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The 2006 Tour of Britain cycle race – An analysis of the management of participant and spectator safety

L Thompson

Abstract

This paper analyses the 2006 edition of the Tour of Britain cycle race and considers how the safety risks to participants and spectators were managed, both in the planning and execution of the event. The 2006 Tour has been chosen principally because it was marked by a number of serious safety incidents including a motorcycle crash on the final stage which injured a number of spectators. These incidents – and their underlying causes – highlight the difference between the identification of risks in advance of an event and their management in a ‘live’ environment. In addition the 2006 Tour raises a number of interesting legal issues regarding the liability of event organisers and governing bodies under both statute and common law negligence – in particular how the relevant duties of care are, in certain circumstances, capable of being applied to event organisers and governing bodies. Given the increasing popularity of road cycling in the UK and the growing number of events taking place on public roads, this is a legal area that will be worth watching closely.

Keywords: Event Management, Risk Management, Safety, Spectators, Negligence, Health & Safety, Occupiers’ Liability, Road Cycling

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INTRODUCTION

This paper analyses the 2006 edition of the Tour of Britain ('the Tour') cycle race and considers how the safety risks to participants and spectators were managed, both in the planning and execution of the event.¹ The 2006 Tour has been chosen principally because it was marked by a number of serious safety incidents including a motorcycle crash on the final stage which injured a number of spectators.² These incidents – and their underlying causes – highlight the difference between the identification of risks in advance of an event and their management in a 'live' environment. In addition, the 2006 Tour raises a number of interesting legal issues regarding the liability of event organisers and governing bodies under both statute and common law negligence.

The paper will first describe the nature of the event and the key safety-related risks to competitors and spectators, before turning to the relevant statutory and common law provisions which govern safety at road cycle races. It is recognised that there exists a wide range of other risks associated with the race – for example those associated with environmental nuisance and commercial arrangements – but these are considered outside the scope of this paper. Similarly, the paper will not assess the wider security risks arising from the event, for example risks relating to crowd safety, terrorism or disaster prevention. The paper will compare the way in which safety risks were planned for in the 2006 Tour with how the event actually unfolded, highlighting how effectively the safety risks were managed in practice. In addition, the paper will discuss a number of key legal issues arising from the race relating to liability under relevant statutory provisions and the common law.

THE TOUR OF BRITAIN

The modern Tour of Britain is a week-long professional road cycling stage race held in early September each year. Since its return to the calendar in 2004, the race has been organised by a company called Sweetspot which also hosts a number of other cycle races in the UK.³ As a stage race, the route of the Tour is chosen so as to ensure the terrain provides opportunities and challenges for all types of rider. This normally involves creating stages that include a mixture of hills and flat sections to encourage exciting racing. In this way, the route is also a means of showcasing a wide range of British regions which is important in terms of securing spectator interest in the race and sponsorship.⁴ Importantly, this variety of route means that spectators are not confined to a single venue. Instead, spectators line the roadsides along the route which, while closed to traffic for the duration of the race, are for the most part open and unprotected. However, where stages start and finish in towns or cities, these areas often draw large crowds of spectators (particularly for high speed sprint finishes) and so require specialist infrastructure to be put in place e.g. crash barriers, signage etc.

During each stage, the competitors tend to race in a single, large group or 'peloton' however depending on race tactics and conditions, the peloton will often fracture into smaller groups or individual riders. As such, competitors can be spread out over long distances along the race route. It is the responsibility of the race officials, marshals and police (the 'race convoy') to ensure that the competitors are escorted safely. This is achieved primarily through the use of pre-agreed road closures.⁵ Road closures can be rolling road closures

¹ 'Tour of Britain': [www.tourofbritain.com]

² William Fotheringham, 'Accident mars end of Tour of Britain showcase' *The Guardian* (London, 4 September 2006) (online) [www.theguardian.com/sport/2006/sep/04/cycling.cycling1]. The 2006 edition was one of the earliest editions of the modern incarnation of the Tour of Britain. The previous version of the Tour (the PruTour) had fallen off the calendar for five years due to lack of sponsorship, mainly as a result of safety concerns raised by a fatal accident during the 1999 edition – see: Martin Ayers, 'Death of police escort rider cancels Tour of Britain stage' *The Independent* (29 May 1998) (online) [www.independent.co.uk/sport/cycling-death-of-police-escort-rider-cancels-tour-of-britain-stage-1156744.html]

³ 'Sweetspot: Events': [www.sweetspotgroup.co.uk/events.php]

⁴ See for example: 'Tour of Britain: Partners' [www.tourofbritain.co.uk/partners/index.php#.VB7LrMtOXIU]

⁵ UCI, 'Organiser's Guide to Road Events': [www.uci.ch/docs/UCIGB-PDF/UCIGB_GUIDEORGA.pdf]

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(whereby the roads are closed temporarily along the route until the riders have passed through) or fixed road closures (whereby the roads along the route are closed entirely for the duration of the race).⁶ For the Tour of Britain, rolling road closures are normally employed although some city centre finishes have fixed road closures.

The Tour is therefore very different to other sporting events which are held in a single location, such as a stadium or arena, where many of the safety risks to participants and spectators can be addressed through standards regulating design, capacity etc.⁷ Instead, the Tour is a series of moving one-day events held across varied and wide geographic locations. As a result, the key risks arise not only from the interaction between competitors themselves (e.g. due to racing incidents such as crashes) but also from the interaction between competitors, other members of the race convoy and spectators. Further, as the Tour takes place on public roads there is the additional risk arising from the potential for competitors and non-race traffic to come into conflict. In this context, the principal safety challenge for the organisers is to ensure that all competitors and spectators are able to interact – often at high speed – whilst minimising so far as possible the chance of injury or death.

THE ROLE OF BRITISH CYCLING AND THE UNION CYCLISTE INTERNATIONAL (UCI)

The Tour is sanctioned by the National Governing Body (NGB) British Cycling.⁸ British Cycling require event organisers to comply with specific requirements in order to approve an application to hold an event including: production of a risk assessment, an event safety plan and a technical guide.⁹ Event organisers must also have sought and obtained approval for any road closures from the relevant agencies (Local Authorities and Police). Where an event organiser has been registered, British Cycling provides an indemnity for liabilities of up to £10m where a claim is made against an organiser, official or participant.¹⁰

In addition, according to UCI race categorisation, the Tour is an international-level race on the UCI Europe Tour.¹¹ This means that the Tour organisers must pay due regard to any relevant safety regulations and guidance stipulated by the UCI. One particular requirement is to ensure that a UCI Commissaire is present at the race to review the management of the event.¹² In 2006, the Tour was categorised as a 2.1 level race on the UCI Europe Tour.¹³ For 2014, the Tour's status was revised upwards to 2.HC to reflect the race's growing status on the international calendar.¹⁴

RELEVANT STATUTORY PROVISIONS

The following statutory framework applies to event organisers seeking to run a road cycle race in Great Britain.

⁶ *ibid.*

⁷ See for example Football Licensing Authority, 'Guide to Safety at Sports Grounds' [<http://www.safetysportsgrounds.org.uk/publications/green-guide>]

⁸ 'Supported by British Cycling': [www.britishcycling.org.uk/about/article/bc-British-Cycling-Event-0]

⁹ British Cycling, 'Road Race Organiser's Guide': [www.britishcycling.org.uk/zuvvi/media/bc_files/road/Road_Race_Organisers_Guide_-_FINAL.pdf]

¹⁰ 'Road event organiser support': [www.britishcycling.org.uk/roadeventorganisersupport]

¹¹ 'UCI Europe Tour': [www.uciropetour.com]

¹² UCI (n5).

¹³ UCI (n11).

¹⁴ *ibid.*

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Health and Safety at Work Act 1974

Under the *Health and Safety at Work Act 1974 (HASAW)*, an employer has a statutory duty to ensure “so far as is reasonably practicable, the health, safety and welfare of at work of all his employees.”¹⁵ The Act also places a duty on employers and self-employed persons to ensure their conduct does not expose affected parties to risks to their health and safety.¹⁶

In addition to the duty on employers, the Act also places a duty on those in control of non-domestic premises in relation to others who are not employees to ensure that:

“...the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.”¹⁷

For the purposes of the Act, a person is considered in control of a premises either through ownership or by virtue of a lease or contract and where such arrangement places an obligation on them in relation to maintenance, repair, access or safe use of plant or substances.¹⁸ Similarly a person’s control extends to any “matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).”¹⁹

The *Management of Health and Safety at Work Regulations 1999* specify in more detail what employers are required to do to manage health and safety under the Act.²⁰ The cornerstone is the requirement to undertake a risk assessment.²¹ Employers must record the findings of the risk assessment and put in place arrangements to implement any risk mitigation measures identified.²²

Occupiers Liability Acts 1957 and 1984

The *Occupiers Liability Act 1957 (OLA 1957)* establishes a common duty on an occupier to ensure any lawful visitor is: “reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.”²³

In particular, the Act provides two important defences to a claim. Firstly, an occupier can discharge their duty provided they have provided a warning sufficient for a visitor to make themselves reasonably safe.²⁴ Secondly, an occupier may be absolved in instances where the risks have been willingly run by the visitor, including where harm has arisen from inherently dangerous activities such as sporting pursuits.²⁵

Separately, the *Occupiers Liability Act 1984 (OLA 1984)* sets out duties on occupiers in relation to trespassers.²⁶ The duty contained within it is not as onerous as that applied to lawful visitors in the *OLA 1957* but it

¹⁵ Health and Safety at Work Act 1974 pt 1, s 2

¹⁶ Health and Safety at Work Act, pt 1 s 3.

¹⁷ Health and Safety at Work Act, pt 1 s 4.

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ Management of Health and Safety at Work Regulations 1999

²¹ *ibid.* s 3.

²² *Ibid.* s 5.

²³ Occupiers Liability Act 1957

²⁴ Mark James, *Sports Law* (1st edn, Palgrave Macmillan 2010) 155.

²⁵ *ibid.*

²⁶ Occupiers Liability Act 1984

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nonetheless requires occupiers to: “take reasonable steps to ensure that the trespasser does not suffer harm from a known danger.”²⁷

Unfair Contract Terms Act 1977

The *Unfair Contract Terms Act 1977 (UCTA)* supplements the *OLA 1957* by delimiting the scope of the exemption contained in s2(1) of the latter.²⁸ The practical effect of this is that it is not possible for occupiers to exclude liability for death or injury resulting from negligence by way of a contract or notice.²⁹

Cycle Racing on Highways Regulations 1960 and Road Traffic (Special Event) Act 1994

The *Cycle Racing on Highways Regulations 1960* set out which types of races require prior police approval (principally competitive races and time trials) and the criteria under which police authority is given for road closures.³⁰ The regulations also provide for the police to refuse permission for races to take place or to place additional conditions on the organisers when approving races.

The *Road Traffic (Special Event) Act 1994* similarly sets out the legal framework for sports and other events being held on public roads.³¹ The Act makes provision for the relevant traffic authority (i.e. Local Authority) to authorise events and to prohibit or restrict temporarily the use of specified roads by vehicles and pedestrians during the event. Organisers of road races therefore require prior permission from both the relevant police constabularies and Local Authorities under the Regulations and the Act respectively. As part of their support to event organisers, British Cycling provides guidance on seeking the relevant approvals under both the Regulations and the Act. The guidance includes the provision of template letters and application forms.³² Interestingly, the Department for Transport has recently undertaken a public consultation on the *Cycle Racing on Highways Regulations 1960* with a view to making it easier for event organisers to put on road cycling events.³³ The proposed changes reduce the discretion of the police to approve events and instead introduce a presumption in favour of races provided the organisers have undertaken an appropriate risk assessment and put mitigation measures in place.³⁴ At the time of writing these changes had yet to be confirmed in legislation.

The Good Practice Safety Guide

Although not having any formal statutory status, the *Good Practice Safety Guide for small and sporting events taking place on the highway, roads and public places* (the ‘Red Guide’) was, until 2006, a commonly-used guide for event organisers seeking to put on sporting events on public roads.³⁵ The Guide contained important guidance on the law as well as best practice in terms of risk assessment and event planning. In addition the Guide contained a section on the specific requirements of road cycle racing.³⁶

²⁷ James (n24), 163.

²⁸ Unfair Contract Terms Act 1977

²⁹ James (n24), 161.

³⁰ Cycle Racing on Highways Regulations 1960

³¹ Road Traffic Regulation (Special Events) Act 1994

³² British Cycling (n10).

³³ Department for Transport, ‘Consultation on revisions to the Cycle Racing on Highways Regulations 1960’ (online) [\[www.gov.uk/government/consultations/proposed-changes-to-the-cycle-racing-on-the-highway-regulations-1960\]](http://www.gov.uk/government/consultations/proposed-changes-to-the-cycle-racing-on-the-highway-regulations-1960)

³⁴ *ibid.*

³⁵ The Home Office, *The Good Practice Guide for small and sporting events taking place on the highway, roads and public places* (The Stationery Office, 2006).

³⁶ *ibid.*, Ch 13.

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THE COMMON LAW: NEGLIGENCE

While a number of the above statutory provisions set down a duty of care, sporting events are additionally subject to the common law tort of negligence. The common law duty owed is the objective standard: the duty to “take reasonable care to avoid injury to the person or property.”³⁷ The test of where a duty applies was established most famously by Lord Justice Bingham’s three-part analysis in *Caparo Industries v. Dickman*: the damage must be reasonably foreseeable, there must be sufficient proximity between the parties and it must be just and fair to impose the duty.³⁸

In the sports context, negligence has been developed not only in relation to the duty owed by competitors to each other but also in three other crucial areas. Firstly, it is established there may be a duty owed by a competitor to spectators in certain circumstances.³⁹ Secondly, the duty can be established between an official and a participant.⁴⁰ Thirdly, the duty has been extended to sports governing bodies where they have a role in the regulation of the sport and/or events held under their auspices. In particular, the landmark case of *Watson v BBBC* made clear that, where their regulatory role is central to safety, national governing bodies have a duty to participants.⁴¹ In addition, *Wattleworth v. Goodwood Racing Company Ltd and Royal Automobile Club Motor Sports Association Ltd and Federation Internationale de l’Automobile* clarified that a similar duty could be extended to International Sports Federations where they set out rules or guidelines on safety.⁴²

PRE-EVENT: HOW WERE SAFETY RISKS IDENTIFIED AND PLANNED FOR?

The starting point for considering how risks were managed at the 2006 Tour of Britain is the regulatory framework set out by British Cycling for registered events and, supplementing this, the UCI regulations for international level events.⁴³

The essential safety requirements for British Cycling-sanctioned events are specified in the *Road Race Organiser’s Guide*.⁴⁴ In addition to gaining the required approvals by the police and highways authorities for road closures, a key precondition for British Cycling to sanction an event is the completion by organisers of a full risk assessment.⁴⁵

Following the British Cycling template, the organisers of the 2006 Tour would therefore have had to provide a detailed risk assessment identifying:

- Safety hazards and their location e.g. road junctions etc.;
- The hazard risk i.e. the likelihood of harm arising (ranked ‘High’, ‘Medium’ or ‘Low’);
- The persons at risk e.g. competitors, race officials, spectators, non-race traffic;

³⁷ Adam Lewis & Jonathan Taylor, *Sport: Law and Practice* (2nd edn, Tottell Publishing 2008) 714.

³⁸ *Caparo Industries v. Dickman* [1990] 2 AC 605.

³⁹ *Wooldridge v. Sumner* [1963] 2 QB 43.

⁴⁰ *Smoldon v. Whitworth and Nolan* [1997] ELR 249.

⁴¹ *Watson v. BBBC* [2001] QB 1134.

⁴² *Wattleworth v. Goodwood Racing Company Ltd and Royal Automobile Club Motor Sports Association Ltd and Federation Internationale de l’Automobile* [2004] EWHC 140.

⁴³ UCI (n5) and British Cycling (n9). It should be noted here that it has not been possible to establish the precise British Cycling/UCI regulations that were in place in 2006. Further, despite this author’s request, it has not been possible to secure any information from the organisers in relation to pre-event planning for the 2006 Tour. Nonetheless it seems reasonable to assume that the regulatory framework in place at the time was very similar in content and scope to that which currently exists. As such, the current British Cycling/UCI regulations and guidance are considered valid for the purposes of this analysis.

⁴⁴ British Cycling (n9)

⁴⁵ *Ibid.* s 9.

- The additional measures put in place where necessary to reduce hazard risk to 'Low'.⁴⁶

As such, the event organisers would have identified the precise location of hazards on the route and provided a detailed description of each.⁴⁷ In addition, each mitigation measure applied to reduce a hazard risk to 'Low' is given a unique number code and so it is reasonable to assume a similar methodology was applied in the risk assessment for the 2006 Tour.⁴⁸

Event Safety Plan and the Event Technical Guide

In addition to a risk assessment, British Cycling also requires organisers to produce both an Event Safety Plan and an Event Technical Guide.⁴⁹ The Event Safety Plan must be developed by a Safety Advisory Group (SAG) comprising as a minimum the event organisers, relevant Local Authorities and emergency services.⁵⁰ Although the precise contents of the Event Safety Plan are not prescribed, the guidance supplied by British Cycling specifies 17 individual items the plan must cover including:

- An overview of the event and the management team (Items 1 and 2);
- Race detail and event itinerary (Items 4 and 5);
- Marshalling plan (Item 6);
- Site safety (Item 7);
- Crowd management (Item 10);
- First aid and welfare (Item 12);
- Incident management procedures (Item 15).⁵¹

As with the risk assessment, it is reasonable to assume that the organisers of the 2006 Tour developed a similar Event Safety Plan covering most if not all of these areas. The final piece of planning required is the production of an Event Technical Guide which sits underneath the Event Safety Plan.⁵² The Event Technical Guide is primarily aimed at participants in the race – including riders, team staff and race officials – and should contain *inter alia*:

- The detailed race route;
- The sporting regulations applicable to the race;
- Maps of the start and finish areas.

Again it is reasonable to assume that the 2006 Tour organisers developed an Event Technical Guide for participants in line with British Cycling requirements.

UCI regulations and guidance

The 2006 Tour was registered as a 2.1 category international race on the UCI Europe Tour. As such, in addition to British Cycling requirements, the 2006 Tour organisers would also have had to abide by any relevant rules,

⁴⁶ British Cycling, 'Event Notification and Risk Assessment – Road and Circuit' [www.britishcycling.org.uk/roadeventorganisersupport#ui-tabs-4]

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ British Cycling (n9), s 9.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *ibid.*

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regulations or guidance provided by the UCI in relation to the race.⁵³ The key document in this regard is the UCI's *Organiser's Guide to Road Events* (the 'UCI Guide').⁵⁴ This contains a significant amount of guidance for race organisers particularly regarding the management of safety.⁵⁵ In particular it sets out precise guidance – through the use of detailed graphical representations of possible race scenarios and site maps – regarding the use of road closures as well as the responsibilities of marshals and various officials within the race convoy to ensure competitor and spectator safety.⁵⁶

The document also establishes a number of important mandatory requirements:

- Race organisers should be affiliated to a National Federation;
- Any application for a race to be registered on the UCI international calendar must be made to the relevant National Federation which passes the application on to the UCI for approval;
- Where an event is registered, the organiser should:
 - Ensure the event complies with all relevant UCI rules;
 - Ensure the event complies with applicable national laws or regulations;
 - Allow an International Commissaire to monitor the race on behalf of the UCI;
 - Take out insurance and name the UCI as co-insured so as to cover any potential claims against the UCI in relation to the event.⁵⁷

The importance of these mandatory measures is that they bind the UCI into a relationship with the event organiser and the National Governing Body (NGB). This has significance in that it could provide grounds for extending the scope of any legal liability to the UCI.⁵⁸ As with the preceding discussion, given that it was a registered race on the UCI calendar it seems safe to assume that the 2006 Tour of Britain complied with the mandatory requirements of the UCI Guide and that the organisers had taken due account of the relevant guidance in relation to safety matters.

THE 'LIVE' EVENT: WHAT HAPPENED IN PRACTICE?

The 2006 Tour of Britain ran from 29 August-3 September and consisted of six stages covering 870 kilometres in total.⁵⁹ The race began in the Scottish borders, took in the Pennines and the Kent countryside and finished with a showpiece stage in central London.⁶⁰ The intention behind the final stage was in part to act as a warm-up for the 2007 Tour de France which was due to start in London.⁶¹

Three stages in particular were marked by serious safety incidents which highlighted deficiencies in the way in which safety risks were managed in the 'live' event environment. On Stage 3 (Bradford-Sheffield), the rolling road closures were unable to prevent non-race traffic from coming into contact with riders as the race entered

⁵³ 'UCI Rules and Regulations': www.uci.ch/inside-uci/rules-and-regulations/regulations/

⁵⁴ UCI (n5).

⁵⁵ UCI (n5), Ch 5.

⁵⁶ *ibid.*

⁵⁷ UCI (n5), Ch 2.

⁵⁸ UCI (n5). On this precise point it is interesting to note that the UCI Guide states: "The UCI can in no event be held liable for problems with the course, any accidents that may occur or cancellation of the event. The UCI's control of the event through an International Commissaire only relates to sporting matters. The organiser is solely liable for the quality and safety of the organisation and all installations." (Ch 1, Section C). In light of both *Watson* and *Wattleworth* it is debatable whether this attempt to exclude liability could be relied upon by the UCI were a court to establish a duty of care in relation to its role in safety regulation.

⁵⁹ 'Tour of Britain: History: 2006' www.tourofbritain.co.uk/history/2006.php#.VB1fX8tOWUk

⁶⁰ *ibid.*

⁶¹ Author uncited, 'London to host start of 2007 Tour' *BBC Sport* (24 January 2006) (online) http://news.bbc.co.uk/sport1/hi/other_sports/cycling/4643032.stm

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into Sheffield. While fortunately no accidents or injuries resulted, a number of riders complained of the danger and one claimed he 'nearly got run over five times' by cars which had penetrated the safety cordon provided by police and race marshals.⁶²

On Stage 5 (Rochester-Canterbury), the peloton was directed off the race route into heavy traffic. Although the peloton was eventually directed back on course, a number of riders subsequently staged a 'go slow' protest at the perceived lack of protection provided by the race organisers.⁶³

On Stage 6 (Greenwich-central London), a police motorcyclist and a race marshal (also on a motorcycle) collided on entry to the race convoy diversion zone on the Mall and crashed into spectators who were standing behind safety barriers. Both the police escort rider and marshal were injured along with spectators. Five people were taken to hospital, two of whom sustained fractured ankles.⁶⁴

These incidents highlight that, even where safety risks are identified and addressed in pre-event planning, the effectiveness of any mitigation measures put in place needs careful consideration and – if necessary – review in light of experience. This is of particular importance where the mitigation measures rely on human intervention and where the relevant event staff require specialist technical skills or expertise to carry out their duties.

The clearest example of this can be seen in the rolling road closures which were put in place to reduce the risk to participants by eliminating any conflict between riders and non-race traffic. These rolling closures were not enforced adequately for two critical reasons. Firstly, the police escort riders at the event had limited prior experience of escorting road cycle races. An officer involved in escorting the race around this period described the situation as "...a bit disorganised, with no consistent approach."⁶⁵ It is quite likely that this was due to the hiatus in the race between 1999 and 2004; during this period, police expertise previously built up from escorting the race was almost certainly lost. Given the importance of the police escort riders and marshals in ensuring the effectiveness of rolling road closures, this loss of expertise turned out to be a major problem in the 'live' race environment. It seems reasonable to conclude that this lack of technical skill and experience of escorting a race contributed directly to all three incidents and in particular to the crash on Stage 6.

Secondly, the 2006 Tour organisers were not able to call on a single team of police motorcyclists nor, similarly, a single team of experienced motorcycle race marshals. Instead, the organisers had to deal with each individual police constabulary across whose boundaries the race passed.⁶⁶ It is estimated that the 2006 Tour may have involved up to 12 different police constabularies.⁶⁷ As such, each constabulary followed its own procedures and the police staff escorting the race varied each day.⁶⁸ Not only did this arrangement present a major logistical challenge to the organisers but from a safety perspective it also put an emphasis on ensuring the respective roles of police and marshals were clear on each day's stage. In practice, it appears that neither

⁶² Hugh Gladstone, 'Britain given crash course in Tour safety' *The Telegraph* (London, 5 September 2006) (online) [www.telegraph.co.uk/sport/othersports/cycling/2345050/Britain-given-crash-course-in-Tour-safety.html]

⁶³ 'Tour of Britain Stage 5: Chicci wins in Canterbury after rider protest divides bunch' *Cycling Weekly* (2 September 2006) (online) [www.cyclingweekly.co.uk/news/latest-news/tour-of-britain-stage-5-chicchi-wins-in-canterbury-after-rider-protest-divides-bunch-73940]

⁶⁴ Fotheringham (n2).

⁶⁵ Owen Rogers, 'Riding with the outriders: policing the Tour of Britain' *Road.cc* (27 September 2012) (online) [<http://road.cc/content/feature/67388-riding-outriders-policing-tour-britain>]

⁶⁶ *ibid.*

⁶⁷ Estimation based on race route and geographical spread of police constabularies. See: [www.justiceinspectrates.gov.uk/hmic/media/police-force-map.pdf]

⁶⁸ Rogers (n64).

the police nor marshals were sure of their precise responsibilities within the race convoy with obvious consequences for the safety of participants and spectators along the route.⁶⁹

In this respect it is of note that, since 2008, a single national police escort team of 28 motorcycle outriders has been in place.⁷⁰ This team has escorted the Tour of Britain for each subsequent year to date as well as the London 2012 Olympic Games. Furthermore, a single national motorcycle marshal team – the National Escort Group (NEG) – has been established with the aim of providing an accredited team of civilian marshals for cycle races held on public roads.⁷¹ Although it is not possible to confirm precisely when the NEG was established, it seems probable that the events of the 2006 Tour precipitated the formation of these two groups.

LEGAL ISSUES ARISING

Aside from the lessons learned in terms of safety management, the incidents at the 2006 Tour also raise some interesting issues in respect of the potential for extension of legal liability in two areas.

Extension of statutory liability to Event Organisers under HASAW and OLA

Two factors distinguish the Tour from most other sporting events with respect to the statutory duties under the *Health and Safety at Work Act 1974* and the *Occupiers Liability Act 1957 and 1984*. Firstly, the event is organised by a third party outside of the direct employment relationship between a rider and his team. Secondly, the event takes place on public roads rather than in a purpose-built venue. Both these factors therefore complicate the standard employer-employee and occupier-visitor relationships that are contained in *HASAW* and *OLA (1957 and 1984)* respectively.

In terms of the *OLA*, the question as to who precisely is the ‘occupier’ is in practice likely to be the relevant Local Authority since it is they who are the highway authority and permit racing to be undertaken on it (albeit under the auspices of the event organiser). In this context, the duty would be on the Local Authority to ensure that the roads were in a sufficiently safe condition for the purposes of a road cycling event. However, given that that Local Authorities have a range of ongoing statutory duties in relation to maintenance of the highways and safety – and which apply to all road users – it seems likely that acting in accordance with these would be sufficient to withstand a claim under the *OLA*.⁷²

In practice therefore, neither the *HASAW* nor *OLA* provides a particularly satisfactory route for a claim against an event organiser and it is more than likely that any claim by a participant or spectator would instead fall under common law negligence. Nonetheless, three cases demonstrate it is possible (at least in theory) for the statutory duties specified under the *HASAW* or *OLA* to be extended to organisers of the Tour of Britain.

In *Andersen v R* the organiser of a road cycle race in New Zealand was held liable for the death of a cyclist who had been struck by a vehicle.⁷³ On the evidence it appeared the cyclist was under the erroneous impression that the road had been closed for the event and had overtaken a fellow competitor only to be hit by an oncoming car. At first instance the race organiser (Andersen) was held to be guilty of committing a criminal nuisance arising from a statutory duty on “persons in charge of dangerous things” to take reasonable

⁶⁹ This confusion appears to be supported by eyewitness accounts from those who attended and marshalled Stages 5 and 6 of the Tour. See for example the discussion at:

<http://tritalk.co.uk/forums/viewtopic.php?p=322414&sid=63fcca9cec8ce8fc134e5ea433cca3b>

⁷⁰ Rogers (n64).

⁷¹ ‘National Escort Group: Motorcycle Marshals’ [www.britishcycling.org.uk/road/article/roadst-National-Escort-Group]

⁷² See for example: Road Traffic Act 1980, s 39; *Gorringe v. Calderdale MBC* [2004] HL 15; *Yetkin v. Newham LBC* [2010] EWCA Civ 776; Julian Fullbrook, ‘Case comment: Personal Injury – Liability – Duty of Care’ [2010] Journal of Personal Injury Law 4.

⁷³ *Andersen v. R* [2004] NZCA 238.

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precautions against endangering life.⁷⁴ This is not dissimilar to the duty placed on employers or occupiers under the *HASAW* and *OLA* in that a person can be held criminally responsible for failure to discharge the relevant duty. While the initial verdict in *Andersen* was ultimately overturned on appeal, the ratio for the latter decision was a narrow one which rested on the conclusion that the appellant had to have known that her omission would endanger life in order to have committed an offence.⁷⁵ As this knowledge could not be demonstrated, she was acquitted.

In *Uren v. Corporate Leisure UK Ltd*, a man was rendered tetraplegic as a result of diving into a pool of shallow water during a 'fun day' event.⁷⁶ On appeal, the court found for the claimant, in large part due to the fact that the risk assessments that had been carried out were defective as they had failed to identify the clear risk of serious injury.

In a similar case – *Blair-Ford v. CRS Adventures Ltd* – the court found for the defendant, but noted the importance of undertaking 'dynamic' risk assessments which build on 'static' pre-event assessment to account for modifications to activities or changes in conditions.⁷⁷

Although *Andersen* was a decision by a New Zealand court, it could have persuasive value in demonstrating that a statutory duty – such as that set down by the *HASAW* or *OLA* – could in principle be extended to place a liability on race organisers. This is reinforced by the fact that race organisers, by virtue of their position, bear a direct responsibility for participant safety.⁷⁸ Similarly, the decisions in *Uren* and *Blair-Ford* indicate that a failure to carry out a proper risk assessment (either static or dynamic) may bring forth liability. In this context, it is reasonable to speculate whether or not the risk assessments carried out for the 2006 Tour – and any adjustments made during the race – were sufficient given the nature of the incidents that occurred.

Interestingly, the potential extension of a statutory duty highlighted by *Andersen* raises a further issue in relation to the precise duties contained within the *OLA 1957* and *OLA 1984*. Specifically, almost all spectators at cycle races are non-paying due to the lack of formal ticketing arrangements. As such, were a claim to be brought under the *OLA* by a spectator – for example on a basis similar to *Andersen* that a statutory duty on the organiser existed to prevent harm to spectators – an important question would be whether or not the person bringing the claim ought to be treated as a 'trespasser' or a lawful guest at the race. This is because the precise answer determines which Act – and therefore which duty – applies.

Common law negligence and cycling's governing bodies

Both the *Watson* and *Wattleworth* cases highlighted earlier have established how sports governing bodies can be held liable in negligence.⁷⁹ While neither related specifically to the sport of cycling, one more recent case illustrates that cycling governing bodies may indeed be held liable for safety-related incidents at road races. In *Brown v. Brent and BCF*, British Cycling was the second defendant in a case brought by a casual cyclist injured by a rider in an amateur race taking place on public roads.⁸⁰ The claimant was injured after he ignored warnings by a marshal and cycled onto the course whereupon he collided with the participant. Ultimately the judge ruled the claimant to be partially to blame for the accident and British Cycling were cleared on the facts. However the judge did examine the safety measures that had been put in place – and which followed British

⁷⁴ *ibid*. This duty is established under s156 of the Crimes Act 1961:
www.legislation.govt.nz/act/public/1961/0043/latest/DLM327382.html

⁷⁵ *Andersen v. R.* [2004] NZCA 238 (New Zealand)

⁷⁶ *Uren v. Corporate Leisure (UK) Limited, Ministry of Defence* [2013] EWHC 353 (QB)

⁷⁷ *Blair-Ford v. CRS Adventures Ltd* [2012] EWHC 2360 (QB)

⁷⁸ Peter Charlish, 'The Astrid Andersen Case' [2004] ISLR 85.

⁷⁹ *Watson v. BBBC* (n41) and *Wattleworth v. Goodwood and FIA* (n42).

⁸⁰ *Brown v. Brent and BCF* [2011] Croydon County Court, Case no. 9SE0058

Cycling guidance – including warning signage and event marshalling.⁸¹ While a County Court judgement, *Brown* nonetheless indicates that cycling's national governing body is not beyond the reach of the common law in respect of its role in providing safety advice and guidance.

Importantly, this conclusion applies as much to the UCI as it does to British Cycling. As already noted, despite the UCI's attempts to limit its liability in relation to sanctioned events, the mandatory requirements placed on organisers by the UCI Guide combined with the extent of the guidance the UCI provides on safety risk management could potentially provide the grounds for a claim in negligence following the path laid down by *Watson and Wattleworth*.⁸²

CONCLUSION

This analysis has examined the Tour of Britain 2006 and highlighted a number of areas where, despite the identification of hazards in pre-event risk assessments, the management of safety in the 'live' race environment posed unforeseen problems. It is clear that important lessons have been learned from the event in terms of how best to police and marshal road cycle races in the UK and which are reflected in the creation of national escort groups for both police and civilian marshals.

In addition, the race illustrates that duties of care imposed both by statute and the common law are, in certain circumstances, capable of being applied to event organisers and governing bodies. Given the increasing popularity of road cycling in the UK and the growing number of events taking place on public roads, this is a legal area that will be worth watching closely.

⁸¹ *ibid.*

⁸² UCI (n5 and n57), *Watson v. BBBC* (n41) and *Wattleworth v. Goodwood and FIA* (n42).

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