

Treating elite sportsmen and women

MPS has produced the following guidance for specialists/consultants who receive referrals to treat injured footballers or other high earning sports men or women.

MPS advises that specialists/consultants treating sports men and women for injuries incurred during the course of their employment should ensure that they conduct themselves in such a way that any duty of care is limited to the patient and not the employer. Specific guidelines are given below.

This guidance has been prompted by a case involving a Premiership football club and a consultant orthopaedic surgeon. The surgeon was referred a player by the club's doctor for an injury suffered whilst training. The player did not resume a level of fitness such that he could return to professional football and a claim was brought by the club against the surgeon, an MPS member, alleging negligence and breach of contract.

The claim was substantial and included a claim for the loss of the player's value on the transfer market or the cost of acquiring a replacement player. The case hinged on whether a relationship existed between the surgeon and the club which gave rise to a duty of care, either contractual or implied.

Prior to treating this player, the surgeon had treated a number of other players from the club. However he denied that he had a contractual relationship with the club or that he owed them a duty of care. The surgeon argued that he had a doctor-patient relationship with the players and that a relationship with the club could not be implied.

The issue was decided by the High Court in



December 2005 in the surgeon's favour, a decision that was upheld on appeal.

Guidelines

Specialists/consultants should:

- Not enter into a written or oral contract with an employer to treat employees for reward
- Only accept referrals from other healthcare professionals, not from clubs directly
- Address any professional fee notes to the patient and not the employer (if fees are to be settled by the employer or their medical insurers the patient should be asked to forward them on. Alternatively, written confirmation may be obtained from the patient that all fee notes should be sent to the employer or their medical insurers)
- Review any existing relationship with an employer of a patient very carefully.