

Is it OK to Clear Snow and Treat Surfaces in Winter?

How far do we have to go to make our car park safe in snow and ice?

If someone slips and falls when snow and ice are on the ground, in most instances, no-one else is to blame because the hazard is obvious and we all have to take care of ourselves through exercising appropriate caution when we know the ground is slippery.

However, there is a legal duty of care to visitors under the Occupier's Liability Acts. Occupiers of premises must take reasonable care to ensure that visitors are reasonably safe whilst using the premises for the purposes for which they have been invited or permitted to be there. In many circumstances, this might include making pathways safe for visitors in winter weather conditions.

This does not mean that risk has to be completely eliminated. The law would usually regard it as sufficient for the occupier to do what is "reasonable" or "reasonably practicable" to make external surfaces safe. This means that occupiers and/or employers do not have to take measures to reduce risk that require a disproportionate sacrifice of money, time or trouble.

What does this mean in practice?

The case of *McCondichie v Mains Medical Centre* (2003) provides an example to illustrate how the legal duty of an occupier to a visitor might be interpreted by the courts. The pursuer (claimant) was a patient of the doctors' surgery (the Mains Medical centre) and despite walking carefully in flat shoes, she slipped and fell on the roadway through the car park, which she described as "very, very icy".

Neither the claimant, nor her sister who arrived a short time after the accident, could discern any evidence that these had been treated with salt or grit.

However, the defenders (defendant) had a system in place for treating the car park and paths to the surgery in icy conditions and could show that they had followed it on the day of the accident, spreading salt and grit in the car park, including the area where the claimant shortly afterwards slipped and fell.

It was held that the defendants had done what was reasonably practicable to make the car park and paths reasonably safe and this was enough to discharge their legal duty to minimize (rather than eliminate) the risk presented by icy weather conditions.

Do we have to protect our employees from falling in snow and ice?

Employers have legal duties towards their employees and others who may be affected by the conduct of their undertaking, which include, so far as is reasonably practicable, the provision of safe access and egress to and from their premises.

There is also a specific duty on employers under the Workplace (Health, Safety and Welfare) Regulations to ensure, so far as is reasonably practicable, that persons are not exposed to risk from slippery floors. The Approved Code of Practice that accompanies these regulations, also states that: "Arrangements should be made to minimize risks from snow and ice. This may involve gritting, snow clearing and closure of some routes, particularly outside stairs, ladders and walkways on roofs".

Each employer must decide what reasonably practicable measures they can implement, taking account of the seriousness of the risk and the resources required, through a winter weather risk assessment. This should cover the ways in which reasonably foreseeable winter weather conditions could affect the safety of employees and visitors (reasonably foreseeable winter weather could now include freezing temperatures and snowfall sustained over a period of days or weeks, without any thaw during the daytime).

The assessment should:

- Prioritize areas to be cleared and/or treated under a winter weather action plan, according to knowledge of the routes pedestrians and vehicles will use
- Identify particular areas where there is likely to be a more significant hazard, for example, places where: black ice could form; there are high levels of pedestrian traffic; pedestrians and vehicles share the same routes; there are changes of level; there is a history of accidents in bad weather

Action to implement the findings of the risk assessment should include:

- A system for monitoring weather conditions and deciding when and how the action plan is to be invoked and whether any treatment programme (gritting/salting/clearing) is to be preventative or reactive - it is easier to remove freshly fallen snow than hard-packed frozen snow, so it is best to start work in the morning after a night of snowfall and maintain the ways you have cleared throughout the day, covering the cleared path with salt to prevent re-freezing
- Continuing monitoring of weather conditions after the initial invocation of the plan, so that any improvement in ground conditions is maintained
- Planning how to take reasonably practicable measures and who is going to carry them out, including, for example:
 - Obtaining and storing adequate supplies of grit and/or salt for an extended period of bad weather
 - Training employees in winter weather procedures
 - Not using water to clear snow - it is quite likely to re-freeze and form black ice, which increases the risk of injury as it cannot be seen and is extremely slippery
 - Planning where cleared snow is placed - avoid blocking drains or other pathways and work by shovelling snow from the centre of the path to the sides
 - Obtaining pedestrian barriers and other equipment so as to undertake any required work safely and effectively
 - Selecting suitable, physically fit personnel to undertake snow clearing and surface treatment work, which can be strenuous
 - Planning suitable rest breaks in snow clearing and surface treatment work, particularly if significant snow clearing work is involved and/or in very cold weather
 - Providing appropriate personal protective equipment for employees required to do such work
 - Devising and disseminating a policy on work attendance by employees who might face great difficulty over their journey into work in extreme weather conditions
 - Including the possibility of employee absence in your business continuity plan
- Recording everything that is done, including risk assessments; safe operating procedures for any work to be done; winter weather action plans; training provided to employees and all work done to clear or treat ground surfaces on your premises - if it can be shown that

reasonably practicable precautions for the safety of employees and visitors have been taken, it is much more likely that legal claims can be successfully defended.

Any kind of salt can be used to melt snow or prevent the formation of black ice - but do not use the supplies in local authority salt bins, which they use to treat roads. Sand or ash grit can be used along with or instead of salt; it provides some grip on the surface - but it is not as effective in preventing the formation of ice.

[In practice, how far do we have to go with this?](#)

What is reasonably practicable is illustrated by the quite recent cases of *Burrows v Northumbrian Water* (2014) and *Kennedy v Cordia LLP* (2016).

[Burrows v Northumbrian Water \(2014\)](#)

In *Burrows v Northumbrian Water*, an employee was injured whilst making an emergency visit to a remote reservoir. He slipped on black ice whilst he was applying salt (obtained from a salt box located by the site entrance) onto the surface of the reservoir access roadway, in the vicinity of the wheels of the four-wheel drive vehicle provided by his employers.

The roadway was used infrequently - once a week or in emergencies – and was therefore not cleared of snow or treated to prevent icing.

It was held, following an appeal to the High Court, which upheld an earlier decision in a lower court, that the employer had done everything reasonably practicable to provide for their employee's safety – and if they had undertaken to ensure that the roadway was treated, the risk would actually have been increased, insofar as more employees would have been exposed to risk in visiting the remote site and clearing or treating the roadway.

The infrequency with which the roadway was used was a key aspect in this decision – if it had been a frequently used thoroughfare, more effective risk control measures would have been justified.

This case shows:

- Risk control measures are related to the risk – employers are not expected to spend a huge amount of money on the mitigation of a minor risk
- Risk is related to the numbers of people exposed to it as well as the likely consequences
- Risk does not have to be reduced to zero

[Kennedy v Cordia \(Services\) LLP \(2016\)](#)

By contrast, the (Scottish) case of *Kennedy v Cordia (Services) LLP* involved a care worker. Her duties involved making visits to clients; she slipped in icy conditions on the way to a client's home and was injured.

Miss Kennedy was not provided with any personal protective equipment in the form of footwear attachments designed to prevent the wearer slipping in snow and ice. In fact, the health and safety manager had assessed the risk as "tolerable" on the strength of the provision of guidance to employees about wearing appropriate footwear.

On appeal to the Supreme Court, it was held that the employer, who controlled the timing and location of visits the employee made, ought to have provided appropriate personal

protective equipment in the form of anti-slip footwear attachments because the risks presented by snow and ice were entirely foreseeable. The employee was at work whilst she was making her way to clients' homes; she was not in the position of an ordinary member of the public, or commuting to a fixed workplace.

This case shows:

- Risk assessments may be considered in evidence before the courts
- If it is reasonably foreseeable that employees will have to work in weather conditions like snow and ice, this should be assessed and measures taken to reduce the risks
- Personal protective equipment is likely to be a reasonably practicable measure

Don't forget to protect workers doing snow clearing and gritting

The employer's duty to protect workers doing snow clearing and gritting work was the focus of a legal case in 2013, *McKeown v Inverclyde Council*.

McKeown v Inverclyde Council (2013)

The injured person was a school janitor whose work included salt-treating paths and other areas around the exterior of the school. Whilst he was doing this, he slipped on ice that had formed on an external fire escape stair and was injured. He had no specific training or instruction about the task.

Nonetheless, the Council had a written system of work for salt treating the grounds. Unfortunately, this was not implemented – but had it been, it would have been enough evidence to prove the Council had done what was reasonably practicable. As it was, the judge considered the disregarded system as evidence that the Council hadn't done what was reasonably practicable to protect their employee.

The Council was held to be wholly liable for the janitor's injuries – and in breach of the Workplace (Health, Safety and Welfare) Regulations because of their failure to keep the fire escape stair free of ice.

This case shows:

- Provide training for personnel engaged in snow-clearing and gritting work
- Ensure that safe systems of work are implemented – if they aren't they may be used as evidence against the employer
- Higher risk areas include fire escape routes, including stairs and these should be prioritized for salt treatment as a precaution against ice

The moral of these stories

It is sometimes said that it is probably better to do nothing than to make matters worse by doing a bad job of snow and ice clearing (which is a principle that applies to anything we do as organizations or individuals) - but it is best to make a good job of snow and ice clearing to make conditions safer, if you are responsible for the safety of people on your premises.

If you have workers visiting other premises, you need to do what is reasonably practicable to reduce the risk of slips in icy conditions. The measures necessary need not be expensive; for example, solutions such as footwear attachments and the implementation of safe systems of work may well be enough.