

When is a slipping risk foreseeable and what should employers and occupiers do to manage the risks?

Pragma

An experienced facilities management view from David Paveley CMIOSH, MIIAI

It was interesting for me to consider the recent cases of *Seppings v Crampsie & Son Ltd* and *Devlin v The Trustees of Lord Durham's 1989 Voluntary Settlement*. In each case, a Claimant slipped through no fault of their own, but, in each case and for different reasons, their claims failed. In neither case was expert liability evidence called.

In the case of *Seppings v Crampsie & Son Ltd*, the Claimant slipped whilst working as a barmaid. The Claimant's position was that her employer did not provide a safe system of work. However, the claim against her employer failed because of the lack of evidence of there being anything on the floor which was likely to have caused the Claimant to fall. The judge ruled that *"Even if there had been a documented cleaning and inspection regime, a documented training programme, more staff on duty, less customers on site, documented risk assessments, or staff handbook, the accident would not have been prevented given the absence of a liquid or hazard on the floor. Accordingly, the claim is dismissed."*

In *Devlin v The Trustees of Lord Durham's 1989 Voluntary Settlement*, it is alleged that the Claimant slipped on an area of damp pavement resulting from a rainwater drainage system discharging water onto the pavement. The Claimant attributed his fall to either some sludge present in the vicinity of some mats laid on the pavement by a resident and/or what he says is the growth of algae, moss or some other organic material on the pavement itself resulting from the damp conditions.

The judge ruled that the claim against the occupier failed because he *"did not think it would have occurred to anyone that there was anything untoward with this accident location. To require an occupier to remove all vegetation, growth, debris, leaves, mulch or anything organic which might cause a pavement to be transiently slippery, would place a wholly unreasonable and overly onerous disproportionate burden on them and misunderstands the extent and nature of the very small risk as opposed to the cost and effectiveness of doing that."*

I have been responsible for slip risk management strategies and have advised duty holders on management of slip and trip risks in premises ranging from schools, factories and care homes to Premier League football clubs. I also provide expert witness advice to the Court across a range of topics, including slips and trips. Consequently, it was insightful for me to consider *Seppings* and *Devlin* in the context of my work as an expert witness instructed in similar cases and as a health and safety advisor. There seems to me to be clear learning points for employers, occupiers and lawyers in relation to the foreseeability of risks associated with slips and the reasonably practicable actions that should be taken when risks are, or should be, anticipated.

In this article, I will reflect on the cases in light of my experience of being responsible for the assessment and management of slip risks in areas accessed by employees and members of the public, in particular looking at:

- What should employers and occupiers do to manage slipping risks?
- What does that mean in the context of foreseeability of slip risks? and;
- How can an expert assist the Parties and the Courts in considering claims involving slipping.

What should employers and other duty holders do to manage slip risks?

People sometimes slip. Employers and others cannot completely prevent all slips, but they should take steps to manage foreseeable slip risks as far as reasonably practicable.

Put bluntly: Surfaces of floors and stairs in workplace and public premises should not be slippery.

There are three steps that employers and others responsible for floors, pathways and stairs should take to ensure that that is the case:

- Firstly, surfaces of floors and stairs should be constructed with appropriate materials and to an appropriate standard.
- Secondly, those surfaces should be maintained in good condition.
- Thirdly, systems should be put in place to deal with circumstances such as spills or contamination that may temporarily cause the floor or stairs to become slippery.

As demonstrated by the Seppings and Devlin cases, there are circumstances when people can slip, but it is not necessarily the duty holder's fault. This means that there is a limit to duty holders' responsibilities to take 'reasonable care' in the context of the Occupiers Liability Act 1957 (OLA), or to reduce risks 'so far as is reasonably practicable' in the context of workplace health and safety law. This in practice means making an assessment of the risk and implementing reasonably practicable control measures to mitigate that risk.

The causes of slips and trips are usefully demonstrated within the HSE's 'Slip potential model' which can be found in HSE's Technical Information Sheet – 'Assessing the slip resistance of flooring' ¹. This model shows that a number of factors can come into play and, in my experience, often multiple factors are involved.



Slip potential model from HSE Technical Information Sheet 'Assessing the slip resistance of flooring'

But what does this mean that employers and duty holders actually need to do? This is how the organisations that I have worked with have managed slip risks in practical terms:

1. Floor and stair construction

In order to ensure that surfaces of floors and stairs were constructed with appropriate materials, the organisations that I have advised provided specifications to contractors and/or suppliers to ensure that the

¹ <https://www.hse.gov.uk/pubns/geis2.pdf>

floor surface achieved minimum standards of surface roughness. One of the simplest methods of testing a floor is to use a surface roughness meter, which measures a cross section of a sample of the floor and identifies its roughness (measured in microns or μm). Where a surface has a roughness reading of less than 10 μm , it would be considered as being a high slip risk and where the roughness is greater than 20 μm , it would be a low slip risk.

2. Maintenance of floors and stairs

Following installation, we would monitor the slip resistance of floors through regular inspections and retesting of floor surfaces at defined intervals to ensure that they continued to meet the required standards and remained in good condition. Records of the results of all inspections were retained on a Building Management System to allow a comparison over time.

Also, systems were implemented to encourage cleaning contractors to report any defects as they regularly visited all parts of the premises. Once an area of damaged floor or pavement was identified, this was recorded on the Building Management System and repaired as soon as practicable. In addition, where there was an increased risk, such as during periods of heavy footfall in an area, such as in a sports stadium prior to an event, there would be an additional pre-event inspection completed which included inspection of floor surfaces. Also, whilst an event was in progress, such as during a football match, additional cleaning was completed at appropriate periods during the event. For example, during a football match, concourse cleaning was always completed just after kick-off, after the spectators had moved into the stadium, rather than at half time when the concourses were full.

When considering floor surfaces, inspections and cleaning regimes, consideration should be given to the type of location and the profile of the people using it. For instance, in a care home, as the likelihood and consequence of injury is greater, more effort would be required to reduce the likelihood of slips occurring than in other locations. In other words, what is reasonably practicable in one location, may not be considered reasonably practicable in another. The thought process behind the decisions that are made in respect of what is considered reasonably practicable, should be detailed in a suitable and sufficient risk assessment. From the perspective of a potential civil claim, very often having contemporaneous records of any risk assessment, inspections, repairs and cleaning regimes can be valuable in demonstrating that an organisation has an effective system in place. Likewise, without these records, it may be difficult to show that an organisation is meeting its duty holder's responsibilities.

3. Management of spills and surface contamination

In order to mitigate the risk of spills or contamination, temporarily causing surfaces to become slippery, an organisation should consider the type of spills that would be foreseeable. Plans should then be put in place to provide readily accessible resources to cope with these spills.

For example, in a football stadium concourse, mops and buckets should be strategically located in accessible positions around the stadium, to deal with any spills. Also, a member of the cleaning team should be on hand during the course of the match to respond to any incidents. In other locations, such as within a warehouse or in a commercial kitchen, spill kits should be prepositioned near any potential spill risks. The process for dealing with spills should be documented within an emergency plan as well as a risk assessment.

What does this mean in the context of foreseeability of slip risks?

The risks that should be foreseen by any employer or duty holder in any circumstance will, of course, always be for the Court. That said, it is also part of the facilities safety manager's role to identify hazards, assess risks and implement appropriate risk control strategies. As part of this process, near miss and accident reports should be assessed to help identify potential areas where a slip may occur.

In facilities management practice, my starting point is to ensure that the relevant legislative and good practice standards are met. There are defined standards for a range of surfaces and situations where there is a risk of slips and trips occurring. For example:

- For workplaces, the relevant standards start with the Workplace (Health, Safety and Welfare) Regulations 1992 ('the Workplace Regulations'). These regulations make reference to the condition of floors and traffic routes, the need for adequate lighting and also cover the requirements for escalators and walkways.
- The Building Regulations (2010) Approved Document K 'Protection from falling collision and impact'² and the British Standard BS 5395 set the standards for the dimensions of steps and handrails and the need for contrasting nosings to make steps more apparent.
- Adequate levels of lighting can also be a factor in some slip and trip accidents and HSG38³ identifies the minimum standards for lighting levels in different settings.
- For UK pavements, the standards depend on whether they are for highways/roads or pedestrian footways/pavements. National Highways apply the standards within the Design Manual for Roads and Bridges. The standards for Local pedestrian footways and public paving are within the Department for Transport's Manual for Streets and within relevant British Standards such as BS 1242:1960 Tarmacadam 'tarpaving' for footpaths, playgrounds and similar works. In public spaces that are not workplaces, e.g. a footpath in a retail park, under the OLA, the operator has a *"duty to ensure that a visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there"*.

In my experience, there will inevitably be a potential that someone will slip at some time in any workplace or public place. This means that the floors and stairs in those places will inevitably create a hazard i.e. a potential that someone will be harmed. The existence of a hazard (a potential for harm) does not, however, necessarily mean that there is inevitably a risk, and certainly not once any risk has been minimised by identifying and taking action where such is assessed as being reasonably practicable.

To my mind, the key to hazard identification and risk management is to be proactive and to identify likely hazards before they cause an injury. The HSE offers advice to those responsible for premises which may present a slipping hazard within their 'Slips and Trips – Hazard Reporting Checklist'⁴. This provides examples of slip and trip hazards within a variety of locations and scenarios and provides practical solutions for managing these managing associated risks.

Overall, and whilst emphasising that whether risks should be foreseen by any employer or duty holder will always be for the Court, in practical terms I take the view that:

- Floors and stairs used by people in workplaces and other public places will always present a hazard i.e. a potential for harm.
- The potential for harm will manifest if, for example, someone slips on a floor or on stairs and is injured.
- Hence there is a foreseeable risk that someone will be harmed by slipping on any floor used by people in workplaces or public spaces.
- This risk and whether any reasonably practicable precautions are required to reduce the risk should be considered in a suitable and sufficient risk assessment.

¹ <https://www.gov.uk/government/publications/protection-from-falling-collision-and-impact-approved-document-k>

² <https://www.hse.gov.uk/pubns/priced/hsg38.pdf>

³ <https://www.hse.gov.uk/pubns/ck4.pdf>

The slipping risk associated with workers and public use of floors and staircases can, however, where an unacceptable risk is identified, be appropriately controlled by taking the simple steps outlined earlier in this article: construct surfaces with appropriate materials, maintain them and take steps to manage spill and contamination risks. By doing this, the risks should be adequately controlled.

How an expert can assist in legal proceedings:

An expert with experience of facilities management can help the parties and courts involved in claims to understand:

- Whether tripping hazards such as floors or stairs are constructed to an appropriate standard? (by reference to relevant guidance and standards, some of which are as noted above). Sometimes the slip resistance of the surface can be determined by reference to manufacturer's literature, alternatively the expert can take measurements to assess the surface roughness of a floor or surface.
- Were actions taken to ensure that the floor or stairs were maintained to an appropriate standard? Were the actions taken consistent with good practice standards in relation to inspections and repairs?
- Were appropriate actions identified and taken to manage spill and contamination risks? What was the cleaning regime? Was that consistent with good practice?

Early advice in cases can help to assess the validity of a claim. Issues can be narrowed, and evidence collected to resolve any questions that the Court may need assistance with. If necessary, an expert report can be prepared to assist the Court in understanding and considering the above issues.

Concluding remarks

People sometimes slip. Not all slips are preventable, but the risks are foreseeable, as are the practical actions necessary to control them.

As the cases of Seppings and Devlin demonstrate, not all slip accidents are the fault of duty holders and not all failures to achieve the appropriate standards are causative. However, there are many other circumstances where slip risks should be foreseen and managed. Seeking advice from an expert, both by those responsible for managing slip risks, and solicitors looking to litigate civil claims involving slips, can assist in assessing the situation.

Early advice can save time and costs associated with litigation, both for duty holders and solicitors. For duty holders, assistance can be given in respect of identifying, assessing and mitigating slip risks. For legal professionals, expert advice can narrow the issues authoritative opinion being provided on how duty holders responded in the context of practical application of the relevant legislative and good practice standards.

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