

Community Housing Cymru Windows and balconies

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Introduction

- Why are we here:
- Falls from height often result in serious or fatal injuries
- Prevent harm
- Prevent prosecutions



Introduction

- Three broad falls to consider
 1. Accidental
 2. Arising from confused mental state
 3. Deliberate

Legal requirements

- Health and safety at work act 1974
- Section 3 states:
 - (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as reasonable practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risk to their health or safety.



Legal requirements

- Important words:
- ‘Shall be the duty’ – cannot be delegated to another.
- ‘ensure’ – positive action
- ‘So far as reasonably practicable’ – risk reduced to lowest level



Legal requirements

- Management of health and safety at work regs 1999
- Regulation 3 - Risk assessment
 1. Every employer shall make a suitable and sufficient assessment of
 - a. ...*employees*.....
 - b. the risks to the health and safety of persons not in his employment arising out of in connection with the conduct of his undertaking



Legal requirements

- Regulation 3
- 3. Any assessment such as referred to in (1) or (2) shall be reviewed by the employer *[or self employed...]* who made it if:
 - a. There is reason to suspect it is no longer valid
 - b. There has been significant change in the matter to which it relates





Legal requirements

- Workplace (health, safety and welfare) regulations 1992
- Regulation 13
- Regulation 14
- Regulation 15



Legal requirements

- Regulation 13
 1. So far as reasonably practicable, suitable and effective measures shall be taken to prevent any event specified in paragraph 3
 2. So far as reasonably practicable, the measures required by (1) shall be measures other than PPE, information, training or supervision



Legal requirements

- Regulation 13
3. The events specified in this paragraph are
- a. Any person falling a distance likely to cause personal injury
 - b. Any person being struck by a falling object likely to cause personal injury.



Legal requirements

- Approved code of conduct
- Fencing required where someone may fall over 2 metres
- Or, there is an increased likelihood of a fall or serious risk of injury
- Height of the fence should be at least 1100mm above the surface
- Adequate strength and stability



Legal requirements

- Approved code of conduct
- Fencing should also prevent items falling from height
- Consider upstands or toeboards

Legal requirements

- Regulation 14
 1. Every window or other transparent or translucent surface in a wall or partition and every transparent or translucent surface in a door or grate shall, where necessary for reasons of health and safety
 - a) Be of safety material or be protected against breakage of the transparent or translucent material
 - b) Be appropriately marked or incorporate feature so as, in either case, to make it apparent



Legal requirements

- Approved code of conduct
- Protection against breakage
- Safety glass etc
- Barriers
- Transparent surfaces should be marked to make apparent



Legal requirements

- Regulation 15
 1. No window, skylight or ventilator which is being capable of being opened shall be opened, closed or adjusted in a manner which exposes any person performing such operation to a risk to his health or safety.
 2. No window, skylight or ventilator shall be in a position when open which is likely to expose any person in the workplace to a risk to his health or safety.



Legal requirements

- Approved code of conduct
- Consider reaching to operate
- Controls should be placed so as to avoid falling through or out of the window
- Open windows should not pose a risk – consider collision or falling through/out



Legal requirements

- Work at Height Regulations 2005
- Not strictly relevant when considering service users
- Must be considered in respect of your employees
- Principles
 - Avoidance
 - Protection against falls/injury
 - Training

Legal requirements

- Whist this applies primarily to the workplace and persons at work, compliance will naturally reduce the risk to service users alike.
- Further consideration should be given S2(2) of the Occupiers Liability Act 1957
- To take such care as in all the circumstances of the case to ensure that the visitor will be reasonably safe for the purposes for which he is invited or permitted to be there.



Other legal requirements

- Fire safety
- Residential care premises
- Should have a suitable means of escape
- Use of windows is not normally acceptable



Other legal requirements

- Building regulations
- No requirement for windows to be fully openable
- Refer to the need for suitable guards, restrictors for windows above ground



Risk assessment

- You must:
- Assess the premises – don't forget furniture, can it be used to access inaccessible windows
- Assess the service user
- Where any risk identified adequate controls need to be out in place



Risk assessment

- Control measures
- Window restrictors
- Edge protection/fencing
- Screens to prevent access to dangerous areas
- Restricting access to higher floors



Risk assessment

- Window restrictors
- Restrict opening to 100 mm
- Robust
- Tamper proof – consider available ‘tools’
- Window frames – condition? Robust?



Risk assessment

- Balconies
- By very nature are dangerous
- Sufficient protection should be provided to prevent climbing over the edge protection
- Consider chairs, plant pots, footholds other furniture
- Where risks cannot be guarded – restrict access





Risk assessment

- Maintenance/inspections
- Regular inspections
- Record maintenance
- Evidence of tampering
- Training

Risk assessment

- The service user:
- Senility or dementia
- Reduced mental capacity
- Mental disorder
- Alcohol and drugs



Risk assessment

- Perceived risk of hostility/determined escape
- Confusion/disorientation new surroundings
- Temperature
- Broken sleep
- Deliberate/self harm





Risk assessment

- Recap
- Class of persons – more likely to fall, young vulnerable
- Fall what risk does it pose, height/harm
- Ease of access to risk
- Prevention



BSI friend or foe

- You may be forgiven for thinking that BSI compliance is enough...
- BS EN 14351-1 & BS EN 13126-5
- Both developed to prevent accidental falls
- BS EN 14351-1 recommends that restrictors hold a static force of 350 newtons for 60 seconds
- BUT

BSI friend or foe

- Is this enough to prevent the determined attack
- No British or European standard deal with deliberate attempt to defeat the restrictors
- Now consider your confused service user who fears a hostile environment...
- It is recommended that restrictors on windows in healthcare have a maximum opening of 89mm and can withstand greater forces than current BSI standards



BSI friend or foe

- Also be aware
- Some types of window restrictors use plastic components
- If allowed to deteriorate can cause the restrictor to fail
- Regular inspection should fail any sign of crack or defect
- Any repairs or restrictions should immediately applied



Lewis v Six Continents Plc [2005]

- Christian Lewis, claimant
- Broadway Hotel in Letchworth owned by the defendant



Lewis v Six Continents Plc [2005]

- Mr Lewis had attended a course during the day
- Following his evening meal he went into the local town for drinks with other delegates
- He returned to his room at 22:00
- His room mate returned at 23:30
- The claimant was asleep



Lewis v Six Continents Plc [2005]

- Sometime during the night the claimant's room mate was awoken to a loud bang
- The claimant was gone...
- ...later found on the ground beneath the window
- For reasons unknown he had fallen through the window



Lewis v Six Continents Plc [2005]

- Many reasons were put to the court as to why he fell
 - Tripped?
 - Drunk?
 - Being sick?
-
- The court could not establish why he fell but discounted many versions. In the event the reason why he fell was not relevant.



Lewis v Six Continents Plc [2005]

- The window was 750 mm from the floor and was a sash type window with no restrictors.
- The building was old



Lewis v Six Continents Plc [2005]

- Liability was considered under the Occupiers Liability Act 1957.
- Health safety legislation was referred to at trial but not pursued
- The judge was mindful of the same as professional opinion/guidance
- Compliance demonstrating good/safe practice



Lewis v Six Continents Plc [2005]

- The judge considered the duty of care to the claimant in this action
- Not a vulnerable person
- The question to be asked is whether the defendant has taken reasonable care to visitor in the material case



Lewis v Six Continents Plc [2005]

- The judge did not consider that had the window height been 800 mm the accident would have been avoided
- The claimant argued that any window out of which someone could fall should be fitted with limiters or bars
- The court did not accept this view, the duty is to take all care that is reasonable
- Such an argument would mean that virtually every window in every building would have to be adapted



Lewis v Six Continents Plc [2005]

- Court of Appeal
- Claimant argued
- Risk assessment
 - Should have been done
 - Risk to the claimant should have been identified
 - Control measures in place
- Court found the risk was not reasonably foreseeable



Lewis v Six Continents Plc [2005]

- Next the claimant argued that the judge was wrong not to consider the usage of the room and the range of persons likely to use it
- Court found that there was nothing exceptional about the claimant that would modify the ordinary risk
- The court of appeal was satisfied that the window did not present an obvious danger to an adult
- Appeal dismissed



Pollock v Cahill and Cahill [2015]

- Guest house
- Claimant staying
- Claimant fell from an open bedroom window at the property
- Catastrophic injury



Pollock v Cahill and Cahill [2015]

- The defendant advanced 3 possible causes
 1. Complete accident
 2. Claimant overbalanced and fell
 3. Claimant was sleep walking
- The court did not accept 2 or 3 due to lack of evidence!



Pollock v Cahill and Cahill [2015]

- Court found that whilst the second defendant was making up the room she had left the window open
- In the night the claimant had awoken to use the toilet but he was disorientated
- Very similar facts to 'Lewis' but... the court found in favour of the claimant
- Why?



Pollock v Cahill and Cahill [2015]

- He was blind
- The defendants should have had regard to his known vulnerability
- The window being left open created a very real risk to this claimant
- By leaving the window open they misjudged the risk and failed to discharge their duty to him



Thank you

Any questions?