounds on behalf of the committee. (This last part seems to imply that at the time of the accident there was no self employed person in charge). It should also be pointed out that the offending door had been changed since the accident.

Mr Grice's counsel argued that it was not the law that under no circumstances can a member of a club sue other members who have undertaken a responsibility which could give rise to a liability in law towards him. He argued that he could give, under negligence, particulars of those members who, he says, were under a duty towards him and who were in breach of that duty. He argued that they were vicariously liable for the faults of the members.

The club's counsel argued that Mr Grice was seeking to sue the members of the club who represented himself and, in law, he could not sue himself.

Mr Grice's counsel said a letter had been sent to the club's insurers and their solicitors (the insurance having been effected on behalf of the members) to inquire about the nature and extent of the insurance cover. He was informed that it was on a member to member basis and covered liability of one member towards another. Counsel considered that such a policy seemed to be adequate to cover a situation in which one member, or one or more members were entrusted as part of a committee to see to the maintenance of the property. If this were the case, any judgment obtained against Mr Ward and Mr Stinton would be met by the insurance company.

The court allowed the appeal and the names of Mr Ward and Mr Stinton were added to the writ.

I understand that Mr Grice was awarded a sum of damages in five figures which, presumably was paid for by the insurance company.

OBSERVATIONS

This case has brought back the basic rules of negligence -

1. There must be an injury.
2. It must have been reasonably foreseen.
3. It could have been reasonably prevented.

This means that where all three elements above are present and where a person in a club undertakes a job, where the welfare of others are concerned, that person cannot hide behind one common law rule that is in conflict with another, because the injured party and the negligent party are members of the same club. The rules are -

1. A person owes a duty of care to ensure that his neighbour is not damaged by any act or omission which he may commit.
2. A member cannot sue the club of which he is a member.

There is a type of third rule which states that where a person purports to be proficient in anything, he is treated as proficient and will be liable in negligence.

Thus the house chairman, who is in charge of the building's maintenance, (whether this duty is in writing or implied) has, according to Owen v Northampton Borough Council and Grice v Stourport Hockey Club, accepted the responsibility for the members and will be liable in negligence.

This new ruling, therefore, implies that while a committee may not be sued, individual members of that committee, who have taken on responsibilities for the care of members, can be sued in negligence.

CLUBS SHOULD INSPECT THEIR INSURANCE POLICIES TO ENSURE THAT THEY HAVE SUCH A CLAUSE AS THAT 'MEMBER TO MEMBER CLAUSE' IN THIS CASE.

THE SALARIED SECRETARY

I believe that these recent cases, Owen and Grice, have made the position of the salaried secretary more precarious from a litigation point of view.

He/she already has a duty of care towards the members, because they all pay his/her salary. The terms of his/her contract of employment will most probably show that he/she is responsible for the maintenance of the building and the chairman of the house committee will be purely supervisory and most probably not liable in negligence where there is a salaried secretary, because he has "passed the buck".

The secretary, while acting in his/her paid capacity, cannot hide behind any form of membership of the club. In fact salaried secretaries are not members of clubs but employees and, therefore, cannot hide behind a member insurance policy.

CLUBS SHOULD ASK THEIR INSURANCE COMPANY IF THE SALARIED SECRETARY IS COVERED FOR LIABILITY FOR NEGLIGENCE TOWARDS MEMBERS.

I have been campaigning, fighting and begging secretaries to listen to me since 1990 to see that they are properly insured. I believe that someone looked into the matter and found that it was fairly expensive and things seemed to have dropped back to the usual lethargy. Do we have to wait for a secretary to be clobbered with a five figure damages claim, before we wake up?

Note from HQ

The GCMA has for some time advised members to suggest to their clubs they take out a Professional Indemnity Insurance Policy which will cover the Secretary and other Club Employees from this very situation.

INSURANCE FOR THE CLUB SECRETARY, OFFICERS, COMMITTEE, DIRECTORS, TRUSTEES AND EMPLOYEES

By Ray Burniston

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In his article in these pages in September, John Page outlined recent cases and stressed the problems that a secretary could face if his club had not got the right insurance cover. He stated that HQ should be doing more to alleviate this problem. For the past two years HQ has suggested that clubs should take out Professional Indemnity Insurance if they have not already got this type of cover. The National Committee looked into this problem in 1996 and as a result took up insurance at this time on behalf of the Association. It was also recommended at the time that all clubs should see if they had this cover. Broadly cover of this type of policy will be along the following lines:

Executive Liability
This covers Officers, Committee Members and Trustees of the Association on Claims made against the Association during the Period of Insurance by reason of a Wrongful Act committed by the Assured in their capacity within the Association.

Professional Indemnity
This covers against Loss arising from any Claim or Claims made against the Association or the Assured during the Period of Insurance by reason of a Wrongful Act committed by:

1. the Association and/or the Assured
2. any Employee
3. any other person, firm or company directly appointed by and acting for and on behalf of the Association
4. in or about the conduct of the Professional Services.

The Professional Services specified in the Schedule are as follows: "To provide help and support to assist the member to carry out their duties in golf club administration."

Fidelity
There is also this type of cover for the Association against dishonest, fraudulent, criminal or malicious act committed after the Retroactive Date by the Assured and/or Employee.

Documents
It also indemnifies the Association against loss, destruction or mislaying any Document which is about the conduct of the Professional Services.

Under the various Definitions stated in the policy, the term Employee covers not only all those persons employed and under the control of the Association but also the following:

1. any person under a contract of service or apprenticeship with the Association
2. any person supplied to be hired or borrowed by the Association
3. any person supplied under any work experience or similar scheme
4. any volunteer working for the Association

There are limits of indemnity within the policy and your Insurance Broker will be best advised to suggest these limits. Like all such policies they cost money depending on how much cover you require.

The above is only a brief summary of the sort of cover available and if you have no such cover currently then you are strongly advised to contact your Insurers and take up the appropriate cover. Not only is the Secretary covered and other Employees but so are the Officers, Committee Members and Trustees etc.