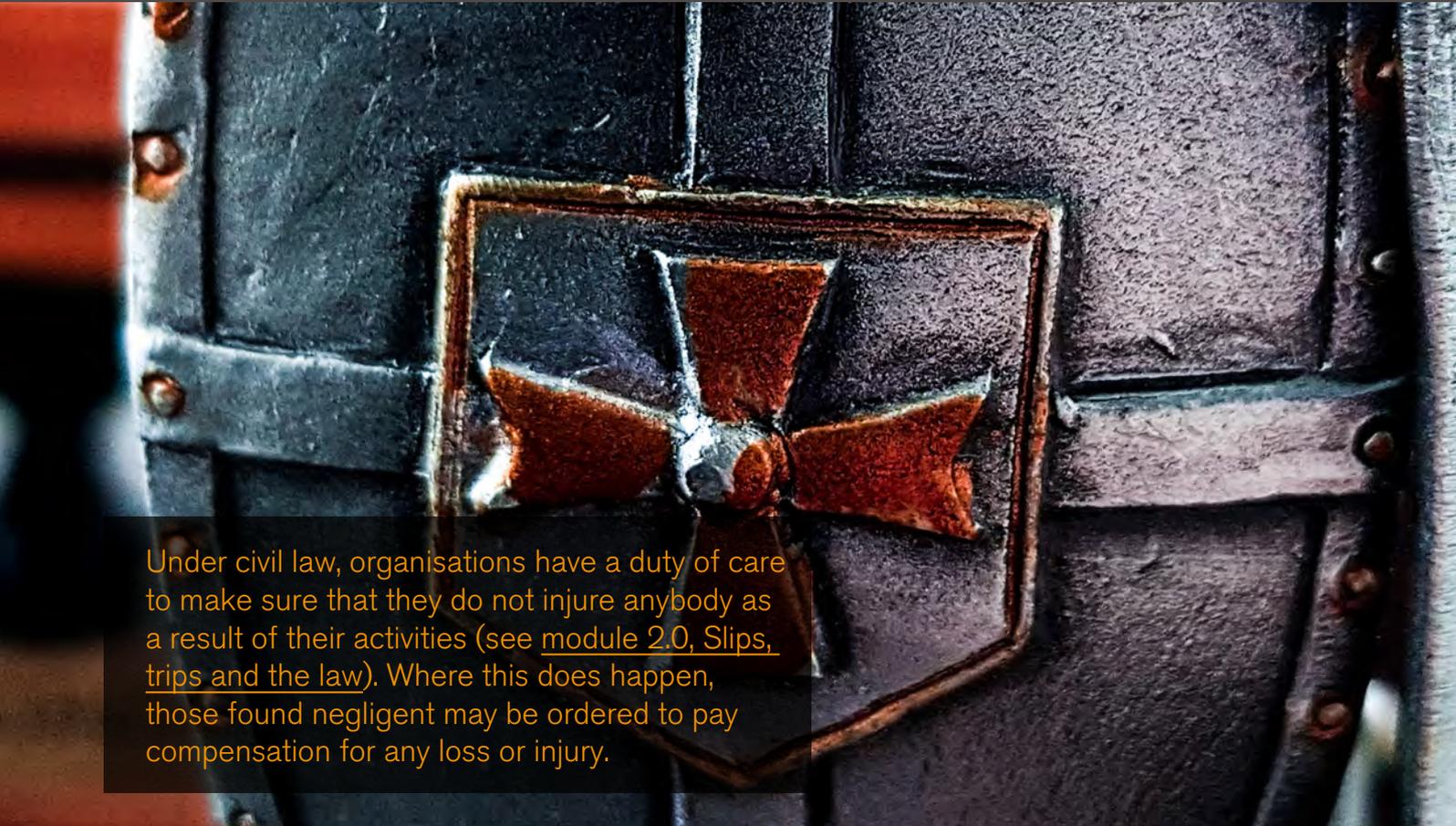


# 8.0 Slips, Trips and Claims Defensibility



Under civil law, organisations have a duty of care to make sure that they do not injure anybody as a result of their activities (see [module 2.0, Slips, trips and the law](#)). Where this does happen, those found negligent may be ordered to pay compensation for any loss or injury.

## Introduction

In discharging this duty, the standard to be expected is that of a 'reasonable' person. For slips and trips, such a person would take account of:

- The likelihood of injury and its potential seriousness
- The adequacy of the precautions they have taken in the light of current knowledge they ought to have
- The cost of eliminating or reducing the risk in particular circumstances.

When it comes to slips and trips, the key question is whether there has been a breach of duty and – if so – has that breach directly caused any injury.

We typically see the success of claims being influenced where there are failures in identifying or following good practice which ultimately leads to a breach of duty. This is particularly so in relation to:

- The adequacy of the **precautions** taken (including maintenance and repair)
- Non-existent or inadequate **risk assessments**
- Inadequate arrangements for periodic **inspection** of access routes
- Ineffective **post-accident investigation** and the lack of relevant **health and safety documentation**.

## The adequacy of precautions

Given the nature of historic properties; the high levels of footfall; and the age demographic in many premises, the potential for slips and trips is significant. It is not surprising then, that one aspect that comes under close scrutiny in civil proceedings is the precautions that were taken to prevent an incident. Usually, this is on two fronts.

Firstly, there is a consideration of the **adequacy of the precautions** themselves relevant to the particular circumstances.

Here, scrutiny can focus on how the defendant considered this in the light of any regulations, guidance or other standards that might apply. Where risk assessments need to be completed to meet the requirements of the Management of Health and Safety Regulations, these should recognise those considerations. They should determine what (if anything) needs to be done to comply with the standards that have been identified.

For example, if the premises are a 'workplace', then the adequacy of any precautions taken to prevent slips and trips might be judged in the context of Regulation 12 of the Workplace (Health, Safety and Welfare) Regulations<sup>1</sup>. This sets out a standard for the condition of floors and traffic routes in workplaces.

It is worth reiterating that since 1 October 2013, where an injured person brings a claim for compensation, 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.

For historic properties, in considering the adequacy of any physical precautions (e.g. handrails), precedent seems to suggest that this is frequently balanced against the historic nature of the premises concerned. Here, it is not always possible or even desirable to eliminate all risks. Frequently, the precautions taken will have to be balanced against other factors such as conservation and people's freedom to explore. This also includes any permissions that might be required to make any alterations that destroy the historic fabric of the building. Whilst physical safeguards might be appropriate in some circumstances, in other situations there are other precautions that can be taken to reduce risk to an acceptable level.

Secondly, the **implementation of those precautions** may be called into question.

Sometimes the success of a claim can be influenced where evidence suggests that the precautions were

poorly implemented or not regularly checked to make sure that they remained adequate. Here, the resources, equipment, materials, information, training etc. provided to do this might be challenged.

For slips and trips, aspects that are usually considered include:

- **The adequacy of procedures for cleaning flooring** – for example, the frequency this was carried out; the appropriateness of the cleaning method itself (e.g. wet mopping); the way in which it was completed (e.g. were the correct polishes used on a floor surface); the precautions that were taken to advise users of any danger whilst cleaning was being carried out (e.g. the provision of warning signs or barriers); the adequacy of any post-cleaning checks that were made; and the training or information provided for those completing the cleaning or making the necessary checks.
- **The maintenance of any floors, footpaths, other walkways, lighting etc.** – this includes the fact that these features were included for periodic maintenance in the first place; the periodicity of any inspections or checks made; the adequacy of any subsequent maintenance work; the provision of safeguards during maintenance work (for example, barriers, warning signs etc.); the checks made where contractors were appointed to complete the work; and the adequacy of any information or training provided to those involved in inspection or maintenance work.



*Where there is a claim, the implementation of adequate precautions can be called into question.*

<sup>1</sup>Regulation 12, SI 1992, No. 3004, [www.legislation.gov.uk/uk/si/1992/3004/regulation/12/made](http://www.legislation.gov.uk/uk/si/1992/3004/regulation/12/made)

## Risk assessments

Another aspect that can come under close scrutiny is risk assessment. For claims involving slips or trips, their success can be influenced by the adequacy of any risk assessments that were made or if it is possible to show that these were not completed where required (or at all).

It has been suggested<sup>2</sup> that previously insufficient judicial attention had been paid to risk assessments. This has been because the lack of one or any inadequacy in it was never a direct cause of an injury. However, the judgment in this case now suggests that for claims involving slips and trips the most logical approach in considering the adequacy of any precautions taken is to consider the adequacy of the risk assessment that was made.

In practice, general assessments made under the Management of Health and Safety at Work Regulations can be used to identify where slips and trips could potentially occur. This, in turn, should help to decide what precautions would be appropriate to prevent them. Further information on this is set out in module 4.0, Risk assessment.

With risk assessments, common failings include:

- Not being able to adhere to or follow the precautions in practice.
- Not being able to demonstrate that they have been completed where necessary, although this on its own is not a clear indication that any claim will succeed.
- Not considering fully the risk from slips or trips.
- Not considering all those who may be at risk.
- Not identifying the steps employers needed, to comply with relevant statutory requirements, guidance and best practice.
- Not being relevant to the actual premises or 'local' conditions.

- Not being kept up to date, particularly where there have been changes in legislation, guidance or best-practice; the premises themselves; the tasks carried out there etc.
- Not being completed by persons who are sufficiently competent.

For historic properties, when completing risk assessments it might also be worth including commentary outlining why certain precautions were not taken in some instances. For example, installing a handrail or displaying warning signs on a set of steps that have a high footfall at certain times might have an impact on the historic fabric of the premises. Other precautions such as regular inspections, improving lighting levels and using stewards to monitor pedestrian traffic might be more appropriate in these circumstances. Here, a simple paragraph showing the rationale for any decisions that were made could be recorded.

From a defensibility point of view, it is important that assessments are properly documented and are kept readily available or suitably archived when they are superseded. Current assessments should be subject to appropriate review and updated as necessary. The arrangements and responsibilities for completing them should be recorded as part of the health and safety policy or other supporting documentation.

It is important to remember that many claims succeed on the basis of poor implementation of the required precautions. Whilst a risk assessment is a first step in identifying these, it is just that - and other steps will be needed to make sure that the required precautions are taken and remain adequate.

<sup>2</sup>Kennedy v Cordia (Services) LLP (Scotland) [2016] UKSC 6, [www.supremecourt.uk/cases/uksc-2014-0247.html](http://www.supremecourt.uk/cases/uksc-2014-0247.html)

## Inspection

Operating a robust inspection system of floor surfaces or coverings, paths, walkways and other pedestrian traffic routes is important in preventing slips and trips. This sits alongside effective arrangements for reporting, recording and correcting (or providing temporary safeguards for) any defects identified in a timely manner. It is not a surprise then that this is another aspect that comes under close scrutiny in civil proceedings.

In relation to slips and trips, elements of the inspection arrangements that are regularly considered include:

- The fact that inspections were carried out in accordance with any risk assessment and the arrangements set out in any health and safety policy (or supporting documentation).
- The frequency of any inspections made and the appropriateness of this in the context of the risks presented.
- The thoroughness of any inspection completed in terms of the items that were checked.
- The use of any checklists and their adequacy in the context of where they are being used.
- The training, supervision and management of those completing any necessary inspections.
- The availability and adequacy of any records of any inspections that were made.

## Post-accident investigation and other documentation

Another consideration is the adequacy of any post-accident investigation that is conducted. This is because documentation produced as a result will usually be required in the defence of any claim. Once the immediate aftermath of an accident has been dealt with, it is important that a prompt investigation is conducted gathering relevant information and documentation. This requires careful consideration, particularly if a claim might result and documentation is to be relied upon sometime in the future.

For example, unless the area has been inspected immediately at the time an individual has slipped or tripped, the initial accident report form should record the accident as an 'alleged accident'. That is, 'X says they have slipped on a wet floor' rather than 'X slipped on a wet floor'. By recording the accident as 'X slipped on a wet floor' this infers that the floor has been inspected and it was categorically wet, when in fact the report of the alleged wet floor has come from the claimant themselves and not from the individual who is completing the accident report form. It will not be until following the post-accident investigation has been fully concluded that a cause can be properly identified.

It may be that following further investigation or inspection after the accident report form has been completed that the floor was, in fact, not wet and/or other suitable precautions were in place. By not recording the accident report form accurately, would take away any perceived 'certainty' that the floor was wet, when no investigation has been completed to confirm it was so.

Accident investigation documentation is important in defending claims. In some cases, it might be appropriate for those completing it to have appropriate training. This is

particularly so, as any reports they prepare and information they collect may be fully disclosed in the event of claim.

For many claims resulting from slips and trips, being able to provide adequate documentation promptly to an insurer can ensure that costs remain low. This is because employers' liability and public liability injury claims valued between £1,000 and £25,000 involving slips and trips are now processed through an online portal. Lower, fixed costs are payable to claimant's solicitors as long as the case remains in the portal (subject to liability being accepted). Should a claim fall out of the portal due to an insured not being able to provide the insurer with the necessary documentation and thus delaying a decision on liability being made, then predictive costs can be up to six times more expensive if the case then proceeds outside the portal.

For claims in the portal, insurers must acknowledge receipt within 24 hours and investigate within 30 working days for employers' liability cases, or 40 working days for public liability cases. Failure to comply with these time limits will result in the claim dropping out of the portal. Therefore, being able to provide all relevant accident documentation as soon as a claim is received in the portal will help insurers to properly investigate and consider claims within the prescribed time limit. Where there are denials of liability and/or allegations of contributory negligence, these claims will drop out of the portal.

Claims exceeding £25,000 cannot be handled through the portal. Here, claims are notified by a claimant solicitor's letter and this must be passed to the insurer. Once the letter is acknowledged, the insurer has a maximum of three months to investigate the accident (this time limit is different in Scotland and Northern Ireland). Within that

time, they must inform the claimant's solicitor that liability is either admitted and the claim will be settled or that liability is denied/contributory negligence is alleged and a defence will be prepared.

The claimant solicitor's letter will contain a list of documents for disclosure. If liability is to be denied or contributory negligence alleged, the letter informing the claimant's solicitor of this must include the documentation that is being relied upon. Failure to disclose all the relevant documentation can result in additional sanctions for the defendant.

In either context, documentation will be important. Further details of relevant documents for disclosure can be found at [www.justice.gov.uk](http://www.justice.gov.uk)

Broadly, documentation could include:

- **Those prepared during any accident investigation** - detail relating to any injured parties; the nature and extent of their injuries; the circumstances of the accident (e.g. time, location, environmental conditions – snow, ice, wet, slippery etc.); the layout of the area concerned (including any sketches/photographs); commentary relating to the condition of any floors, steps or stairs involved and any lighting or signage provided; details of the footwear worn; witness statements; any CCTV footage etc.

- **Those completed following any treatment or notification** - such as entries in any accident book; any first-aid record; any accident or investigation report; any RIDDOR report form<sup>3</sup> and related documents; correspondence with any Enforcing Authority; minutes of the health and safety committee meeting(s) where the accident was discussed; copies of all electronic communications/documentation relating to the accident.

- **Those completed to meet related health and safety purposes** - including risk assessments; records of maintenance, cleaning, inspections or other checks; details of any information or training provided; policy documentation; spills procedures etc.

## 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.

<sup>3</sup>Usually, the F2508 report form under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations

