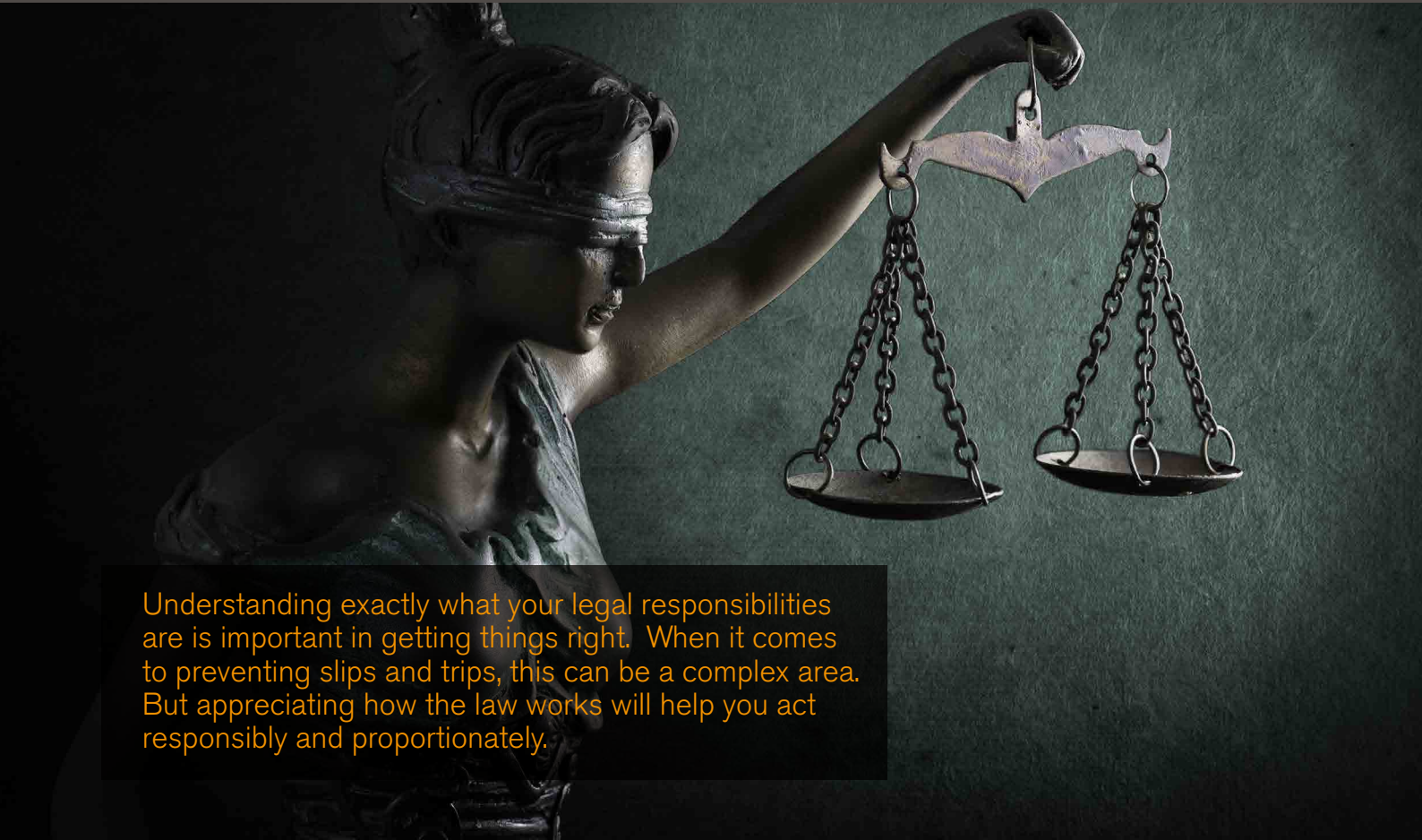


## 2.0 Slips, trips and the law



Understanding exactly what your legal responsibilities are is important in getting things right. When it comes to preventing slips and trips, this can be a complex area. But appreciating how the law works will help you act responsibly and proportionately.

### Introduction to health and safety law

The main statutory legislation is the Health and Safety at Work etc. Act<sup>1</sup> supplemented by more specific regulations. This is **criminal** law intended to protect employees and others. The Act sets out a number of general duties to ensure people's health and safety. It applies to any organisation (including those responsible for a historic property) which has at least one employee or has control of premises in certain circumstances. Failure to meet these duties could lead to prosecution resulting in a fine and – in extreme circumstances – a custodial sentence.

In addition to this, everyone has a duty of care under **civil** law to ensure that their activities do not cause injury or damage to another. Where something does go wrong, individuals may sue for compensation as a result of another person's negligence.

Where the Health and Safety at Work etc. Act applies, you will need to comply with it. More generally, if someone is injured you may need to show that you have met your duty of care.

## Historic properties used as 'workplaces'

If you have employees or where your premises are used as a workplace by others, you will have to meet a number of health and safety duties. With slips and trips you must, as an employer under the **Health and Safety at Work etc. Act:**

- Protect your employees whilst they are at work – ensuring, so far as is reasonably practicable, their health, safety and welfare. This includes providing a safe, well-maintained workplace including any access to or from it. You must also provide them with a safe system of working and any necessary information, instruction, training and supervision.

**This duty only applies where an organisation has employees.** Employees are those working under a 'contract of employment'<sup>2</sup> or deemed to be 'de facto' an employee (where the necessary elements of the 'employment test' are met as outlined in the Employment Rights Act 1996 and ensuing case law). Further information is available from HSE on [contracts of employment](#).

- Protect others who are not your employees, but may be affected by your work – ensuring, so far as is reasonably practicable, that they are not exposed to risks to their health and safety. 'Others' could include members of the public, volunteers etc.

### 'So far as is reasonably practicable'

The phrase 'so far as is reasonably practicable' requires duty-holder to balance the risk against the sacrifice (whether in money, time or trouble) involved in taking any necessary precautions to prevent danger.

If there is a gross disproportion between them, the risk being insignificant relative to the sacrifice, the duty-holder is not required to take any further measures. In assessing what is 'reasonably practicable', the likelihood of any risk includes some consideration of what is reasonably foreseeable.

One important consideration, is the duty as an employer to prepare (and revise as necessary) a written health and safety policy statement<sup>3</sup>. This is where you have five or more employees. It must detail the general policy and the specific organisation and arrangements for carrying it out. The policy must be brought to the notice of all your employees and could include important information in relation to the prevention of slips and trips.

If you have fewer than five employees, you do not have to have a policy in writing. But the law does not exempt you

from having a policy altogether. You could, for example, record what you do to manage health and safety, and how you do it, in a retrievable mobile phone video clip. Or provide evidence that you've put the information across to workers by recording in writing when you did it, and how (e.g. at a face to face meeting). It could include information on the how you aim to prevent slips and trips.

Obviously, if an organisation has no employees, then they are not required to prepare a written policy. However, health and safety management (and the production of verifiable documentation) are matters of good governance. Any organisation should therefore still consider aspects of their common law duty of care. In claims of negligence, most decisions turn on the question of prevention and causation. Having said this, from a defensibility point of view it may be important to show the deliberative process concerning risk. Here, simple documented evidence briefly outlining how health and safety is to be managed, or the safety checks that have been made, would be sufficient. For example, recording periodic checks for slip and trip hazards at a historic properties in a diary. Again, this documentation should not be confused with a written health and safety policy as set out above.

### A note about 'domestic premises'

The Health and Safety at Work etc. Act 1974 applies to any organisation which has at least one employee or where they control non-domestic premises in certain circumstances. It does not apply to those who employ others as domestic servants in a private household. There is no definitive guidance on when employees qualify as a 'domestic servant'. However, it is most likely that they are where:

- the employee works solely to upkeep and maintain the private household, this being for the convenience and comfort of those living there
- the employer is a member of the household or a private individual rather than a company set up to administer the running of a private estate
- the work is completed at a private household. However, domestic servants need not live in the household where they work and may be employed in more than one household.

<sup>2</sup> Section 53(1), Health and Safety at Work etc. Act 1974, <https://www.legislation.gov.uk/ukpga/1974/37/section/53>

<sup>3</sup> Section 2(3), Health and Safety at Work etc. Act 1974, [www.legislation.gov.uk/ukpga/1974/37/section/2](https://www.legislation.gov.uk/ukpga/1974/37/section/2)

## As an employer under the Management of Health and Safety at Work Regulations<sup>4</sup>:

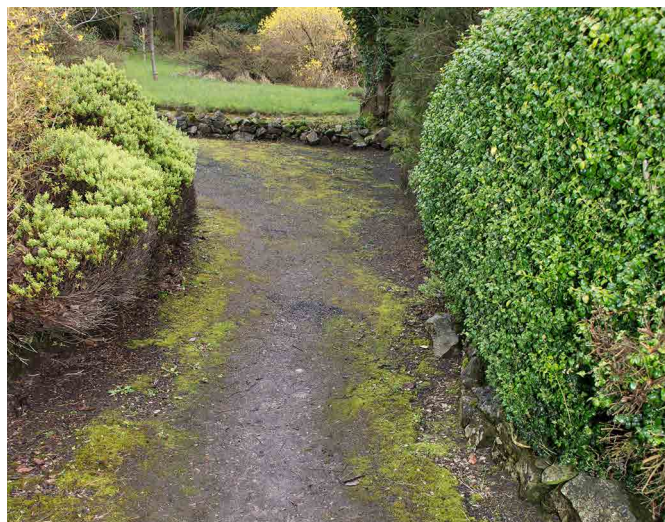
- Make (and review as necessary) a suitable and sufficient risk assessment<sup>5</sup> of the risks to health and safety of their employees whilst they are at work and to others not in their employment who may be affected by it. The assessments needs to meet certain standards. For example, where you have five or more employees they must be recorded, detailing any significant findings and those employees who may be especially at risk. Many of those who are responsible for historic properties will need to complete them. And for many, the risk posed by slip and trip hazards will need to be considered.
- Apply certain principles<sup>6</sup> in deciding on what health and safety precautions to take. In applying these for slips and trips, an employer should first decide if it is possible to avoid a risk altogether. If not, then decide if it can be combatted at source. For example, where steps are slippery, can these be treated or replaced rather than displaying a warning sign. If this is not possible, determine if there is an advantage to adopting any technological advance to make premises safer (e.g. using LED or solar powered lighting). They should also give priority to those precautions that safeguard all those who use the premises, rather than those which just protect certain groups (e.g. employees) and so on.

Experience suggests that, in the majority of cases, adopting good practice will be enough to ensure risks are reduced sufficiently and these principles are correctly applied. Authoritative sources of good practice could include prescriptive legislation and supporting Approved Codes of Practice or guidance produced by the Government or the HSE. Other sources include standards produced by 'standard-making' organisations or guidance agreed by a body representing a certain sector, provided it has gained general acceptance.

- Make appropriate arrangements<sup>7</sup> for the effective planning, organising, controlling, monitoring and review of any precautions that have been put in place. These need to reflect the nature and size of the organisation. Where there are more than five employees these arrangements must be recorded. Developing these arrangements with the prevention of slip and trip in mind is considered in [module 3.0, Managing slips and trips](#).
- (In most cases) appoint an adequate number of competent persons<sup>8</sup> to assist in complying with

obligations under relevant health and safety legislation. Employers must provide those they appoint with any relevant information, support and facilities they need to carry out their responsibilities. Those appointed will be invaluable in providing guidance to ensure that the risk from slips and trips is properly considered and that adequate precautions are identified for premises of a historic nature.

- Provide employees with comprehensible and relevant information<sup>9</sup> on any health and safety risks identified by a risk assessment and the precautions to be taken. This could include detail relating to the prevention of slips and trips.
- Co-operate<sup>10</sup> with other employers where workplaces are shared to comply with any health and safety duties. This will be particularly important to prevent slips and trips where workplaces, access routes, car parks etc. are shared with others.



A 'traffic route' includes any route for pedestrians.

## As an employer under the Workplace (Health, Safety and Welfare) Regulations in relation to:

- the maintenance, repair, cleanliness and lighting of workplaces
- safe access in workrooms
- the safety of floors and traffic route surfaces\*
- handrails and guards on staircases.

\* 'Traffic route' means a route for pedestrians, vehicles, or both - and includes stairs, fixed ladders, ramps etc.

'Workplaces' are non-domestic premises (or parts of them) made available to any person as a place of work. It includes any place within those premises to which someone who is

<sup>4</sup> SI 1999, No. 3242, [www.legislation.gov.uk/ukSI/1999/3242/contents/made](http://www.legislation.gov.uk/ukSI/1999/3242/contents/made)

<sup>5</sup> Regulation 3, SI 1999, No. 3242, [www.legislation.gov.uk/ukSI/1999/3242/regulation/3/made](http://www.legislation.gov.uk/ukSI/1999/3242/regulation/3/made)

<sup>6</sup> Regulation 4, SI 1999, No. 3242, [www.legislation.gov.uk/ukSI/1999/3242/regulation/4/made](http://www.legislation.gov.uk/ukSI/1999/3242/regulation/4/made)

<sup>7</sup> Regulation 5, SI 1999, No. 3242, [www.legislation.gov.uk/ukSI/1999/3242/regulation/5/made](http://www.legislation.gov.uk/ukSI/1999/3242/regulation/5/made)

<sup>8</sup> Regulation 7, SI 1999, No. 3242, [www.legislation.gov.uk/ukSI/1999/3242/regulation/7/made](http://www.legislation.gov.uk/ukSI/1999/3242/regulation/7/made)

<sup>9</sup> Regulation 10, SI 1999, No. 3242, [www.legislation.gov.uk/ukSI/1999/3242/regulation/10/made](http://www.legislation.gov.uk/ukSI/1999/3242/regulation/10/made)

<sup>10</sup> Regulation 11, SI 1999, No. 3242, [www.legislation.gov.uk/ukSI/1999/3242/regulation/11/made](http://www.legislation.gov.uk/ukSI/1999/3242/regulation/11/made)

at work has access. This includes the access to or from them, other than a public road.

As such, it can include the common parts of shared buildings, private roads and footpaths. A modification, conversion or extension is part of a workplace only when it has been completed. Domestic premises are not within the scope of the Regulations, as are places of work in woods, fields and other agricultural land which are not inside buildings.

## Historic properties under the control of those with no employees

Even if you do not have any employees, you may still have duties to make sure that people are not exposed to danger from slip and trip hazards.

As someone who controls premises under the **Health and Safety at Work etc. Act** you have a responsibility to:

- Protect those who are not employees. This is where non-domestic premises are made available either as a place of work or where others may use plant or substances provided for their use there. 'Plant' includes any machinery, equipment or appliance.

This duty is placed on anyone who has, to any extent, control of the premises for trade, business or other undertaking (whether for profit or not). They must make sure that the premises are safe, including any access to or from them, so far as is reasonably practicable.

As a person in control of premises used as a workplace under the **Workplace (Health, Safety and Welfare) Regulations** you have responsibilities in relation to:

- the maintenance, repair, cleanliness and lighting of workplaces
- safe access in workrooms
- the safety of floors and traffic route surfaces
- handrails and guards on staircases.

However, here the duty is limited to matters which are within that person's control. For example, an owner who is responsible for the general condition of a staircase provided for commercial tenants' use, should ensure that it complies with these regulations. However, the owner is not responsible under these regulations for matters outside of their control. For example, where a spillage is caused by another person's employee.

### Under civil law generally

Most organisations have a duty of care under civil law to ensure that their activities do not cause injury or damage to

Some of the regulations require things to be 'suitable'. This includes anyone including people with disabilities. Where necessary, parts of the workplace, particularly passageways and stairs should be made accessible for disabled people.

In addition to this, employers have a duty of care under civil law to ensure that their activities do not cause injury or damage to another (see below).

another. In health and safety, civil liability usually arises as a result of negligence. Those found negligent may be ordered to pay compensation for loss or injury.

Put simply, negligence is a failure to exercise the care that any reasonably prudent person would in similar circumstances. It is not an absolute duty, but one to take reasonable care. To defend these cases, it is important to be able to demonstrate that the precautions taken were those that would be expected of such a person. One aspect of this may be what was proportionate in those particular circumstances.

Organisations will be negligent if there were some lack of care on their part or they failed to identify something that was reasonably foreseeable.

### A word about volunteers

Many organisations rely on the support of volunteers to function properly. They make an invaluable contribution across many sectors, completing a wide range of varied tasks.

Under civil law, voluntary organisations and individual volunteers themselves have a duty of care to each other and others who may be affected by their activities.

Under criminal law, where the Health and Safety at Work etc. Act applies (i.e. to any organisation – including a voluntary one – which has at least one employee), you should generally afford the same level of protection to volunteers as you do to any of your employees.

It is also important to note that certain aspects of the Act may still apply to you even if you do not have employees. In particular, this would be where you control non-domestic premises used as a place of work or where machinery, equipment, appliances or substances are provided for use by others (e.g. volunteers). Here, you must take reasonable steps to make sure that these are safe.

Most organisations will have insurance in place to cover the costs of any compensation that is awarded. Usually, this will take the form of both employers' and public liability insurance.

Employers' liability insurance is compulsory for nearly all employers, requiring cover for at least £5million provided by an authorised insurer. Obviously, it provides cover where employees suffer an injury caused by an accident at work. In many cases, this not only covers employees, but also:

- any person supplied, hired or borrowed
- any work experience student
- any youth training scheme participant while under direct control or supervision

- any person under a contract of services or apprenticeship
- authorised volunteers (i.e. those normally resident in the geographical limits acting under the insured's authority whilst engaged in their business).

Public liability insurance provides cover where third parties suffer a bodily injury caused by an organisation's activities or premises. For slips and trips, those organisations with the greatest public liability risk exposure are occupiers of premises with large numbers of third party footfall. Here, the risk increases dramatically where alcohol is consumed on the premises or where there are sporting events involved.

## Negligence

For a claim of negligence to succeed, the injured person must show that:

- the defendant had a duty to take reasonable care towards them
- they suffered the injury, loss or damage as a direct result of a breach of that duty (known as 'causation'); and
- the type of loss or injury or damage was foreseeable.

In discharging this duty, the standard to be expected is that of a 'reasonable' person. In other words, this is someone who consciously or unconsciously takes into account:

- the current standard of knowledge and practice
- the likelihood of injury and its potential gravity
- the cost of eliminating or reducing the risk.

If a defendant is able to show that they complied with common practice in preventing slips and trips, then this is evidence that they have discharged their duty of care. Here, other facts may also be considered to show that the defendant met their duty. For example, demonstrating compliance with the Health and Safety at Work etc. Act, related health and safety regulations or relevant guidance.

Since 1 October 2013, where an injured person brings an action at civil law, this can now only be for negligence. Previously, an action could have been brought for either negligence or a breach of statutory duty - more commonly - for both. Despite this change, it is likely that the courts will still take the view that a breach of a statutory duty remains evidence of negligence.

### Occupiers Liability Acts (1957 and 1984)

One important aspect of civil law to consider is occupiers' liability. This is concerned with the duty of care owed by occupiers of premises to those who may use them. This is now principally governed by the Occupiers Liability Act 1957.<sup>11</sup>

Broadly, the duty is to take reasonable care to see that visitors will be reasonably safe in using the premises for the purpose they are invited or permitted to be there by the occupier. There is a greater duty of care owed to children, particularly if there is any form of allurements e.g. derelict buildings. However, there may be less of a duty where a person, in exercising their calling, will appreciate and guard against any special risks.

In determining whether the occupier of premises has discharged the duty any necessary warnings must enable the visitor to be reasonably safe. The occupier is under no obligation to a visitor who willingly accepts a risk.

This duty is extended to include unlawful visitors and trespassers under the Occupiers Liability Act 1984. Here, occupiers will owe a duty of care if:

- they know there is a risk, or have reasonable grounds to believe it exists
- they know or have reasonable grounds to believe someone may come into the vicinity of danger posed by a risk
- they would be reasonably expected to offer visitors some protection from the risk.

Looking at these obligations in the context of historic properties, it can be useful to consider:

- the adequacy of any precautions taken, particularly where physical precautions are not practical due to the historic nature of the premises
- the difficulty the frail, elderly and disabled may have in negotiating their way around the premises
- whether it is reasonable to assume that dangers are obvious
- risks that are willingly accepted by any person.

<sup>11</sup> In Scotland, The Occupiers' Liability (Scotland) Act 1960; Northern Ireland, The Occupiers' Liability (Northern Ireland) Order 1987; the Isle of Man, The Occupiers Liability Act 1964

## Historic properties and planning

In implementing precautions to prevent slips and trips in historic properties, it may be necessary for you to consider any consent requirements that might be necessary. For example, repairs or renewals to:

- a listed building where it would affect its character as a building of special architectural or historic interest would require listed building consent
- a scheduled monument may require scheduled monument consent
- you may need planning permission in certain circumstances.

Further information is available from [Historic England](#).



*Consent requirements may need to be considered before making any adjustments to a protected building, including fixtures and fittings.*

## Need to contact us?

For further advice Ecclesiastical customers can call our Risk Management Advice Line on **0345 600 7531** (Monday to Friday 09:00 to 17:00, excluding Bank Holidays) or email us at [risk.advice@ecclesiastical.com](mailto:risk.advice@ecclesiastical.com) and one of our experts will call you back within 24 hours.

