

Neutral Citation Number: [2024] EWHC 3052 (KB)  
Claim H12YJ1987

**IN THE HIGH COURT OF JUSTICE**

**KINGS BENCH DIVISION**

**PRESTON DISTRICT REGISTRY**

Date: 7<sup>th</sup> October 2024  
Corrected 11<sup>th</sup> October 2024

**Before:**

**Her Honour Judge Beech**  
**Sitting as a Judge of the High Court**

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**Between:**

**THOMAS OLIVER CARUS**

**Claimant**

**- and -**

**STONYHURST**  
**(A LIMITED COMPANY BY GUARANTEE)**

**Defendant**

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Mr Walker of Counsel (instructed by Minster Law) for the Claimant  
Mr Woodhouse K.C of Counsel (instructed by Clyde & Co) for the Defendant

Hearing 24<sup>th</sup> September 2024

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**JUDGMENT**

**Her Honour Judge Beech:**

**Introduction**

1. This judgment concerns the Claimant's ("TC") claim for personal injury, loss and damage arising out of a freak and tragic accident whilst he was playing in a 1<sup>st</sup> XV rugby match as a lower Sixth pupil at the Defendant's school ("D"). The match was an away fixture at Mount Saint Mary's College, Sheffield ("MSM"). He was playing at inside centre and during the second half, he was tackled to the ground by two opposing players and suffered a dislocation of the right clavicle and a rupture of the innominate artery resulting in significant blood loss and an anoxic brain injury to the right middle cerebral artery territory. But for the timely intervention of an emergency doctor who happened to be spectating, TC may well have lost his life. The doctor performed a pitch-side thoracotomy using a kitchen knife and TC was then airlifted to hospital. Mr Walker's skeleton argument informs that TC's rehabilitation has been protracted and that he has faced it with great determination and fortitude. TC's witness statement and the Provisional Schedule of Special Damage informs that whilst TC's long standing plan had been to go to medical school and train as a surgeon, the accident required him to re-take the school year and change his A levels from Physics, Chemistry and Maths to Business, Economics and Geography. Whilst he completed a degree at Bath University (the subject is not mentioned) he now has employment in a graduate level farming related occupation. It is asserted that he will suffer a continuing loss of earnings having been forced to change his career aspirations. Moreover, he suffers from ongoing difficulties which are set out on page 15 of the application bundle ("AB"). The claim is not capable of reasonably accurate valuation as this matter has been listed for liability to be

determined as a preliminary issue in the first instance, but it is averred by Mr Walker that it has a value in excess of £1m. TC has received £800k by way of insurance payments.

### TC's case

2. TC's accident occurred shortly after the beginning of the new school year, when he had progressed to the lower sixth. He was aged 16.58 in September 2016 and so fell within the U17 age grade. The 1st XV was selected from boys in the lower and the upper sixth, who would largely or wholly be within the U18 age grade although there was the possibility of one or more members of the team being over 18 by reason of retaking their final year. It is understood that there was one such player in TC's first XV although his presence in the team did not cause or contribute to TC's accident.

3. This rugby injury claim is unusual in that it is not alleged that TC's injuries were suffered as a result of a reckless tackle or a dangerous passage of play or that the teams were mismatched or that the standard of the game was such that it should have been stopped because it posed a serious risk of harm to the players prior to TC suffering his injuries or that the referee was negligent in any way.

As Mr Walker puts it in paragraph 3 of his skeleton:

*“it is the Claimant's case that he should not have been playing at all at the time he met his injury and that, in selecting the Claimant to play and/or failing to withdraw him from the game following his complaint of injury, the Defendant was negligent. His continued presence on the pitch exposed him to a risk of injury and injury he suffered, even if at a degree of severity that has clearly shocked all those involved”.*

The reference to “*injury*” in the first sentence of the above quotation refers to an injury to his left hand suffered by TC during the first half of the game.

4. The allegations set out in paragraph 9 the Particulars of Claim (“PoC”) made against D and Mr Charles, the Head of Rugby and the 1<sup>st</sup> XV coach can be summarised in this way:

- a) (i) - TC should not have been playing in the game;
- b) (ii), (iii) & (v)(b) - failed to undertake a safe and suitable risk assessment of TC taking account of his physical condition, maturity, technical ability, injury history, confidence and desire or otherwise to play against bigger, older opponents and failed to devise and enforce a safe system of risk assessment with reference to the RFU and other appropriate guidance. Had such an assessment been carried out, TC would not have been playing in the 1<sup>st</sup> XV;
- c) (iv) - failed to devise or enforce a safe system of assessment of injuries and their impact upon a player’s ability to continue to play competitive full contact rugby (reference to “*concussive (and other) injuries*” has been struck out of the paragraph as this claim is not about concussion);
- d) (v)(a) - failed to heed and act upon the specific safety issues and concerns raised by TC’s father with Mr Charles during the previous school year.

- e) (c) - Ignored or failed to appreciate that during the game TC was hesitant and reluctant to come into full contact with the opposition and he will state that he felt out of his depth and was nervous. He should have been substituted;
  - f) (d), (e) & (f) - During the first half, TC approached Mr Charles on the touch line and asked to be taken off because he had injured his hand. Mr Charles failed to assess TC's safety to continue playing and refused his request, telling him to continue playing (it is also asserted that TC asked to be taken off as he felt out of his depth). Mr Charles should have asked whether TC was comfortable or confident in continuing to play;
  - g) (g) - Mr Charles failed to warn or inform TC's parents that he was intending to select TC to play in the 1<sup>st</sup> XV. Had they been informed, they would have refused permission for TC to play, if he could potentially have been playing against players two years older than him;
  - h) (h) & (i) - Mr Charles failed to exercise proper care and skill in his employment as Head of Rugby and as a reasonably prudent and experienced teacher in charge of the selection of and running of the school rugby teams.
5. In his submissions to this Court, Mr Walker put "*flesh on the bones*" in respect of the allegations about inadequate or no risk assessments and the failure to obtain the consent of Mr and Mrs Carus to TC being permitted to play in the 1<sup>st</sup>

XV team. He submitted that the combined effect of RFU Regulation 15 and section 5.1 of the RFU Age Grade Rugby Guidance is as follows:

- a) The RFU recommended the preparation of a risk assessment and provided advice and guidance as to the circumstances in which children can play outside their Year age group;
- b) The “playing up” guidance for U17s males (amongst whose ranks TC was then numbered) is that they are permitted to play with U18s (but not with over 18s) so long as an appropriate assessment has been carried out (and documented) and approval has been gained from an individual with parental responsibility or the school headteacher (as applicable).

(It is unclear where either the rules or the guidance required a risk assessment to be “documented”).

6. TC’s claim is supported by witness statements sworn by TC (AB126), his parents - Mr and Mrs Carus (AB137 &146) and his brother Ben (AB154). He further relies upon an expert witness report prepared by Dr. Stephen Lloyd dated 22<sup>nd</sup> January 2022 (AB43) which was drafted without the benefit of full disclosure or any of the witness statements which are sworn on various dates in May and June 2024. He did have the benefit of the video of the second half of the game. Insofar as it is suggested by TC that he was either a reluctant rugby player or that there was any degree of coercion to cause him to continue with rugby as a sport, Mr Walker advised during his submissions that these are matters which are not being pursued.

7. It is agreed that at some stage, Mr Carus spoke with Mr Charles on the telephone about his concerns that TC was taking too many “*hits*” and performing too many tackles which increased the risk of injury whilst playing as fullback. TC had shown him statistics of one game which showed that he had performed 17 of the 23 tackles in the game. Mr Carus will say that he expressed his concerns to Mr Charles and asked that TC was not “*in the firing line*”. Mr Charles reassured him that he would take his concerns on board and keep an eye on things. Mr Carus thinks that this was about March 2016 (AB140). That would be when TC was playing in the U16’s. Mr Charles thinks that the conversation took place when TC was playing in the U14’s or U15’s (AB164). His recollection was that a conversation took place about moving TC from fullback up to centre or scrumhalf where his skills would be better used and which would take him away from high speed one on one defensive contact at fullback.

**D's case**

8. TC’s case is denied in full (Defence AB26). The school relies upon the witness statements of Mr Charles (AB 161), Mr Browne, D’s headmaster (AB175) and Mr Hopkins the Deputy Head at the time (AB199). D also has the benefit of an expert’s report prepared by Jay Piggott dated 14<sup>th</sup> December 2023 (AB 81) without the benefit of the witness statements.
9. With regard to C’s proficiency as a rugby player, his suitability for playing in the 1<sup>st</sup> XV, D relies on the following:
- a) TC had been the Captain of the rugby team in each of the academic years and was a skilled and enthusiastic player;

- b) prior to this fixture taking place, TC applied to be selected for the Senior Rugby Tour to South Africa in the summer of 2016. TC was duly selected and played in the Development Team. The selection process was based on “*playing ability, attitude, consistent application and commitment to college sport*” (see the notice drafted by Mr Charles provided during the course of the application hearing). A full, generic risk assessment was made which was provided to the experts.
- c) On the 7<sup>th</sup> September 2016, the 1st XV played a match against Audenshaw and TC was included in the team.

### **Joint Experts Report**

- 10. The report is dated 28<sup>th</sup> March 2024 (AB116). The experts had both had the benefit of viewing the video of the second half of the MSM game which recorded TC’s accident. There is, apparently, a second video of the entire game played against Audenshaw the week before (7<sup>th</sup> September 2016) in which TC was a participant but it would appear that neither of the experts and certainly not the court have had benefit of viewing that.
- 11. What is of note, is that the experts agree in every material respect when answering the questions put to them. In summary, they agree that:
  - a) Mr Charles was appropriately experienced/qualified to coach the 1<sup>st</sup> XV team;



- b) There was no evidence to suggest that TC was an unwilling participant in playing rugby for his school (as is suggested in his witness statement but now abandoned);
- c) There is no evidence to suggest that playing rugby at Stonyhurst was compulsory or that not playing rugby was not a viable option;
- d) It was appropriate for Y12/lower 6th students (which TC was) to play in the 1<sup>st</sup> XV/U18 team;
- e) Preparing a generic risk assessment for playing rugby in a school situation is a recommended requirement;
- f) There is no requirement to prepare a formal single individual risk assessment for students and this was not normally done;
- g) Neither is there any requirement for the preparation of single risk assessments for each game in schools;
- h) D's risk assessments were appropriate and any criticisms of the risk assessments had no causative effect in relation to TC's injury;
- i) TC's playing experience prepared him appropriately for playing in the 1<sup>st</sup> XV;
- j) Participation in the pre-season tour to South Africa was an appropriate means of assessing the suitability of students to play in the 1<sup>st</sup> XV;

- k) Participation in a pre-season match such as the Audenshaw match was an appropriate means of assessing the students' abilities to play in the 1<sup>st</sup> XV;
- l) TC was of a suitable size and stature in relation to the other students in the 1<sup>st</sup> XV team and he was suitably skilled;
- m) Upon viewing the video of the second half of the match, the pitch was appropriate, the refereeing was appropriate, the teams were suitably matched in physical size and ability and the match was played in an appropriate manner;
- n) TC did not look out of his depth and he played a full and active part in the match;
- o) There was no visible sign that TC wanted to leave the field of play although there may have been a discussion between TC and Mr Charles for which there is no evidence;
- p) There is no evidence to suggest that it was unsafe for TC to continue playing in the match, prior to him suffering significant injury although the lack of a video of the first half of the match is problematical in accurately assessing any injuries TC sustained;
- q) There is evidence of him holding his hand which may indicate that he had suffered an injury to his hand but the video presents TC as a willing and active participant throughout the second half of the match;

- r) It is impossible to determine the extent of an alleged injury in relation to game performance. Players do continue to play if injuries are not significant and can be managed through the game. The decision to leave the field of play can be made by the player, the teacher in charge, the referee or any combination of participants;
- s) There was no evidence that TC was so seriously injured that he should have been considered unable to continue playing and be substituted immediately;
- t) There is no evidence that the referee was concerned about TC's hand injury or his ability to continue to participate in the match;
- u) There is no evidence to suggest that TC's hand injury caused or contributed to the injury that he subsequently sustained in the second half of the match;
- v) It is common for players at school 1<sup>st</sup> XV/U18 level to suffer injuries or be hurt during a match and it is common that they continue to play in spite of being hurt (save with regard to head injuries);
- w) It is a judgement call by the player and the coach as to whether a player should continue to play once injured. An experienced coach will err on the side of caution and judge whether in his/her opinion the player can continue without further injury (save with

regard to head injuries which are far more serious and the utmost care must be taken);

- x) With regard to a player who was nervous or who felt out of their depth, it is a judgement call for the coach/teacher as to whether they encourage the player to see whether they could continue playing rather than being substituted immediately. The judgement will be based on knowledge of the player and how they react in a difficult situation. In some cases, players will be substituted as soon as possible, in others they may be encouraged to continue to improve their confidence and competence;

- y) There is no evidence of coercion on the video (now abandoned).

12. There are two communications from Mr and Mrs Carus to members of D's staff which are important. The first is dated 19<sup>th</sup> September 2015 (AB170) and reads:

*“Tom has contacted us this morning devastated that he has not been put forward for the Lancashire Trials tomorrow. This is a huge disappointment to him as he was unable to attend last year due to injury and despite being told that someone would come and watch him play later in the year this never materialised.*

*Tom has trained hard all summer and after a few weeks into term you have made the decision not to put him forward. I am sure you have your reasons and we would be very interested to hear them.*

*This is not the only blow Tom has had to rise above. Despite being Captain all last year he was not awarded the rugby award, an award which would normally be given to the captain.*

*As a parent, it is extremely difficult to see your son have to cope with such disappointments. I feel we have a very realistic view of our sons ability and input, not just from watching him play ourselves but from feedback from other parents. I think Stonyhurst is in danger of demoralising a passionate and committed player and we are very concerned this is going to have a knock on effect on the rest of his work in a very important year.*

*Tom would be mortified if he knew we had emailed you, so we would appreciate it if you did not discuss this email with him.”*

13. On 18<sup>th</sup> September 2016, eight days after the game, Mr and Mrs Carus wrote a letter to Mr Charles and invited him to read it to TC’s fellow players in the 1<sup>st</sup> XV:

*“Tom was thrilled to have been chosen to play for the first team. He was loving training and the trip of South Africa had inspired him. Not only did he have an amazing experience, he had the pleasure of getting to know his team mates, whose company he enjoyed so much. He also talked fondly of the lads in Rhetoric who he said were such good fun and friendly to him and his mates.*

*What happened in the first game of the season was a freak and shocking accident. If it wasn’t for the quick and skilled care Tom received from parents watching and Mr Charles, it is without doubt Tom would have lost his life on the pitch.*

*Tom as you are aware has been extremely poorly but like you boys he is fit, strong and brave and is now on the long, slow road to recovery.*

*If Tom could speak to you all now he would say with a cheeky smile “come on lads, lets do it”.*

*So keep your heads up and have a wonderful season, you are strong, tight and talented team with wonderful coaches ....”*

**Application for summary judgment made by D**

14. This application for summary judgment pursuant to CPR 24.3 is at a stage in the proceedings where disclosure is now complete, witness statements have been exchanged and the Joint Experts Report provided. It follows that there will be no more evidence to put before the trial judge and that is agreed between the parties.
15. The jurisdiction under CPR 24.3 may be exercised in respect of the whole of a claim or an issue in it if:
  - a) It considers that the party has no real prospect of success on the claim; and
  - b) There is no other compelling reason why the case or issue should be disposed of at trial.

There is no dispute between the parties as to the legal principles to be applied. In Swain v Hillman [1999] EWCA Civ 3053 Lord Woolf MR determined (AUB6):

*It is important that a judge in appropriate cases should make use of the powers contained in Part 24. In doing so he or she gives effect to the overriding objectives contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position.*

16. The approach to be taken by the Court is summarised by Lewinson J in Easyair Ltd (t/a Openair v Opal Telecom Ltd [2009] EWHC 339 at §15 [AUB15]:

*...The correct approach on applications by defendants is, in my judgment, as follows:*

- i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: Swain v Hillman [2001] 2 All ER 91;*
- ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED&F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]*
- iii) In reaching its conclusion the court must not conduct a “mini-trial”: Swain v Hillman*
- iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous*

*documents: ED&F Man Liquid Products v Patel [2003] EWCA Civ 472 at [10]*

- v) *However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospitals NHS Trust v Hammond (No 5) [2001] EWCA Civ 550*
- vi) *Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63;*
- vii) *On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as*



*opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725*

17. Mr Woodhouse KC has helpfully provided further assistance with regard to the above principles. As for i) above, this is derived from paragraph 7 of Swain:

*“...the words ‘no real prospect of being successful or succeeding’ do not need any amplification, they speak for themselves. The word “real” distinguishes fanciful prospects of success or...they direct the court to the need to see whether there is a “realistic” as opposed to a “fanciful” prospect of success ..”*

18. Principles iii) and iv) are derived from paragraph 20 of Swain and §10 of ED&F Man [AUB27]:

*“It is certainly the case that under both rules (CPR 13.3(1) & 24.3), where there are significant differences between the parties so far as factual issues are concerned, the court is in no position to conduct a mini-trial: see Lord Woolf MR in Swain v Hillman [2001] All ER 91 at 95 in relation to CPR 24. However, that does not mean that the court has to accept without analysis everything said by a party in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporary documents. If so, issues which are dependent upon those factual assertions may be susceptible of disposal at an early stage so as to save the cost and delay of trying an issue the outcome of which is inevitable: see the note at 24.2.3 in Civil Procedure (Autumn 2002) Vol 1 p.467 and Three Rivers DC v Bank of England (No.3) [2001] UKHL/16. [2001] 2 All ER 513 per Lord Hope of Craighead at paragraph [95] (and now Okpapi v Royal Dutch Shell Plc [2021]UKSC 3 per Lord Hambleton JSC at paragraph 21 and the note to CPR 24.3.2.2)*

19. Easyair principle iv) is further explained in King v Stiefel [2021] EWHC 1045 per Cockerill J at §21 [AB110]

*“The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that - even bearing well in mind all those points – it would be contrary to principle for a case to proceed to trial”.*

### **Determination**

20. Risk Assessments

By virtue of Regulation 15.3.6 of the RFU Regulations, U17s can train and play up one age grade (including in the front row of the scrum) or up two age grades if recommended by the School, provided that:

- a) an appropriate assessment is carried out. Best practice in carrying out those assessments is to be found in the Age Grade Rugby Guidance; and
- b) in respect of club rugby, approval is obtained from an individual who has parental responsibility for the player and
- c) in respect of Schools’ rugby, approval is obtained from the School’s Head Teacher;
- d) the individual who has parental responsibility for the player or the School’s Head Teacher (as applicable) is informed that it is

possible that this dispensation may result in the player playing with and/or against one or more U19 players who are playing down in accordance with Regulation 15.4.3.

21. It is clear from the above, that the Regulation does not require parental consent in the case of school rugby. Section 5.1 of the Age Grade Rugby Guidance, is concerned with Regulation 15.3 and sets out the detail of the required assessment of the player. The paragraph goes on to advise that a parent or guardian should be asked to consent to an assessment of a child to play up or down an age grade with risks explained. It is unclear whether this advice is intended to broaden the requirements of Regulation 15.3 as to whose consent should be obtained in the context of school rugby. For the purposes of this judgment, it is assumed that it does and that parental request is required.
22. D has failed to disclose a risk assessment (generic or personal to TC) for the 1st XV team for the school year 2016/2017. D has however produced the generic risk assessment for the South African Tour that took place at the end of the summer term of 2016 and a more recent risk assessment for the year 2021/22. The experts are in agreement that those assessments were appropriate. Moreover, the experts are satisfied that TC's playing experience had prepared him for playing in the 1<sup>st</sup> XV, that he was of suitable size and stature in relation to the other students in the team, that he was suitably skilled and that it was appropriate for TC to be playing in 1<sup>st</sup> XV team. Moreover, TC had been the team Captain in every academic year which is indicative of his abilities as a rugby player. The experts agree that any criticisms of the risk assessments or lack of them had no causative effect in relation to TC's injury.

23. In the absence of a documented contemporary generic or individual assessment of TC at the beginning of the school year, it may be that a finding would be made at trial that D's risk assessment process was deficient. However, the experts are satisfied that any deficiencies that there may have been in the assessment process were made up by the opportunity that Mr Charles had to assess TC as an individual and as a player during the South African Tour and during the first match of the season against Audenshaw and that was sufficient. Even if TC were able to satisfy the Court that those assessments were insufficient, the "*bottom line*" is that the experts agree that TC was sufficiently experienced as a rugby player, was of suitable size and stature and was suitably skilled and that it was appropriate for him to be in the 1st XV. In other words, the criticisms levelled against D with regard to the risk assessment process are of no causative effect: TC would have been chosen for the 1st XV team in any event and it is unarguable that any other conclusion would have been reached. Applying the ratio of Lord Woolf MR in *Swain v Hillman (supra)*, particulars of negligence (ii) - (iii) and (v)(b) are bound to fail as there is no reasonable prospect of success in establishing causative breaches of those particulars of negligence and there is no other compelling reason why they should be tested at trial. In the circumstances, summary judgment should be entered in respect of them in favour of D. In coming to this conclusion, the Court has hesitated and considered carefully whether a fuller investigation of the fact supporting these allegations would be appropriate and I have concluded that it would not be. The allegations are simply unarguable.

24. Parental Consent

TC's case with regard to parental consent is set out in paragraph 4(g) above. It is unarguable that Mr and Mrs Carus were not aware that TC was playing in the first XV team:

TC pg 132: *"when I told my parents, they said that they thought I would be a substitute.."*

Mr Carus pg 142: *"When Tom told me he had been selected for the first team I was surprised. This team was usually full of pupils from the upper sixth. I assumed that Tom would be on the substitute bench, that he was there to watch and get a feel for it, rather than to actually play."*

Mrs Carus pg 150: *"On or around the 9<sup>th</sup> September 2016, Tom told us that he had been selected to play for the first XV team in a game against St Mary's Mount school .. I was surprised by Tom's selection given that he had only just started in the lower sixth form .. Bearing in mind Dickon's re-assuring conversation he had with Mr Charles the months prior (sic), I thought Tom would be protected. I assumed Tom would be a substitute and it was unlikely that he would get onto the pitch"*.

Ben Carus pg 157 *"On or around 9<sup>th</sup> September 2016, Tom told me that he had been selected to play for the first XV team .."*

None of the witness statements filed on behalf of TC mention the match against Audenshaw the week before TC's accident and therefore do not mention that he had already played a full part in that game as a 1<sup>st</sup> XV player. By reason of the fact that TC had already played with the 1<sup>st</sup> XV, the assertion that it was anticipated that on 10<sup>th</sup> September 2016, TC would have been a substitute is not

understood. He was already a fully participating member of the team. But in any event, one cannot assume that even if a player is on the substitutes bench, that they are not going to play. TC's case in this regard does not withstand close scrutiny. The point of being a substitute is that you may very well be called upon to play.

25. It is TC's case that Mr and Mrs Carus would not have consented to TC playing up a grade or even two if there were U19 players in the team (there was in fact one player who was resitting his A levels). Mr Carus states, he thought that the 1<sup>st</sup> XV was usually "*full of pupils from the upper sixth*". This understanding is materially undermined by the South African Tour documentation. Both the notice provided to TC and the letter to the parents make clear that the 1<sup>st</sup> XV squad was to be selected from players in the current Rhetoric (upper sixth) and Poetry (lower sixth). TC would have been progressing to Poetry in the Autumn term after the tour although during the tour, he was playing in the development team. The letter to the parents also makes clear that pupils from Poetry and Syntax (of which TC was a member) would have priority for the development team. It follows that even during the tour, TC would have been playing up a grade with Poetry players. Mr and Mr Carus consented to this by signing a consent form on 10<sup>th</sup> January 2016. The email of 18<sup>th</sup> September 2016 (AB174) further undermines TC's case in this regard.

26. The conversation between Mr Carus and Mr Charles is relied upon in support of TC's case that his parents thought that TC would be kept safe by Mr Charles. What is known is that TC was not playing fullback on the day of his accident but TC's case as to what other steps should have been taken to keep him safe is

not particularised. It is not TC's case that his parents wanted him to withdraw from rugby all together and he certainly did not want to withdraw. He was obviously a passionate and committed player and he was thrilled to be a member of the 1<sup>st</sup> XV team. Moreover, between that conversation and TC's injury, he had participated in the South Africa tour (for which he volunteered) and had played in the Audenshaw game. The position had moved on from the time the conversation took place to when TC was tragically injured during an unexceptional and non-negligent tackle.

27. The Court must of course avoid a "*mini trial*" on any particular issue and in the ordinary course of events, TC would be entitled to have his witness evidence tested at trial. However, the Court is entitled to look behind the statements filed on behalf of TC. In this case, the contemporaneous documentation fundamentally undermines TC's case on parental consent and the assertion that he should not have been playing in the 1<sup>st</sup> XV team at all. I am satisfied that it would be contrary to principle for these allegations to proceed to trial as they have no reasonable prospects of success. For the reasons set out with regard to the issue of risk assessments and by reason of the contents of paragraph 24 to 26 above, summary judgment will be entered on allegations (i) and (v)(a) and (g).

The failure to remove TC from the field of play

28. It is TC's case that during the game, he was hesitant and reluctant to come into full contact with the opposition and that he "*felt out of his depth and nervous*". Either Mr Charles saw this and ignored it or did not see it when he should have done. When TC had sustained his hand injury, he asked Mr Charles to be taken

off the pitch as he felt out of his depth and because of his injury. Mr Charles should have asked TC whether he was comfortable/confident to continue playing. Mr Charles refused to take TC off the pitch. He failed to assess TC's safety to continue playing (Particulars (c) to (f)). TC accepts that Mr Charles applied strapping to his hand.

29. The standard of care owed by D and Mr Charles is that of a “*reasonably careful parent*” and the duty is to take all reasonable steps. The extent of the duty was set out in *Chittock v Woodbridge School [2003] EWCA Civ 915* paragraph 18.vi) (AUB261):

*“Where there are a number of options available for the teacher as to the manner in which he might discharge that duty, he is not negligent if he chooses one which, exercising the Bolam test (1957 1 WLR 582), would be within a reasonable range of options for a reasonable teacher exercising that duty of care in the circumstances”.*

30. The experts agree that TC did not “*look out of his depth*” on the video (paragraph 19 AB121) and that he played a full and active part in the match (paragraph 20). Moreover, there was no visible sign that TC wanted to leave the field of play; there is no evidence of a discussion between TC and Mr Charles during the second half of the game (paragraph 21); there is no evidence to suggest that it was unsafe for TC to continue to play, prior to his significant injury (paragraph 22). It is a judgment call for the coach/teacher as to whether to encourage a player to continue to play based on knowledge of the player and how they react in a difficult situation, even if the player has asked to come off because of a lack of confidence. In some circumstances, players will be



substituted as soon as possible, in other situations the player may be encouraged to continue to improve their confidence and competence (paragraph 33).

31. Whilst it is TC's evidence that he was out of his depth and hesitant, that is undermined by the video which speaks for itself along with the useful commentary of TC's contribution to the second half of the game prepared by Mr Piggott (AB91). It is unarguable that Mr Charles should have seen the signs and acted upon them. Moreover, the experts' answer in paragraph 33 makes it clear that even if there were signs, it is a judgement call as whether to substitute or not. Is it arguable that Mr Charles was Bolam negligent in this regard? The experts are not critical of Mr Charles in this regard and are not critical of TC's continuing presence on the pitch. It follows that paragraph (c) of the particulars of negligence is unsustainable.
  
32. As for paragraphs (d) – (f), the experts agree that TC is holding his hand during the second half which may indicate an injury but it is not possible to determine the extent of the alleged injury. However, the experts agree that the video evidence presents TC as a willing and active participant throughout the second half (paragraph 23 AB122). It is impossible to determine the extent of the injury in relation to TC's game and performance. Injuries are a common occurrence in rugby (paragraph 28) and players do continue to play if injuries are not significant and can be managed through the game. The decision to leave the field of play can be made by the player, teacher, the referee or a combination of participants. (paragraph 24 (B122)). There is no evidence that TC was so seriously injured that he should have been substituted immediately (paragraph 25). There was no evidence that the referee was concerned about TC's hand

injury or his ability to continue with the match (paragraph 26) and there is no evidence to suggest that TC's hand injury caused or contributed to the injury he subsequently suffered (paragraph 27). The experts agree that it is a judgement call by both player and coach as to whether an injured player should continue to play (paragraph 31). It follows that a decision made by a coach to allow a pupil to continue playing when injured is a decision which is within a range of reasonable options available to the coach and the experts are not critical of Mr Charles in allowing TC to continue. It follows that it must be within the generous ambit of decisions available to him.

33. There is then the issue of causation. TC must establish that the injury he suffered in the 29<sup>th</sup> minute of the game was a reasonably foreseeable consequence of the failure of Mr Charles to remove TC from the pitch whether because of a hand injury or because TC was out of his depth/nervous. The experts agree that the hand injury did not cause or contribute to the injury in the 29<sup>th</sup> minute and there is no evidence of hesitancy/nervousness in the moments leading up to the injury. But in any event, it is D's case that the injury that TC suffered was not a reasonably foreseeable consequence of any negligence established against Mr Charles as it did not fall within the scope of the duty TC claims Mr Charles was in breach of.
34. D relies on the case of Eaton v The Auto-Cycle Union Ltd and others [2022] EWHC 2642 per Turner J at paragraphs 39-44 (AUB318). In short, the scope of any duty that TC may establish against Mr Charles was to protect TC from further injury to his hand or from some other injury that was materially contributed to by the injury to his hand or alternatively to protect him from the

consequences of a lack of confidence in the game. D avers that protection from an injury arising from a legitimate tackle was not within the scope of that duty. If C had been substituted, he would not have been on the pitch and would not have suffered injury. However, the injury was not caused or exacerbated by the factors that TC maintains justified substituting him. As a matter of law, his injury is too remote or not a reasonably foreseeable consequence of or not within the scope of any breach of duty TC might establish, there being no duty owed to TC in relation to a risk unrelated to either a hand injury or lack of confidence.

35. Mr Walker sought to distinguish *Eaton (supra)* upon the basis that the case concerned an adult engaging in a risky activity rather than a supervised child and that the risk was completely different (a failure to band a tyre wall to prevent the tyres falling from the track which should have resulted in the track being closed) rather than a failure to withdraw TC from the game which is central to his case.
36. I am persuaded by D's submissions on this point. There is no prospect of establishing that it was Bolam negligent for Mr Charles to keep TC on the pitch and in any event, Mr Charles did not owe TC a duty in relation to a risk that was unrelated to either a hand injury or TC's lack of confidence (see *Meadows v Khan 2022]AC 852 at paragraph 43 of Eaton supra*). It follows that allegations (c) to (f) fall.
37. That leaves (iv) – a failure to devise a safe system to deal with and take account of injuries sustained by pupils in the context of rugby which does not add anything to those matters already pleaded nor do the generic allegations contained in (h) and (i).

## **Conclusion**

38. For the reasons given above, this Court is satisfied that there are no reasonable prospects of TC succeeding in his claim and there are no other compelling reasons for this matter going to trial. Summary judgment is accordingly entered in favour of the Defendant. The trial listed for 4<sup>th</sup> November 2024 with a time estimate of four days is vacated. There will be an order for costs in this application. The parties are to liaise to agree the terms of the order, D to have carriage. This judgment will be sent out to the respective parties by email. The draft order is to be sent to my clerk, using the same email address.

Her Honour Judge Beech