

Work at Height: Responsibilities of Building Owners.

Health and Safety is the responsibility of everyone. We know that. However, there are grey areas where people cannot determine whose direct responsibility it is to provide the safety equipment or processes required.



Figure 1 Walkway and Lifeline for window and gutter access

An example of this is building access. Where an employee is required to access an area of a building it is very clear that the employer is required to provide safe means of access for their worker.

This will be a series of risk assessed methods of work, with hopefully the correct equipment provided, whether this be passive safety, single anchorages, ladder systems or horizontal lifelines.

However, it is a common practice for building owners to incorrectly pass the responsibility for this risk assessment and method statement generation onto a subcontractor employed to perform a task on the building. Many a time have we seen the statement "Contractor to supply detailed RAMS" within contracts, thereby passing responsibility for themselves and their employees' safety.

This "buck-passing" does not stop just at building access.

It is highly prevalent in all areas of non-employee access safety. For example, in the bulk liquid transport industry it is an on-going discussion over who should provide safe means of access to the back of a vehicle for off loading of its contents. Is it the site? Is it the haulier? Reading through the following pages should assist in the answering of this question, allowing you to apply the logic to any kind of access throughout any building.

For the purposes of this discussion we shall assume that building owner shall refer to a landlord and also to an owner who also uses the building for their own purposes.

The responsibility is in black and white, so any mis-appointed responsibility has no defence in the event of an accident.

Much of the following is based on the UK Health and Safety at Work Act, but the principles will remain the same in other countries.

Health and Safety at Work etc. Act 1974

Under the General Duties of the Health and Safety at Work Act it is stated

4 General duties of persons concerned with premises to persons other than their employees.

(1) This section has effect for imposing on persons duties in relation to those who—

(a) are not their employees; but

(b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

(a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom; or

(b) the safety of or the absence of risks to health arising from plant or substances in any such premises;

that person shall be treated, for the purposes of subsection (2) above, as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

As with all Acts of Parliament this is confusing and honestly written in such a way that only those trained and certified in the legal profession have a chance of being able to read it without causing themselves pain.

So, lets remove the pain.

In Straight Language

Broadly speaking this section means the following:

Building owners and tenants share responsibility for ensuring health and safety provision, depending on where in the building the employee / subcontractor is requiring access.

- Any building owner utilising subcontractors to perform work of any variety on their premises are responsible for ensuring the provision of suitable safety measures.
 - For example: Repair to the fabric of the building such as roof repairs. This would invariably be the responsibility of the building owner / landlord to undertake, and therefore provision of safety falls under their jurisdiction also.
- Any building owner allowing tenants to use the premises to perform work of any variety on their premises are responsible for ensuring the provision of suitable safety measures for areas and sections of the building that they are in control of.
 - For example: If the building owner is responsible for the maintenance of balconies, atriums, plant rooms or other areas where tenants may

Health and Safety at Work etc. Act 1974	
CHAPTER 37	
ARRANGEMENT OF SECTIONS	
PART I	
HEALTH, SAFETY AND WELFARE IN CONNECTION WITH WORK, AND CONTROL OF DANGEROUS SUBSTANCES AND CERTAIN EMISSIONS INTO THE ATMOSPHERE	
Preliminary	
Section	1. Preliminary.
	<i>General duties</i>
	2. General duties of employers to their employees.
	3. General duties of employers and self-employed to persons other than their employees.
	4. General duties of persons concerned with premises to persons other than their employees.
	5. General duty of persons in control of certain premises in relation to harmful emissions into atmosphere.
	6. General duties of manufacturers etc. as regards articles and substances for use at work.
	7. General duties of employees at work.
	8. Duty not to interfere with or misuse things provided pursuant to certain provisions.
	9. Duty not to charge employees for things done or provided pursuant to certain specific requirements.
	<i>The Health and Safety Commission and the Health and Safety Executive</i>
	10. Establishment of the Commission and the Executive.
	11. General functions of the Commission and the Executive.
	12. Control of the Commission by the Secretary of State.
	13. Other powers of the Commission.
	14. Power of the Commission to direct investigations and inquiries.
	<i>Health and safety regulations and approved codes of practice</i>
	15. Health and safety regulations.
	16. Approval of codes of practice by the Commission.
	17. Use of approved codes of practice in criminal proceedings.
	A

Figure 2 Health & Safety at Work Act 1974



Figure 3 Roof Repairs using a horizontal lifeline and suitable PPE

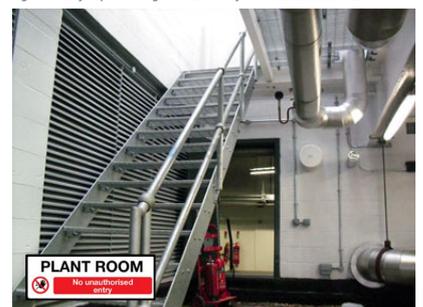


Figure 4 Access provided to plant and maintenance

be required to go then they are responsible for ensuring that the access to these areas is secure from fall risks.

- Any tenant who is contracted as being responsible for access to areas of the building are responsible for all employees and subcontractors as if they were the building owner. This is most obvious when the access is to machinery or structures installed by the tenant under the terms of their lease.
 - For example: Repair to a mezzanine storage floor which was installed by the tenant. This is obviously not the responsibility of the building owner as they had no weight in the design process.



Figure 5 Barriers and access provided to mezzanine floor storage areas

So, taking this a little further, we also need to consider the Construction (Design and Management) Regulations 2015. Any designer in the process of any new build or alteration has the responsibility of ensuring the provision of safety throughout the life of the structure being built. Therefore, the onus is once again placed on the client of the designer, in this instance the building owner, to ensure that the correct measures are put into place.



Figure 6 Mobile Barrier systems employed to allow gutter access for maintenance

For example: Maintenance of Photovoltaic panels. We discussed this in Issue 4: Safety Provision for PV Panel Access. Under the CDM Regulations PV access requires safety provision, and it is the responsibility of the designer AND later the building owner to ensure that any personnel, whether directly employed or subcontracted is supplied with the correct solution to working at height, without the output of the panels being taken into consideration.

Whilst this example is very specific, its message is simple. The building owner needs to take responsibility for provision of health and safety measures throughout the design of the building, and also through its

life, its uses and its maintenance. The tenant needs to ensure that they provide this same level of safety for all structures and machinery designed and installed themselves for their own use, and both parties need to take responsibility for direct employees, and subcontractors, with each party taking ownership of the parts of the structure that they are responsible for.

Summary

There is a simple way of determining responsibility for height safety provision. Follow this checklist, and use the example of the bulk liquid transport industry and see if you can determine the correct result:

1. Is the structure to be accessed part of the original building fabric?
2. Is the maintenance of this structure the responsibility of the building owner?

If the answer to either of these questions is NO then the responsibility lies with the tenant, or the subcontractor if they have brought the "structure" with them.