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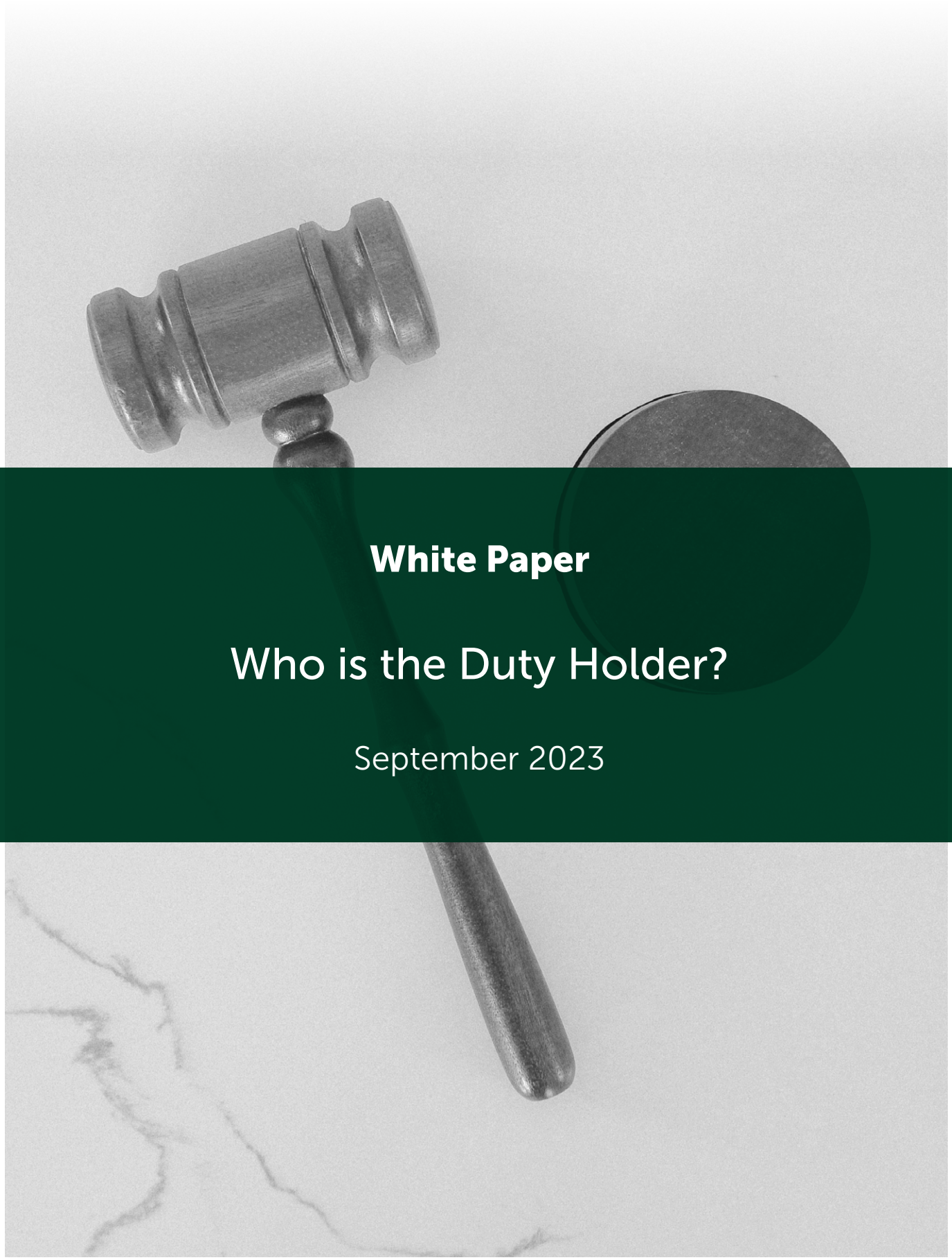
Independent workplace compliance



White Paper

Who is the Duty Holder?

September 2023

Who is the Duty Holder?

The changes to our building/fire legislation (see our previous whitepapers July 2023, November 2022 and August 2022), following the Grenfell Tower fire in 2017, have seen various people and organisations reviewing their roles and responsibilities.

This in turn has prompted a number of queries for us from a range of sectors and levels of management on how they should be positioning their roles as a result.

So, this month we're looking at roles, responsibilities and duty holding for a number of areas of health and safety compliance and what they mean.

In this whitepaper:

1. The Health and Safety at Work Act etc. 1974
2. Asbestos
3. Legionella
4. Fire
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1. The Health and Safety at Work Act etc. 1974

Our primary piece of legislation covering occupational health and safety in Great Britain, the Health and Safety at Work etc. Act 1974, places duties on both employers and employees. Primarily these cover:

- **Section 2(1) of the Act** places a duty on all employers have to ensure, as far as is reasonably practicable, the health, safety, and welfare of their employees when at work.
- **Section 3(1) of the Act** places a duty on employers and the self-employed to also ensure that individuals who are not employees but may be affected by the work activities (such as customers, visitors, contractors and members of the public) are not exposed to risks to their health and safety.
- **Section 4 of the Act** imposes duties on persons concerned with premises to persons other than their employees - where they have to any extent, control of premises, means of access or egress and of any plant or substance in such premises - to ensure, so far as is reasonably practicable, that the premises are safe and without risks to health.
  In addition, where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to the maintenance or repair of any premises and access and egress and/or the safety of or the absence of risks to health arising from plant or substances in any such premises, they shall be treated as being a person who has control of the matters to which their obligation extends.
- **Section 7 of the Act** places a duty on every employee while at work, to take reasonable care for the health and safety of themselves and others who may be affected by their acts or omissions and to co-operate with the employer in matters relating to health and safety.

A link to the Act is - Health and Safety at Work etc. Act 1974 (legislation.gov.uk)

The duties apply to all employers and employees, as relevant, and provide the foundations for requirements including, risk assessment, providing and maintaining safe working conditions, equipment, and systems of work, information, instruction, training and supervision, communication and consultation and health surveillance.

Under the Health and Safety at Work Act etc. 1974, sits a range of Statutory Instruments (regulations) and these provide more specific requirements on how aspects of health and safety relevant to your organisation should be managed. Some of these also define in more detail the responsibilities of the duty holder.

2. Asbestos

Regulation 4 of the Control of Asbestos Regulations 2012 is the duty to manage asbestos in non-domestic premises. The duty covers all non-domestic premises, including industrial, commercial and public buildings, as well as the 'common' parts of certain domestic premises.

For this regulation the dutyholder is the owner of the non-domestic premises or the person/organisation that has a clear responsibility for the maintenance or repair of that premises. Where a contract or tenancy exists the extent of the duty depends on the nature/ responsibility under that agreement.

This means the dutyholder could be one or a number of people/organisations, for example, where:

- A building is owner occupied, or has an occupier with a full repairing lease, it is the occupier;
- Through a contract or tenancy agreement, responsibility within the premises is shared between a number of people/organisations, each of the them will have the duty for the areas in which they have the responsibility to maintain;
- The owner uses a managing agent, while the managing agent may act on behalf of the owner the ultimate responsibility remains with the owner; or
- The premises are unoccupied or there is no contract in place, the person in control of the premises or part thereof.

As an additional consideration and using schools as an example, the employer will have the duty holding depending on their responsibility for maintenance of the premises. So for,

- Local authority managed schools the employer is the local authority;
- Voluntary-aided or foundation schools, it's the school governors;
- Academies and Free Schools, the trust; and
- Independent and fee-paying schools it is the proprietor, board of governors or trustees.

Links to the regulations and further guidance are -

The Control of Asbestos Regulations 2012 (legislation.gov.uk)
Managing and working with asbestos (hse.gov.uk)

3. Legionella

For Legionella, The control of legionella bacteria in water systems, Approved Code of Practice (ACoP) (L8) "applies to the risk from exposure to Legionella" where man-made water systems are used that could be a potential source for the bacteria to grow. The ACoP is enabled through the Health and Safety at Work etc Act 1974, the Management of Health and Safety at Work Regulations 1999 and the Control of Substances Hazardous to Health Regulations 2002 (COSHH). It extends to "any undertaking involving a work activity managed by you or on your behalf to premises controlled in connection with a trade, business or other undertaking where water is used or stored; and where there is a means of creating and transmitting water droplets (aerosols) which may be inhaled, causing a reasonably foreseeable risk of exposure to legionella bacteria."

The dutyholder, is identified in the ACoP, and could be:

- "(a) the employer, where the risk from their undertaking is to their employees or others; or
- (b) a self-employed person, where there is a risk from their undertaking to themselves or others; or
- (c) the person who is in control of premises or systems in connection with work, where there is a risk from systems in the building, e.g. where a building is let to tenants, but the landlord keeps responsibility for its maintenance."

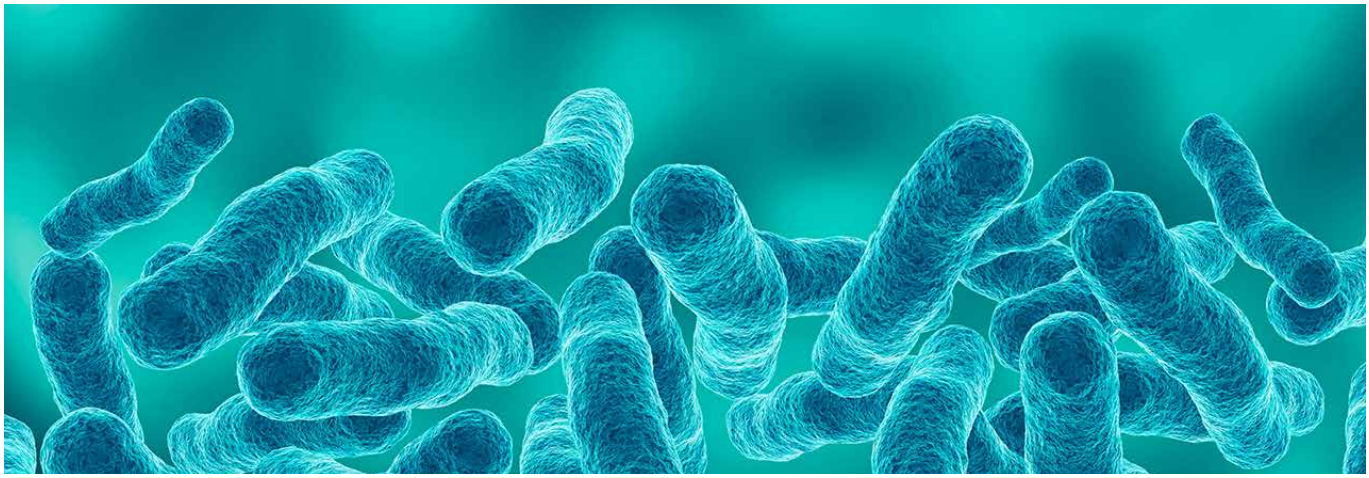
Where a reasonably foreseeable risk is identified, the dutyholder is required to appoint a competent person or persons to help undertake the measures needed to comply with the requirements.

"The appointed competent person or persons should have sufficient authority, competence and knowledge of the installation to ensure that all operational procedures are carried out in a timely and effective manner (L8 para 48).

"The appointed competent person or persons to take day-to-day responsibility for controlling any identified risk from legionella bacteria, known as the 'responsible person' " (L8 para 51).

A link to the ACoP is -

Legionnaires' disease: The control of legionella bacteria in water systems. Approved Code of Practice and guidance on regulations L8 (hse.gov.uk)



4. Fire

The Regulatory Reform (Fire Safety) Order 2005, defines under Article 3 a 'Responsible Person', which means—

- "(a) in relation to a workplace, the employer, if the workplace is to any extent under his control;
- (b) in relation to any premises not falling within paragraph (a)—
  - (i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or
  - (ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking."

The duties under the Order include:

Where the premises are a workplace, the Responsible Person must ensure that any duty imposed (through Articles 8 to 22B) is complied with in respect of those premises. (Article 5(1)).

Where the premises are not a workplace, the Responsible Person must ensure that any duty imposed (through Articles 8 to 22B) or by further regulations (made under article 24) is complied with in respect of those premises, so far as the requirements relate to matters within his control (Article 5(2)).

Any duty imposed by Articles 8 to 22B or by regulations made under Article 24 on the Responsible Person in respect of premises shall also be imposed on every person, other than the Responsible Person referred to in paragraphs (1) and (2), who has, to any extent, control of those premises so far as the requirements relate to matters within his control Article 5(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, including anything in or on premises; or
- (b) the safety of any premises,

that person is to be treated, for the purposes of paragraph (3), as being a person who has control of the premises to the extent that his obligation so extends (Article 5(4)).

The interpretation of this is the duty holding falls to the organisation, with an individual acting as 'Responsible Person' on behalf of that organisation. There will of course then be other individuals that have been appointed to assist the 'Responsible Person' in carrying out their legal duties i.e. completing fire risk assessments, maintaining fire systems and implementing organisational fire safety objectives – but ultimately, the budgets and resources allowing the organisation to comply with its duties sit with the Responsible Person.

In Scotland the 'Responsible Person' is referred to as the 'Duty Holder' and in Northern Ireland it's referred to as the 'Appropriate Person'.

The introduction of the Building Safety Act 2022 (in England and Wales) has added a new additional duty holder; the 'Accountable Person', for buildings in scope. This will be the organisation or person who owns or has responsibility for the building. It may also be an organisation or person who is responsible for maintaining the common parts of a building, for example corridors or lobbies. During for example refurbishment, multiple duty holders may be involved.

If a building has more than one 'Accountable Person', the 'Accountable Person' responsible for the structure and exterior of the building will be the 'Principal Accountable Person'. When buildings have a single 'Accountable Person', that entity or person is the 'Principal Accountable Person'.

The 'Accountable Person' will have a duty to take all reasonable steps to:

- Prevent a building safety risk happening (defined as 'spread of fire and/or structural failure'); and
- Reduce the seriousness of an incident if one happens.

In addition to the above duties the 'Principal Accountable Person' must:

- Register existing buildings with the Building Safety Regulator (BSR) (between April 2023 and October 2023);
- Register all new buildings before occupation;
- Prepare a safety case report for the building and give to the Building Safety Regulator (BSR) on request; and
- Apply for a building assessment certificate when directed by Building Safety Regulator (BSR).

Links to the legislation include:

The Regulatory Reform (Fire Safety) Order 2005 (legislation.gov.uk)
Building Safety Act 2022 (legislation.gov.uk)

5. In conclusion

For the most part health and safety law in the UK is focussed on the employer their work activities. In relation to buildings/premises those obligations can also extend to areas of that building(s), where under their control and/or through a contract and tenancy.

Specific regulations, including examples mentioned above, also define specific roles as part of their requirements, although the terminology used to define these can be different.

Have clear structures and arrangements in place around your health and safety provision, with roles and responsibilities clearly identified is key to successful provision. All involved should be competent to carry out their work and suitable trained/informed.

As we see additions/changes to our legislation, organisations need to be reviewing their provisions and adapting their arrangements accordingly.

Seek advice from competent sources to help support your health and safety management.

When was the last time you assessed your health and safety management?

Assurity Consulting is the UK's leading independent consultancy specialising in workplace health, safety and environmental solutions. As your partner in compliance management you will reap the benefit of our more than 35 years' experience of helping customers across a range of different sectors – manage their compliance responsibilities as effectively as possible. If you need any help with your health, safety or environmental compliance, or if you would like more information on the services Assurity Consulting offer, please get in touch.

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