

# The inherent risks when partaking in leisure activities

*Harrison v Intuitive Business Consultants Limited (T/a Bear Grylls Survival Race) & Others* [2021] EWHC 2396 (QB)

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## Facts of the case

1. In 2016, the claimant who was 54 years old at the time was a participant in a “Bear Grylls Survival Race” made up of various obstacles. The obstacle in question was a “monkey ring” which required holding and swinging from one ring to the next, whilst being elevated off the ground. Hay was distributed underneath the rings to break any falls and provide for a soft landing.
2. The claimant sought damages for personal injuries and consequential losses after falling from the obstacle. As a result of the fall, she suffered very serious injuries to her leg and shoulder.
3. The first defendant (Intuitive Business Consultants Limited) was the organiser of the event. The second and Part 20 defendant (Beyond the Ultimate Limited) were subcontractors. The second defendant was responsible for the design of the course, the management of the race, provision of staff and the carrying out of appropriate risk assessments on each of the obstacles.
4. The risk assessment of the “monkey ring” identified two hazards, as follows:
  - a. There was a risk of a hard landing when falling from the initial rings, which could be reduced if the marshals briefed the participants to reach out for the ring from a seated position, as opposed to standing.
  - b. An increased risk of injury when falling from the rings if there had been movement of the hay covering the landing surface. The risk could be reduced by the marshals redistributing the hay as participants passed through the obstacle.

5. The claimant alleged that:
  - a. She had taken a standing position when reaching for the initial rings, as she was not instructed to do so from a seated position.
  - b. The hay had not been properly distributed by the marshals to allow for a softer landing.

### **Decision of the Court**

6. The claim was dismissed by His Honour Judge Freedman. The reasoning for the dismissal is as follows.

#### **Scope of the Defendants' Duty of Care**

7. Once the Defendants had stipulated in the risk assessment that instructions must be given to all participants to swing out from a seated position, they had assumed a responsibility to give such instruction. The duty of care arises out of section 2 of the Occupiers' Liability Act 1957.
8. The duty of care went as far as to give the instruction but not to mandate that the participants adopted a seated position. The duty did not extend to speaking to each participant individually and ensuring that they had understood the appropriate instruction. It was sufficient for the instructions to be given generally to those standing on the platform, waiting to set off on the obstacle. In addition, the defendants owed a duty to provide a reasonably safe landing surface in the event that the participants fell from the rings.

#### **Causation**

9. The court found that:
  - a. A failure by the Defendant to give appropriate instruction would not have been found to cause the accident. Given the nature of the obstacle, most participants fell off the rings at some point, regardless of whether they started from a sitting or standing position. Moreover, it was a matter of chance the manner in which the participant landed on the ground.
  - b. The claimant had successfully grabbed hold of the first ring and fell when taking hold of the second ring. As such, any connection between her moving off the platform in a standing position and the injuries sustained were tenuous.

- c. Even if it could be demonstrated that there was a culpable failure to redistribute the hay, the claimant failed to establish the causative potency in the context of this accident.
10. It was held that the claimant's injuries were not caused by any fault of the defendants. These types of accidents were an inherent risk of participating in obstacle races. No amount of care and vigilance could remove the possibility of these risks materialising from time to time.

### **Commentary**

11. This case provides helpful guidance to occupiers and those subcontracted by them on how they can avoid liability in respect of leisure activities. Each case will turn on its own facts, but the following steps are likely to assist occupiers (and its agents) in avoiding liability:
- a. Obtaining waivers from the participants in good time of the leisure activity. Ideally, this ought to be done when the participant makes the application or fills in the entry form to enter the activity. It would also assist, if the waiver was specifically brought to the participant's attention at the time of lodging the application or entry form.
  - b. Where safety instructions are to be given to participants, these ought to be given prior to the beginning of the activity. If an occupier or its agent wanted to be absolutely sure about whether the instructions were understood and received by the participants, a pamphlet or website link contained within the application or entry form would achieve this.
  - c. Undertaking risk assessments (multiple times if necessary) and highlighting any foreseeable risks.
  - d. Keeping written records of the hazards identified in the risk assessment and what active were steps taken to reduce the risk of any foreseeable harm.
  - e. During the course of activities, having marshals who as far as possible are able to take active steps to reduce the risk of any bodily injury.
  - f. Where the activity is at a height or involves a foreseeable risk of a fall, ensuring that the area of landing is reasonably safe.

12. The decision is a clear indication that there is a degree of unavoidable risk that comes with participating in leisure activities. The Claimant of her own volition participated in the activity, went in with her eyes open as to the risk of bodily injury and signed a waiver form to this effect. To place an occupier and/or its agent under a duty of care to prevent participants from taking risk, which were inherent in the activities that they volunteered to undertake, would place too much of an onerous burden.

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