



Using Buggies on the Golf Course

The use of buggies on golf courses is becoming increasingly common. For many Clubs, it is simply to comply with their obligations in respect of persons with a disability under the terms of the Equality Act 2010.

SAFETY AND INSURANCE

A golf buggy is not a vehicle which is “designed or adapted to be used on the road” and is therefore not a “motor vehicle” as defined by the Road Traffic Act 1988 s.185 as a ‘mechanically propelled vehicle intended or adapted for use on roads’.

Under the terms of the Road Traffic Act compulsory 3rd party insurance is not necessary.

However, we live in an age in which for better or for worse there seems to be fewer and fewer ‘accidents’ and more and more ‘victims of accidents’. It is important to consider the consequences of an accident and where responsibility from a legal point of view rests.

The type of accidents that are probably most common are either perhaps when a buggy turns over or when there is an accident when crossing a public highway which separates two parts of a course. There are any number of other possibilities, but these two instances would seem to be the most likely cause of any potential claim.

If a buggy were to turn over and injure either the driver or the passenger, who would be to blame?

The obvious answer is that the driver is to blame, but is this really so?

The Club could be liable and matters for them to consider, in no particular order of importance, are:-

- Did the Club ensure that the driver was competent to drive?

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- Did the Club ensure that the driver had insurance?
- Had the Club made a risk assessment on that particular day of which parts of the course are safe to use?
- If the course is a hilly course, has consideration been given to laying paths?
- Has the Club sufficient signage to indicate dangerous areas?
- Did the driver of the buggy sign the appropriate transport policy?

From the driver's point of view have they behaved properly? What constitutes reasonably? One would assume it would be driving with reasonable care and attention as if it were a road vehicle.

There have been two incidents recently of which I am aware where buggies going across a public highway have been in collision with oncoming vehicles. Who is responsible for the damage? Who will pay for that damage? Does insurance cover it?

I bear in mind the Scottish case recently where the damages for the injury were divided equally between the Club and the member who inadvertently caused an injury. The damages in that case were about £475,000.

If a course is going to allow buggies on it, a Club should have a risk assessment in place, which is updated on a regular basis.

If ground conditions vary, there may have to be daily inspections.

There are many Clubs which still only allow buggies on the course if they are needed to comply with the Club's obligations under the Equality Act.

If a buggy is owned by a member, does that member have appropriate insurance? If the buggy is owned by the Club, who has the benefit of indemnity from the insurance?

The N.G.C.A.A. and England Golf have prepared a joint statement which will be available on the N.G.C.A.A. website and through England Golf. With that policy statement there is a Safety Policy and associated documents. Whilst these documents may be used by a Golf Club, each Club should consider its own position and form a policy appropriate to it. Clubs should however have a Safety Policy.

COMPETITIONS

The basic rule is set out in paragraph 8 of appendix 1, part C of the Rules of Golf 2012/15. This states that:

'If it is desired to require players to walk in a competition, the following condition is recommended:-

'Players must not ride in any form of transportation during a stipulated round unless authorised by the Committee'.

This would under ordinary circumstances mean the Committee in charge of the competition. The England Golf policy seems appropriate for most Clubs, although each and every Club should direct its mind to the position and make appropriate Rules.

Attention is drawn to the fact that if it is the norm that players are expected to walk the course during competitions, that should form part of the Rules of the Club.

WEAR AND TEAR

England Golf (then the EGU) commissioned a study by the STRI (Sports Turf Research Institute) and that Report can be obtained www.Englandgolf.org/STRIweartrial. The Report is catchingly entitled 'Comparison of Surface Damage to Fairway Turf from use of a Golf Cart, Walking with a Trolley (electric) and Carrying Clubs under acceptable and poor (wet) ground conditions'. It comes to the conclusion that the use of a golf buggy can do more damage than either walking or taking a trolley. Researchers in America have calculated the contact area for a golfer walking and carrying their clubs around a 6,200 yard course, would be 1,283 sq ft. The same calculation for a golfer using a buggy was 61,845 sq ft, most of which would be in a significantly confined area because there are parts of the course where a buggy would not be permitted.

The problems are highlighted by the longer term implications of damage caused. Under wet conditions they demonstrated the buggy causes significantly greater compaction which is not a short term problem. Once created, it will probably last for years.

They recommend:-

- That efforts should be made to direct buggy traffic away from wet areas with signs.
- Marking areas to be avoided.
- Taking holes out of play.
- Consider hard pathways.
- Moveable rope link fencing can help to protect areas and direct traffic to spread wear.

There is no contradiction between safety and care for the course and the Equality Act with which I will deal next. If the use of a buggy is not safe or will damage the course, then that is entirely a matter for the person who has the delegated authority to deal with it.

THE EQUALITY ACT 2010

This is not intended to be a detailed analysis of the Equality Act. It is solely to deal with persons under a disability and the reasonable provision a Club must make to accommodate them.

For these purposes, we are talking about two of the protected characteristics set out in chapter 1 of the Equality Act. These are age and disability.

Age

'Age' itself in these circumstances is not a deciding factor. In conjunction with the remainder of this policy, age would only be a relevant factor if it caused sufficient difficulty to the individual to prevent them from playing. This could and should be covered by the medical certificate required, or by the general discretion of the appropriate Committee.

Disability

A person has a disability if they have a physical or mental impairment and that impairment has a substantial and long term adverse effect on their ability to carry out normal day to day activities.

This should not be a question of judgement for the individual Club. It is a matter of medical judgement. However, a degree of flexibility is essential for any policy to succeed. Some disabilities are so obvious that in a number of cases the insistence on a certificate may be unnecessary.

Indirect Discrimination

The Act also provides for ***associative discrimination***. For the purpose of dealing with the use of buggies, it would protect a person from being treated less favourably because they are linked or associated with a disabled person. Thus, if the father or a disabled male junior golfer was unable to participate in a Club's father and son competition because the junior was prevented from using a buggy, that would be unlawful discrimination. It is not possible to cover every eventuality. Common sense must prevail.

Does a Club have a duty to provide buggies for visitors?

The Club has no absolute duty to provide a buggy. It is a question of what is a reasonable adjustment. Each case must be decided on its facts. Where the Club insists that a disabled golfer uses the Club buggy and not their own, the Club should not charge for its use.

Reasonable adjustments need to be considered.

The first requirement is a requirement where a disabled person is at a substantial disadvantage to a relevant matter in comparison to persons who are not disabled, to take such steps as it is reasonable to have to take to avoid a disadvantage.

The second requirement is a requirement where the physical feature puts the disabled person at a substantial disadvantage in relation to relevant matters in comparison to persons who are not disabled to take such steps as it is reasonable to have to take to avoid the disadvantage.

The third requirement is where a disabled person would, but for the provisions of an auxiliary aid be at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled to take such steps as it is reasonable to have to take to provide. It will have to be a matter of judgement for each member Club. Financial considerations should not form part of that judgement.

In conclusion, we live in a litigious age. Golf Clubs should consider their position carefully. This article is not intended to be exhaustive, but is intended to be a guide to the major and most obvious problems.