

Help and advice



John Holdsworth on defects and liability – part 2

Why you better NOT choose the materials

THERE are often problems deciding who is liable for defects. Here are some typical situations:

Most flooring contractors do not have design indemnity insurance. This could make them personally liable and/or their company liable for any defects resulting from any design they under take.

Sub-contractors often say they have not taken on design responsibility, but when asked who chose the self levelling compound and the adhesive, they admit it was them because nothing was specified in the contract.

A sub-contractor is responsible for any product he chooses [i.e. he has taken on the design] and it must be fit for purpose. If he does not know the purpose – and often he does not – he takes a great risk when choosing the products.

The answer is easy: Do nothing unless you receive written instructions confirming exactly what is required and choose nothing yourself.

Furthermore it is a breach of contract to choose materials as the contract obligation is usually to comply with the specification and architects instructions.

A sub-contractor has no power

'If you wish to correct a problem which is not yours, you must state you are carrying out the repair work as a gesture of goodwill, stating that you do not accept liability for the problem'

under the standard forms to choose the products unless he has accepted design liability.

Example 1: A defect appears in a floor and it is of small value so you decide to put it right as a goodwill gesture, but get nothing in writing. You are then charged with delays, costs from other contractors etc. How can this be when it was not your fault and you were merely helping out?

Any adjudicator, arbitrator or judge will assume that if you put it right without complaint it must be your fault and you will likely be found liable for the alleged defect and the resulting delay in correcting it.

Again the answer is easy: If you wish to correct a problem which is not yours, you must state you are carrying out the repair work as a gesture of goodwill, stating that you do not accept liability for the problem.

It is also advisable to state that

your remedial work is totally 'without prejudice' to your right to claim payment for the work as a variation.

Example 2: An architect is unsure of what product to use in a given situation and asks you what you would recommend. You confirm what product you would recommend and that recommendation is confirmed in writing.

The product fails and the architect instructs you to correct the defective work. In this situation you must have some liability as you recommended the product and the architect relied upon your expertise to get the selection right.

I have seen this situation on numerous occasions and either the sub-contractor was held fully liable in the worst situations and partially liable in others. Only on the rarest of occasions have I seen the sub-contractor escape

liability.

SUMMARY: These problem were caused by a sub-contractors willingness to assist and it can be very difficult to resist the temptation to help.

My advice is to avoid recommending products and solutions at all times.

What you should do is recommend a manufacturer or supplier etc who can provide advice on the products and insist upon clear instructions before proceeding.

Your words should be something like 'I understand that Fred Blogs makes a product that might satisfy your requirements but you will need to take his advice directly.'

I will forward his contact details [or will ask the manufacturer to make contact with you]. In this way you assist, but avoid liability for recommending the product.

If you would like further advice or would like to discuss a particular problem contact John Holdsworth. **CFJ**

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Simon James on sustainable slip performance

Some RH10 claims may be dangerous

WHEN it comes to sustainable slip performance – check the paperwork,

Recently – and not for the first time – I noticed claims relating to slip resistance, and R10 results in particular, that were at best naive and at worst potentially dangerous.

A heterogeneous smooth flooring is heralded as now being available with R10 slip resistance on a floor that is designed to be suitable in high traffic areas such as schools and hospitals.

Despite a helpful description of the German Ramp Test method DIN51130, the absence of any assurances as to the sustainability of the slip claims is notable.

This presents two major problems:

1. The R10 result takes no account of traffic, wear and maintenance when installed. It is not difficult to understand that the slip reading on an ex-factory smooth floor may be rather different from the results when the floor has been in use for some time.

2. It is wrong, though it occurs in this

'The R10 result takes no account of traffic, wear and maintenance when installed'

example, to make any connection between the ramp test and the pendulum test. There is no correlation between the two, something that the HSE would have confirmed very quickly had someone called them – as I did.

Perhaps most surprising though is that somebody has felt the need to then suggest which category this non-correlation 'generally falls into' in the HSE's preferred pendulum test method. If it is recognised that the Pendulum test is a preferred HSE measure then why not simply test against this method and make sustainable slip claims accordingly?

Some time ago we set in place a programme of independent testing by a third party testing

house. In January 2006, six samples of smooth flooring that also claimed an R10 slip result were installed in a high school corridor.

Before they were installed all the floors were tested with the Pendulum wet test, a surface roughness measurement and a ramp test.

In June this year the test house returned and tested the materials in-situ and then lifted them to repeat the ramp test. In this way we were able to monitor the effect of very typical wear and cleaning on the slip performance of the chosen flooring.

All products were from mainstream manufacturers and all had made R10 claims. Out of the six ranges, all but one did in fact test initially to R10, as claimed. However, after only 2½ years in use, the change in results was dramatic.

The ramp results on four products had plummeted down from R10, past R9 and were now so low as to be unclassified. These four included a linoleum product, two wood effect

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