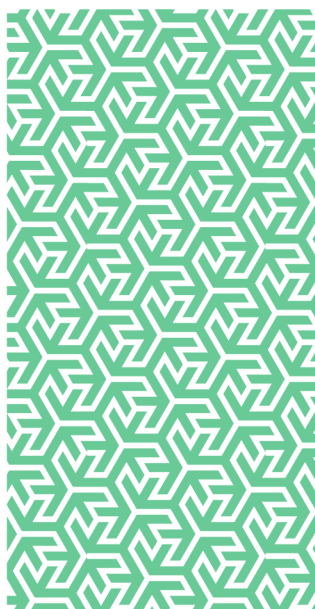




## **Risk control**

### **Safe Systems of Work: Safe Use of Ladders and Stepladders**



In partnership with



# Safe Systems of Work: Safe Use of Ladders and Stepladders

## Introduction

When an employer engages an employee to work for them, they become responsible for the health and safety of the employee. The employer has influence over all aspects of the work from providing the equipment; defining the task, selecting the people and the environment where the task takes place.

Falls from height are one of the biggest causes of workplace fatalities and major injuries. In 2023/24<sup>1</sup> there were 40 worker deaths attributed to falls from height.

Recent prosecutions by the Health and Safety Executive<sup>2</sup> continue to emphasise the failure of organisations to successfully manage working at height.

Civil claims are typically successful in this area due to the failure of organisations to provide enough evidence to show that they had effective systems in place to make sure employees could safely use the ladders and stepladders.

## Common Law Duty of Care

While there has been significant health and safety legislation since the 1960's and 1970's, the principle of a common law duty of care towards employees was first established in 1937<sup>3</sup>. At the heart of the judgement of *Wilson & Clyde Coal Co Ltd v English* 1937 was an expectation that an employee is entitled, among other things, to "a safe system of work".

This was also explored in *Speed v Thomas Swift & Co*<sup>4</sup> where the judge stated that a system "may include the physical layout of the job - the setting of the stage, so to speak - the sequence in which the work is to be carried out, the provision in proper cases of warnings and notices, and the issue of special instructions."

The need for the employer to specify the safe system of work was reinforced by *General Cleaning Contractors v Christmas*<sup>5</sup>. In this case the claimant was an experienced window cleaner sent by his employer to clean a customer's windows. To clean the outside windows, he had to put his hand between two window sashes but when one sash closed into the other, for reasons unknown, his hand was crushed and, it being his only means of support, he fell.

The judge stated in this case "it is the duty of the employer to give such general safety instructions as a reasonable careful employer who has considered the problem presented by the work would give to his workmen." He also observed that "the common law demands that employers should take reasonable care to lay down a reasonably safe system of work themselves."

In the process of preparing to defend a claim, organisations will be asked to provide evidence of the safe system of work their employees were expected to follow.

Where it can be shown that an employee was injured in the course of their employment whilst working on an unsecured ladder provided by an organisation, **that is sufficient for the civil court to find that the organisation is primarily liable** for the accident before any other evidence is led.

Organisations may consider that the employee was at fault and want to rely on lines of evidence to show contributory negligence. However, **that evidence will be of assistance in relation to primary liability**.

## Health and Safety at Work etc. Act 1974

As the main act of Parliament relating to health and safety in the workplace, The Health and Safety at Work Etc. Act 1974<sup>6</sup> places duties on employers. Employers are required under Section 2 to provide, among other things, a safe place of work; provide and maintain safe plant and equipment such as ladders or stepladders; and a safe system of work.

There is also a requirement under the same section to provide information, instruction, training, and supervision to employees.

To establish the need for a specific safe system of work it is critical to have assessed the risks. The significant findings of the risk assessment will inform upon the Health and Safety Policy which is also a statutory document required by this Act. A copy of the policy for working at height is a specific piece of evidence requested as part of the pre-action protocol.

## Risk Assessment

The requirement to undertake risk assessments has been in existence since the Management of Health and Safety at Work Regulations were first introduced in 1992 (replaced in 1999<sup>7</sup>).

Over the last 30 years many organisations will have prepared risk assessments and reviewed them regularly. However, the Health and Safety Executive frequently finds situations where a risk assessment has not yet been prepared. As it is a statutory document and the failure to provide a risk assessment when requested not only leaves an organisation open to enforcement action, such as an Improvement Notice, but also the potential for criminal prosecution.

Organisations will also rely on that document as a key piece of evidence, requested in the pre-action protocol, as an essential part of a defence of an Employers' Liability claim for compensation.

For activities using a ladder or stepladder, the Work at Height Regulations 2005<sup>8</sup> also apply. These regulations require organisations to firstly consider avoiding the need to work at height. Where this is not possible then a more focussed risk assessment must be completed. This assessment should consider the potential for a person to fall a distance causing injury.

Collective protective measures must be implemented to ensure that no person has the potential to fall from a height. In situations where this is not reasonably practicable personal protective measures such as the use of safety harness and fall restraints must be considered.

## Principles of Prevention and Control

The Management of Health and Safety at Work Regulations 1999 also require an employer to apply 'the principles of prevention and control' as set out in a schedule to the regulations. In practice this means applying what is known as a hierarchy of control.

Within that hierarchy it clearly regards the provision of physical safeguards such as a properly maintained, secured ladder as a critical element. Giving instructions to not use equipment unless the worker has been trained is seen as a weaker form of control. To deter primary liability being attributed, a critical evaluation of each control measure is necessary, making sure the safe system of work highlights the specific controls which are critical to the success of the task.

## Safe System of Work

A common control measure mentioned in risk assessments is the requirement for a suitably competent person to follow a safe working method.

A safe system of work can be defined as 'a formal procedure which will allow a specific task (usually one with significant hazards) to be undertaken in a 'safe' and pre-defined way. **Before the task is started**, it should be systematically examined, which includes the identification and elimination of any hazards associated with the task, or reducing the risks to an acceptable level'.

A safe system of work will contain a description:

- **Of the job** to be undertaken
- **In order**, how the job should be undertaken

- The **main hazards that may be encountered** whilst doing the job
- The **key control measures that should prevent any harm** occurring

The safe use of ladders and stepladders would need to consider key steps and the order of the work including selecting the correct type of ladder for the task; the process of getting the ladder; safely putting it against the structure; securing it from slipping or falling; gaining access at height using the ladder; performing the work at height; and then finishing the work.

The main risk potential is associated with the employee moving their centre of gravity outside the stiles of the ladder by overreaching, toppling the ladder, or loses their grip on the ladder and falling to the ground.

In the development of the safe system of work it is necessary to consider:

- The sequence of operations to be conducted and any safety critical steps
- The specific equipment, plant, machinery, and tools involved
- The people who will be doing the work – their skill and experience
- Foreseeable hazards (health, safety, environment), whether to the people doing the work or to others who might be affected by it
- Practical precautions which, when adopted, will eliminate, or minimize these hazards
- The training needs of those who will manage and operate under the procedure
- Monitoring systems to ensure that the defined precautions are implemented effectively

It could also be necessary to define:

- The preparation and authorisation needed at the start of the job
- The correct isolation methods for all power sources nearby
- The specific personal protective equipment that should be used
- The need for conducting pre-use safety checks (e.g. inspection of the ladder or stepladder)
- The means of access and egress, including emergency escapes, for the people involved
- Any arrangements to deal with emergencies
- Elements of the task such as dismantling equipment at the end of the job

## Information

It can be common practice to provide employees with information, in the form of a document, as part of their induction. Care must be taken to ensure that if this information is provided in an electronic format, a hard copy document is provided for those without electronic access.

An employee must be aware of the significance of the information provided as it relates to their work.

## Instruction

Giving information to the employee to make them aware of hazards is a good starting point, however, it will also be necessary to provide instructions about how they are expected to apply that information to the work they are employed to do.

In *General Cleaning Contractors v Christmas*<sup>5</sup> it was identified that the employer must set out how they expect the task to be completed. Where that task is easy to complete, everyone understands the hazards and precaution to take. It could be a verbal safe system of work. However, with increasing complexity and opportunity for error it will need to be written down so that essential steps are not missed out.

This will require a process to make sure that the system of work is properly recorded and amended as things change over time. Providing evidence that this process exists and is effective is another element of the pre-action protocol.

## Training

Within a task there will often be a requirement to use a piece of work equipment, such as a ladder or stepladder. To be able to use the equipment specific instructions may need to be demonstrated by a competent person and therefore the employer will provide training. The training may be delivered by an in-house instructor or a third-party training provider.

A third-party training provider may deliver a nationally accredited training course, to an agreed national occupational standard, or their own tailored version. However, it must be verified that the third party is delivering the training to the required level, so some form of supplier assessment and verification would be required to make sure the content is provided according to the syllabus.

Care should be taken over content, as externally provided course content can be too generic for specific needs. It may therefore need to be supplemented by additional specific in-house training.

In recent years there has been a move to online learning to support the delivery of health and safety training. This form of learning does provide a mechanism to impart information and extend awareness on health and safety topics, however, that would not be sufficient for practical roles and so the provision of physical face-to-face training for some aspects of work would still be necessary.

## Monitoring

Every employer has a responsibility under the Management of Health and Safety at Work Regulations 1999 to monitor the effectiveness of their arrangements, which includes making sure that someone is made responsible for checking that health and safety procedures are in place and being followed.

As part of their regular inspection of the workplace a manager should conduct this function to satisfy themselves the arrangements are both appropriate and effective in controlling the risk.

There may also be situations where an employee is involved in an accident or incident (near miss) involving the use of ladders and stepladders. Accidents and near misses must be thoroughly investigated to make sure the manager identifies why the situation happened and how it can be prevented. Focus of the investigation should be on the equipment involved and the training and competence of the employee.

Any complaints from employees regarding the equipment or concerns about activities involving working at height should also be investigated by a manager or competent person to make sure that the risk assessment and control measures are reviewed to establish why those concerns are present.

Evidence that may be requested as part of the pre-action protocol can involve documents including ladder and stepladder inspection and maintenance records; accident and incident reports; complaints; and any subsequent investigation reports.

## Induction

When and how to provide instruction and guidance to employees is critical to ensure a positive culture for health and safety exists. Ensuring that the induction has been correctly undertaken, with evidence that the employee attended, is also another evidential element requested in the pre-action protocol.

Simply giving an employee a booklet and expecting them to read it and understand the contents is not enough. Key systems of work need to be formally brought to their attention and aspects of the system reinforced at this earliest stage.

Often the employee is especially vulnerable within the first few weeks of joining an organisation, or changing their role, and will be unfamiliar with the key health and safety risks and controls they are expected to follow.

## Training and Refresher

The provision of training in health and safety should be recorded and is another key piece of evidence asked for in a letter of claim. The training can be structured around mandatory requirements of the role, and other training that may be beneficial. Ensuring that the employee has received this training, as planned, especially for a large diverse organisation can be a challenge.

For all employees there can also be an issue of how frequently they are required to follow the safe system of work. If it is used infrequently there is an opportunity for the person to make more mistakes or errors due to their unfamiliarity. Therefore, setting an appropriate frequency for refresher training is important. It needs to be frequent enough to ensure the employee has not slipped into any poor practices or unhealthy habits. Too frequent and the employee may not pay as much attention to the refresher training as they believe they know it.

Statutory requirements for refresher training do exist for some high-risk situations, such as being a first aider, however, the factors that need to be considered when deciding on the refresher frequency can include:

- The potential consequences if the safe system of work is not followed, i.e. potential for a fatal or major injury
- The level of knowledge and experience required by the person completing the task
- The complexity of the task to be undertaken
- The different environmental aspects that may be encountered when performing the task.

## Toolbox Talks

Taking an opportunity to remind employees about key health and safety risks is key to ensuring a positive health and safety culture. One method is through the provision of toolbox talks.

The talk is delivered by the Supervisor or Manager and typically contains a reminder of the concern, such as the potential risks associated with working at height. It provides

a valuable opportunity to remind employees of the key elements of the safe system of work and the precautions they are expected to take. A toolbox talk also provides the opportunity for employees to raise questions or concerns about the safe system of work.

Ensuring that the toolbox talk has been correctly delivered, with evidence that the employee attended, is yet another valuable piece of evidence requested in the pre-action protocol.

## Letter of Claim and Pre-Action Protocol

When an employee is injured, they may consider making a claim for compensation under an organisations Employers' Liability insurance cover.

Their solicitor will send a letter of claim setting out the harm they claim has been caused, and the amount of compensation they intend to receive if successful.

The pre-action protocol<sup>9</sup>:

- Encourages the exchange of early and full information about the dispute
- Encourages better and earlier pre-action investigation by all parties
- Enables the parties to avoid litigation by agreeing a settlement of the dispute before proceedings are commenced
- Supports the just, proportionate, and efficient management of proceedings where litigation cannot be avoided
- Promotes the provision of medical or rehabilitation treatment (not just in high value cases) to address the needs of the claimant at the earliest possible opportunity

At this stage employers are required to disclose information through a solicitor or claims management organisation to the claimant to demonstrate that no wrong was committed.

Throughout this guidance note evidence has been identified which can help dispute the claim including:

- Policy for working at height
- The general risk assessment for the task recognising the potential for a fall from a height
- A working at height risk assessment for the task
- The induction content and record of attendance
- The information provided to the employee and any records
- The instructions contained on the documented safe system of work
- The training in the use of ladders and stepladders and record of attendance



- The dates and content of any refresher training
- The dates and content of any working at height toolbox talks
- Inspection and maintenance records for ladders and stepladders
- The outcome of any accidents or near miss investigations relating to the use of ladders and stepladders
- Any complaints and subsequent investigation reports regarding those complaints
- The supervision arrangements for lone workers using ladders and stepladders

## Summary

Any prudent and responsible organisation will regularly review their policies and practices to make sure that they are doing everything they can to ensure the health and safety of those affected by their undertaking.

An employer must ensure a robust risk assessment is completed, with effective control measures implemented, especially for activities and tasks involving the use of ladders and stepladders.

In the event of a claim an employer will be relying on the numerous pieces of evidence necessary to defend their case. Proactively making sure safe systems of work are provided and maintained will improve safety and claims defensibility.

While the equipment is simple and straightforward to use, it has also been involved in many claims for compensation. When a claim does arise it often highlights weaknesses in evidence and the lack of key evidence is usually instrumental in the claim being settled.

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## Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

## Get in touch

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