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# **LEGAL RESPONSIBILITIES OF FIRE RISK ASSESSORS**

A Basic Guide

## LEGAL RESPONSIBILITIES OF FIRE RISK ASSESSORS – A BASIC GUIDE

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### ***Purpose and Disclaimer***

This guidance document has been prepared on behalf of the Fire Industry Association and its purpose is to provide an introduction and basic guide to potential legal responsibilities of Fire Risk Assessors, it should be consulted together with all applicable laws, not instead of them.

The guidance is founded upon current legislation (in force at the date of writing) applicable in England and Wales and provides notes for the relevant legislation and differences for Scotland and Northern Ireland where applicable. Whilst the Fire Industry Association has commissioned the preparation of this guidance document in good faith, nothing in this guidance document constitutes advice or professional advice by the Fire Industry Association, the authors or other contributors. In relation to any particular matter or circumstance advice from a suitably qualified professional should always be sought. The Fire Industry Association, the authors and contributors shall not be liable for any loss or consequential damages whatsoever arising out of or in connection with the content of this guidance document or its use.

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## 1 INTRODUCTION

### 1.1 Liability of Fire Risk Assessors

As with members of all other professions, a Fire Risk Assessor could have potential legal liabilities in a number of ways, for example:

- Criminal responsibility – A breach of a legal responsibility covered by criminal law could lead to prosecution, and if found guilty, this could result in large fines and/or imprisonment
- Civil liability – A breach of duty or contract could lead to a claim for damages and/or other remedies by any person who suffers a loss as a result of any breach

### 1.2 Liability under Criminal Law

The Regulatory Reform (Fire Safety) Order 2005 (“the 2005 Order”) (for England and Wales), Part 3 of the Fire (Scotland) Act 2005 (“the 2005 Act”) and The Fire and Rescue Services (Northern Ireland) Order 2006 (“the 2006 Order”) all create a number of similar duties and legal obligations in the relevant jurisdictions to be complied with for those responsible under the legislation. This will include fire risk assessors to the extent that they have responsibility under the legislation. A breach of any duty under the legislation could lead to a criminal prosecution and could result in large fines for the assessor or imprisonment. To be held criminally liable an offence under the legislation has to be committed.

### 1.3 Liability in Contract

For most Fire Risk Assessors there will be an agreement in come back for transaction of a fee or some other way of concern by a customer .The Fire Risk Assessor will normally have agreed to assess the premises and, usually prepare a written fire risk assessment and/or another written report. Conditions of engagement may determine the foundation of such agreement of the contract. If the terms of a contact is breached a claim could be made for breach of contact for any losses suffered. If a claim is successful this could result in an award a sum of money (damages) for the breach.

### 1.4 Liability in Tort/Delict

Outside of any strict or expressed criminal or contractual liabilities other liabilities could arise such as under the law of tort/Delict. A tort or Delict (in Scotland) is a civil wrong that is committed against an individual. The basic principle of is to protect certain interests. This predominantly covers negligence, nuisances and trespass. The principle is that there is a “duty of care” which could be owed not just to any direct contracting party, but also to third parties. If there is a breach of any duty of care owed, a claim for loss suffered as a result could be made. The lack of a fee in the form of a gratuitous service may mean that there is no contractual liability but there may still be liability in tort/delict. If a claim is successful this could result in an award of a sum of money (damages), for the infringement, alternatively an injunction (if appropriate), could be ordered.

## 1.5 Insurance

Professional indemnity and liability insurance policies may be available to provide an indemnity in respect of legal liability for errors and omissions committed in the course of a business. This is the most commonly known of insurances and the level and extent of any cover provided by any such policy will depend on the individual policy terms. Certain liabilities and/or types of losses may be excluded by such policies and there is likely to be caps on amounts of liability covered under any such policy. Therefore it is important to know what is covered and to select the correct policy for any particular business need.

## 2 LIABILITY UNDER CRIMINAL LAW

This section provides a basic overview of potential responsibilities under the Regulatory Reform (Fire Safety) Order 2005, (for England and Wales), Part 3 of the Fire (Scotland) Act 2005 and The Fire and Rescue Services (Northern Ireland) Order 2006 only, it does not consider other laws under which a criminal liability may arise.

### 2.1 The Regulatory Reform (Fire Safety) Order 2005 (“the 2005 Order”)

The 2005 Order reforms the law relating to fire safety in England and Wales in non-domestic premises. It replaces fire certification under the Fire Precautions Act 1971 with a general duty to ensure the safety of employees and a general duty in relation to non-employees to take such fire precautions as may reasonably be required in the circumstances to ensure that premises are safe. The 2005 Order creates a *duty to carry out a risk assessment*. The 2005 Order imposes a number of specific duties in relation to the fire precautions to be taken. The 2005 Order provides for the enforcement of the 2005 Order, appeals, offences and connected matters.

Article 9 of the 2005 Order provides the duty to make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions the person responsible for the premises needs to take to comply with the requirements and prohibitions imposed on them by or under the 2005 Order.

The person responsible for premises will normally be the employer or the owner of the premises (Article 3). Often those responsible for premises will hire or employ professional fire risk assessors to conduct the risk assessment required by Article 9 on their behalf.

Although the employer and/or owner will remain responsible under the order, any risk assessor instructed to provide a risk assessment will also have a responsibility to ensure that any risk assessment conducted is suitable and sufficient.

### 2.2 Part 3 of the Fire (Scotland) Act 2005 (“the 2005 Act”)

Part 3 of the Act makes provision for fire safety in non-domestic premises in Scotland. (Other Parts of the Act detail the duties of the Fire and Rescue Service which include the promotion of community safety as well as responding to emergencies, such as fire). Since August 2005 a number of amendments have been made to the Act and statutory instruments made under the Act. This includes The Fire Safety (Scotland) Regulations 2006 (SSI 2006/456). These Regulations make provision in connection with the carrying out of assessments to identify risks in respect of harm caused by fire, and the review of those assessments. They also make provision about fire safety in relevant premises (as defined in section 78 of the Fire (Scotland) Act 2005).

Section 53 and 54 of the Act provides duties to carrying out assessments to identify risks in respect of harm caused by fire and duties for fire safety measures to be implemented.

The person responsible for premises will normally be the employer (section 53). Often those responsible for premises will hire or employ professional fire risk assessors to conduct the risk assessment required by section 53 on their behalf thus potentially triggering a duty under section 54. Section 54 provides a duty on any person who has control, to any extent, of relevant premises.

Although the employer/owner will remain a person responsible under the act, any risk assessor instructed to provide a risk assessment will also have a responsibility to ensure that any risk assessment conducted is compliant.

### 2.3 The Fire and Rescue Services (Northern Ireland) Order 2006 (“the 2006 Order”)

Part 3 of the Fire and Rescue Services (Northern Ireland) Order 2006 and the Fire Safety Regulations (Northern Ireland) 2010 came into effect on 15 November 2010. These operated in a similar way to the legislation discussed above and simplified existing Fire Safety legislation in Northern Ireland replacing fire certification in non-domestic premises and reinforcing the now risk based approach to fire safety.

The legislation changed the ways in which employers and people in control of premises manage fire safety. Responsibility for fire safety in a workplace rests with the employer (section 25) and those with any degree of control of premises such as persons hired as professional fire risk assessors to conduct the risk assessments will also potentially have a duty under the 2006 Order (section 26).

Again although the employer/owner will remain a person responsible under the order, any risk assessor instructed to provide a risk assessment will also have a responsibility to ensure that any risk assessment conducted is compliant.

### 2.4 Responsibility for fire risk assessors

#### ***England & Wales***

Article 5(3) of the order provides a duty on persons other than person responsible to comply with the Order to the extent that they have control of premises.

In other words, if a risk assessor has control of the premises to the extent that they will be conducting a risk assessment of the premises, they will be responsible to that extent – i.e. they are responsible for the risk assessment.

This is confirmed by Article 5(4) of the Order that provides:

*When a person has by virtue of any contract or tenancy an obligation for the maintenance or repair of premises, or the safety of the premises they will be treated as a person who has control of the premises to the extent that their obligation so extends.*

In the case of a professional risk assessor, they will either be employed or contracted to undertake a risk assessment which is for the safety of the premises. As a result of the employment or contractual arrangement they will therefore automatically be considered a person responsible under article 5(3) of the Order by virtue of Article 5(4).

#### ***Scotland***

Section 54 of the Act provides a duty on persons other than the employer to comply with the Act to the extent that they have control of premises and a specific duty to undertake an assessment of risks (section 54(2)).

In other words, if a risk assessor has control of the premises to the extent that they will be conducting a risk assessment of the premises, they will be responsible to that extent – i.e. they are responsible for the risk assessment.

This is confirmed by section 54(4) of the Act that provides:

- (4) A person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to—*
- (a) the maintenance or repair of—*
- (i) relevant premises; or*
- (ii) anything in relevant premises; or*
- (b) safety in respect of harm caused by fire in relevant premises,*
- shall also comply, to the extent of the obligation, with subsection (2).*

In the case of a professional risk assessor, they will either be employed or contracted to undertake a risk assessment which is for the safety of the premises. As a result of the employment or contractual arrangement they will therefore automatically be considered a person responsible under section 54(2) of the Act.

### **Northern Ireland**

Section 26 of the Order provides a duty on persons other than the employer to comply with the Act to the extent that they have control of premises and a specific duty to undertake an assessment of risks (Article 26(2)).

In other words, if a risk assessor has control of the premises to the extent that they will be conducting a risk assessment of the premises, they will be responsible to that extent – i.e. they are responsible for the risk assessment.

This is confirmed by Article 26(4) of the Order that provides:-

- (4) A person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to—*
- (a) the maintenance or repair of—*
- (i) relevant premises; or*
- (ii) anything in relevant premises; or*
- (b) safety in respect of harm caused by fire in relevant premises,*
- shall also comply, to the extent of the obligation, with subsection (2).*

In the case of a professional risk assessor, they will either be employed or contracted to undertake a risk assessment which is for the safety of the premises. As a result of the employment or contractual arrangement they will therefore automatically be considered a person responsible under Article 26(2) of the Order.

## **2.5 Offences**

### **England and Wales**

By virtue of Article 32(1) of the Order it is an offence for any person mentioned in article 5(3) (and thus, any fire risk assessor), to fail to comply with article 9 (or any other requirement or

duty under the Order placed on them by Article 8 to 22), where that failure places one or more relevant persons at risk of death or serious injury in case of fire.

In other words if a risk assessor carries out a risk assessment for a premises and that risk assessment is not “suitable and sufficient” as required by Article 9 of the Order, they will be committing an offence if the failure places one or more relevant persons at risk of death or serious injury in case of fire.

A risk assessment is a corner stone under the Order to identify the required general fire precautions the person responsible for the premises needs to take to comply with the requirements and prohibitions imposed on them by or under the Order. A failure to identify a required fire precaution and the absence of it could therefore potentially place persons at risk in the case of fire.

A person who is guilty of such an offence is potentially liable to a fine not exceeding £5,000 in a Magistrates Court, or to an unlimited fine and/or imprisonment if the matter is dealt with in a Crown Court.

#### **Case example:**

Breaches of the Order are treated very seriously by the Courts, for the obvious reason that breaches could lead to serious injury or death in the case of fire. A risk assessor was prosecuted in the case of R (Nottinghamshire and City of Nottingham Fire Authority) -v- O’Rourke [2011] EWCA Crim 3263. In that case a risk assessor who had failed to carry out suitable and sufficient risk assessments at two premises was sentenced to 8 months imprisonment (reduced from 12 months for an early guilty plea) and was ordered to pay £5,862 towards the costs of the prosecution. An appeal against sentence was refused and the Court of Appeal stated:

*“We emphasise, as did the Judge, the importance of the role of assessors under the 2005 Order. People’s lives depend upon it. The importance of the role is emphasised by the fact that the 2005 Order provides for sentences of imprisonment to be imposed...”*

#### **Scotland**

Section 54(2) places a specific duty on persons other than employees to carry out an assessment of the relevant premises for the purpose of identifying any risks to the safety of relevant persons in respect of harm caused by fire in the relevant premises. Any breach of this duty is an offence by virtue of section 72 if the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire.

A person guilty of this offence is liable on summary conviction, to a fine not exceeding £20,000 or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Section 74 of the act also creates liability if an offence is due to the act or default of some other person. Where the commission by any person (“A”) of an offence is due to the act or default of some other person (“B”), B shall be guilty of the offence. B may be charged with and convicted of an offence whether or not proceedings are taken against A.

So for example if an employer (“A”) undertakes a risk assessment with the help of a risk assessor, even if a strict contract could not be proved to trigger a section 54 duty on the risk assessor (“B”), if it was shown that the risk assessment was defective and placed persons at risk and breach of the employers section 53 duty occurs then the risk assessor could also be potentially liable by virtue of section 72.

### **Northern Ireland**

Article 26(2) places a specific duty on persons other than employees to carry out an assessment of the relevant premises for the purpose of identifying any risks to the safety of relevant persons in respect of harm caused by fire in the relevant premises. Any breach of this duty is an offence by virtue of Article 41 if the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire.

A person guilty of this offence is liable on summary conviction, to a fine not exceeding £5,000 or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Similar to Scottish law Article 43 of the Order also creates liability if an offence is due to the act or default of some other person. Where the commission by any person ("A") of an offence is due to the act or default of some other person ("B"), B shall be guilty of the offence. B may be charged with and convicted of an offence whether or not proceedings are taken against A.

So for example if an employer ("A") undertakes a risk assessment with the help of a risk assessor, even if a strict contract could not be proved to trigger an Article 26 duty on the risk assessor ("B"), if it was shown that the risk assessment was defective and placed persons at risk and breach of the employers Article 25 duty occurs then the risk assessor could also be potentially liable by virtue of Article 43.

## **2.6 Corporate liability / Directors and company officers**

If the risk assessment is carried out by an incorporated company it will be a legal person and can be liable for offences.

If an offence is committed by an incorporated company and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, they as well as the body corporate will be guilty of an offence, and are liable to be proceeded against and punished accordingly (See Article 32(8) of the 2005 for England and Wales, Section 74 of the 2005 Act for Scotland and Article 42 of the 2006 Order for Northern Ireland).

All those responsible for carrying out fire risk assessments, be it an individual, a body corporate or any director, manager, secretary or other similar officer of the body corporate, could all potentially be liable for offences under the Order/Act if the risk assessment is deficient and creates a risk of death or serious injury in case of fire.

## **2.7 Other offences**

A number of offences are created by the legislation. The main offence relevant to fire risk assessors will be the failure to create a suitable and sufficient assessment discussed above. However, all those conducting work under the relevant legislation should be fully aware of all of the requirements of the legislation and the duties under it. It is beyond the scope of this guidance document to discuss all possible offences. However, by way of example of other potential offences, this could include, intentionally obstructing an inspector in the exercise or performance of his powers or duties or failing, without reasonable excuse, to comply with any requirements imposed by an inspector (for example see 27(1)(c) or (d) of the 2005 for England and Wales, Section 62 of the 2005 Act for Scotland and Article 34 of the 2006 Order for Northern Ireland).

### 3 LIABILITY FOR BREACH OF CONTRACT

A claim for damages can arise if there has been a failure to perform one or more obligations contained in a contract without lawful excuse. The innocent party may also have a legal right to terminate the contract.

A failure to perform can include refusal to perform a contract having agreed terms, defective performance of one or more obligations, delayed performance or any action taken which prevents performance.

#### 3.1 Entering into a contract and the terms of the contract

The basic requirements of a contract are that there is an intention to create an enforceable legal relation, an agreement (offer and acceptance), and consideration (payment or otherwise).

Often a contract will be agreed in writing, however, express terms of a contract will be any terms that were agreed orally between the parties as well as those which were stated in writing. Some contracts may be made partly in writing and partly by what has been stated orally. Implied terms can also be included in a contract such as those implied by custom of the trade, or implied by statute (such as the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982).

It is therefore important when entering into any contract to ensure that the terms and agreement are clear, and that all parties understand the conditions of engagement.

There are no standard Conditions of Engagement available at the present for carrying out of Fire Risk Assessments, only for guidance purposes. Most Fire Risk Assessors will have prepared Conditions of Engagement to meet their own individual requirements, based upon the service they are able to provide. As a minimum, Conditions of Engagement should include the following (this is not an exhaustive list):

- Name and address of the client
- Property address
- Purpose, scope and the extent of the assessment to be undertaken
- Type of property and its tenure
- Date when the Fire Risk Assessor hopes to carry out assessment
- Date when the Fire Risk Assessor hopes to provide the risk assessment and/or report
- Fee and any method of extending this
- Size of any property as advised by the client; if it is larger, fee can be extended
- What will be included in the assessment
- The position regarding the carrying out of specialist tests required
- Any limitations of the assessment such as an area which cannot be accessed for some reason
- Limitations as to whom the fire risk assessment is intended for and that it is not to be reproduced without the Fire Risk Assessors approval. It is vital to repeat this at the beginning of the report itself just in case the report does find its way into the hands of another person who might attempt to rely upon its content

To prevent any possible misunderstanding arising later, it is advisable for the client to be asked to sign date and return one copy of any contract or conditions that have been agreed prior to any work being carried out. This should help considerably to stop misunderstanding, as evidence of the contract agreed can be shown.

A breach of any obligation under a contract could give rise to a claim for damages. The importance of the term broken will determine if there is also a right to terminate the contract or to seek specific performance. The importance of a term broken will also be potentially relevant to the level of damages that could be sought.

### **Scotland**

Similarly the above principles will apply for any breach of contract in Scotland. The notable exception being that the English/Welsh/Northern Irish requirement for “*consideration*” (payment or otherwise) does not apply in Scotland, so it is possible to have a *gratuitous* contract, i.e. a contract where only one of the parties comes under any duties to the other (e.g. a contract to perform services for no consideration). A contract will be an agreement between two or more parties which creates or intends to create legally binding obligations between the parties to it.

## 4 LIABILITY IN TORT

A tort is a civil wrong that is committed against an individual. The basic principle of tort law is to protect certain interests. Tort predominantly covers negligence, nuisances and trespass. The law of Tort creates a “duty of care” which could be owed not just to any direct contracting party, but also to third parties. If there is a breach of any duty of care owed a claim for loss suffered as a result could be made.

### 4.1 Basic principles

The basic principles of tort are

1. The existence of a duty of care
2. The duty is owed to the person making a claim
3. There must be an act or omission in respect of a duty of care that is owed
4. The act or omission must amount to a breach of the duty of care owed
5. The breach must *cause* damage (that is not too remote) to the person making a claim

Where there is a contractual relationship between the parties, this does not prevent a duty also being owed under the law of Tort. Despite any terms of any contract or other agreement a fire risk assessor will owe a client a duty of care. Where there is a contractual relationship, the risk assessor will have concurrent duties in tort and contract. The “duty of care” owed by a risk assessor will also potentially be owed to any third party.

The duty owed can be expressed as a duty to take “reasonable skill and care” to a minimum standard expected of the “ordinary skilled man exercising and professing to have that special skill” (*Bolam v Friern Barnet Hospital Management Committee* [1957] 1 WLR 583).

For liability to be established, it must be determined that the Fire Risk Assessor has fallen below the standard of care. The standard is one of reasonable care and skill. The question to be asked is “What would a reasonably competent member of the same profession have done in the same circumstances?” Inevitably the standard is set by the evidence of independent experts. As such it is an objective standard.

A breach of any duty of care could be relied upon by a party to a contract or any third party who suffers loss as a result of any breach of duty to claim damages. For a claim in tort to succeed, causation must be established. In basic terms this can be described as the “but for” test. The claimant must prove that but for the breach of duty, the loss would not have occurred.

#### **Scotland**

The equivalent law to “tort” in Scotland is known as “Delict” which operates in the same manner and creates the responsibility to make reparation caused by breach of a duty of care. It vastly covers the same ground as the English law of Tort, the Scottish law concentrates more on general principle and less on specific wrongs. Delict deals with the righting of legal wrongs in civil law, on the principle of liability for loss caused by failure in the duty of care, whether deliberate or accidental.

## 5 POTENTIAL BREACHES BY A FIRE RISK ASSESSOR

This section aims to identify just some examples of how a breach of contract and/or duty of care owed under the law of tort or Delict could occur. These are provided by way of example and this is not in any way an exhaustive list.

1. The failure to provide a written risk assessment
2. Failure to conduct any actual survey of the premises for which a risk assessment is provided
3. Failure to correctly identify premises or other essential details within an assessment
4. Failure to make the risk assessment premises specific
5. Failure to identify significant findings
6. Failure to take into account relevant information
7. Failure to identify required general fire precautions the person responsible for the premises needs to take to comply with the requirements and prohibitions imposed on them by or under the Order/Act

All of the above and any other breach or failure could lead to a claim for breach of contract and/or a breach of duty to carry out a risk assessment with the reasonable care and skill of a reasonably competent risk assessor. Further, any such breach which created a risk of death or serious injury in the event of fire could amount to a breach of the duty owed under The Regulatory Reform (Fire Safety) Order 2005, The Fire (Scotland) Act 2005 or The Fire and Rescue Services (Northern Ireland) Order 2006 and amount to a criminal offence.

## 6 DAMAGES IN CONTRACT OR TORT/DELICT

The basic principles of damages is to put the claimant as nearly as possible in the same position as they would have been in if they had not sustained the wrong for which they are seeking compensation.

- Breach of contract: the claimant is to be placed in the same situation they would have been in if the contract had been performed as agreed
- Tort/Delict: the measure is to compensate the claimant for the loss caused by the breach of duty

The loss must have been foreseeable and not too remote.

### 6.1 Damages in Contract

The defining case is that of *Hadley v Baxendale* (1854) 9 Exch 341.

Where two parties have made a contract which one of them has broken, the damages in respect of any breach of contract should be awarded to cover:

- Any monies that may fairly and reasonably be considered to arise naturally as a result of any breach
- Any monies that may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as a result of the breach of it

If a contract has been breached, damages will be available as a matter of right. The underlying principle of damages is to compensate the claimant for his losses. There are three basic methods of calculating "loss":

- Expectation
- Reliance (or wasted expenditure)
- Restitution

The basis used to calculate damages will depend on the type of loss that has occurred as a result of the breach.

#### ***Expectation (loss of bargain)***

These types of damages are forward looking (*Robinson v Harman* (1848) 1 Ex 850) and are intended to put the Claimant into the position in which they would have been if the contract had actually been performed. This will include both the loss of the promised performance and the loss of profit resulting from not being able to put the performance to use.

For example, if C contracts for a risk assessment to be completed by D by an agreed date, in respect of a new business premises and states they will not operate the premises until the risk assessment is completed and any required steps implemented, if D cancelled the contract without any lawful reason at the last minute, C has lost the benefit of the risk assessment itself by the due date, but may also lose the chance to use it in the business to get it opened by a target date. A claim could be made for any price paid for this assessment and/or potentially any loss of profit if there is a delay directly linked to the delayed assessment.

All losses which are not too remote from the breach could be recovered, provided that C had acted reasonably to mitigate any loss.

***Reliance (or wasted expenditure)***

This type of loss arises when a Claimant has expended money which is then wasted in preparation for, or in partial performance of, a contract. It covers out-of-pocket expenses.

***Restitution***

This type of damages is to compensate for the costs of cure, measure, or any difference in value.

For example, if C contracts for a risk assessment to be completed by D by an agreed date and D cancels the contract without any lawful reason at the last minute, and C obtains a risk assessment at a higher price from T, a claim could be made for the difference in price that would have been paid for assessment by D and the price charged by T.

Alternatively, if D carried out a fire risk assessment and recommended the installation of a specific fire detection and alarm system and it subsequently transpired the detection and alarm recommended was a significantly higher specification than required for the type of premises. C could seek to claim the difference in cost between a suitable fire alarm and the higher specified fire alarm.

**6.2 Damages in Tort/Delict**

Damages in tort/delict are intended to be compensatory in nature and are designed to put a Claimant into the position that they would have been in had the tort/delict not been committed. Providing rules on causation and remoteness are satisfied this means that a Claimant could seek damages both in respect of any loss directly caused and in respect of any consequential loss.

The basic principles are that:

- A party shall only be liable for any damage which were reasonably foreseeable
- It would be wrong that a man should be held liable for damage unpredictable by a reasonable man because it was 'direct' or 'natural', equally it would be wrong that he should escape liability, however 'indirect' the damage, if he foresaw or could reasonably foresee the intervening events which led to its being done

**6.3 Costs**

If a breach is found of any contractual term and/or a breach of duty is established in the law of tort/Delict in addition to any damages payable, costs of the legal proceedings may also have to be met. Such costs could be significant. It is therefore important to seek early appropriate advice if any claim is intimated or made. In addition to any damages and/or costs payable if any proceedings are made, there is also the potential for reputational damage.

## **7 CLAIMS PROCEDURE**

### **7.1 Notifying possible claims**

When dealing with a claim a Fire Risk Assessor should notify circumstances to their insurers. If a professional indemnity policy is held, a requirement under the policy wording would certainly require this. It is a question of looking at the policy wording and seeing what benefits are available. It is most important to take legal advice as soon as possible. This may be available under the terms of the Fire Risk Assessor's indemnity policy. It is vital that a Fire Risk Assessor should not worry all the time about the cost of next year's insurance premium. It is folly to imperil a current insurance policy by delaying notification of a possible claim or circumstance for the sake of the cost of next year's premium. The wording of insurance policies can differ. As such, it is possible that a Fire Risk Assessor might be uninsured for a particular claim even though he has a continuous insurance policy. Different policies will have different extents and levels of cover.

If a formal letter of claim is received there is normally a requirement to provide an initial response to this within 21 days. Therefore if such a letter is received it is important to act quickly and provide a copy to any insurer urgently and to seek appropriate advice.

### **7.2 Discharge of a claim**

Where it is deemed appropriate to make some form of settlement, even if only for reasons of goodwill; then it is important to obtain some form of discharge from the claimant. Ideally, this will be in full and final settlement of all claims arising out of the fire risk assessment. Depending on the case it may be necessary that the discharge or payment is made and accepted without any admission of liability. This is to prevent the possibility of a further claim materialising some time later arising out of the same risk assessment. If an earlier payment had been made without any qualification then it could act as evidence that there had been an admission of liability. This could present difficulty in considering any subsequent claim made. When considering any claim or any discharge of a claim it is advisable to seek appropriate legal advice prior to any response being provided.

## 8 DISCLAIMER

This guidance document has been prepared on behalf of the Fire Industry Association and its purpose is to provide an introduction and basic guide to potential legal responsibilities of fire risk assessors, it should be consulted together with all applicable laws, not instead of them.

The guidance is founded upon current legislation (in force at the date of writing) applicable in England and Wales and provides notes for the relevant legislation and differences for Scotland and Northern Ireland where applicable. Whilst the Fire Industry Association has commissioned the preparation of this guidance document in good faith, nothing in this guidance document constitutes advice or professional advice by the Fire Industry Association, the authors or other contributors. In relation to any particular matter or circumstance advice from a suitably qualified professional should always be sought. The Fire Industry Association, the authors and contributors shall not be liable for any loss or consequential damages whatsoever arising out of or in connection with the content of this guidance document or its use.