



Indemnity

Contract Flooring Association

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CFA comment



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A letter of indemnity: Is it worth the paper?

THIS has happened twice recently; I've turned up on site and tested the floors and according to all the readings it was wet and consequently I tell the installer what needs to be done.

In both instances the main contractor wasn't buying, commenting something like 'not interested, too expensive, we're not going to use a membrane,' and told the installer to just get on and install the floor.

The installer obviously said 'hang on this floor needs a membrane because it's wet,' but gets told by the main contractor to just lay it.

Now the premise we've always worked to is that if this was a domestic installation and the customer says lay the floor, despite it requiring a membrane, it is still the installer's responsibility as they know the floor will fail.

With no real option the installer should insist or walk away. However, when you are talking to a fellow professional who should know the standards, who should understand the consequences and who knows that the floor is most likely going to fail then the dynamic changes.

In this commercial situation the main contractor may insist you proceed with the installation, but may be prepared to give you a letter of indemnity absolving you of all responsibility for any future problems.

Is this or should this be right? More importantly, is this letter of indemnity actually worth the paper it is written and does it really clear you of any responsibility should any problems arise with the flooring installation in the future?

So just who IS responsible for a flooring installation and where does responsibility start and stop?

British Standards says that those responsible for the construction and design of the building are responsible for

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certain issues and moisture is one such issue.

Logically this means that as a flooring contractor I should be saying to the architect or main contractor that they know the floor is wet, I have tested it and I will therefore only proceed if they provide a letter of indemnity and that this clearly states that they, as the main contractor, accepts all the risks.

To protect you, the onus must be placed back onto the main contractor and you should not proceed without them accepting all responsibility should the flooring installation fail and have to be replaced.

You have advised them that they shouldn't be proceeding – you get this indemnity and you may be OK. However, the question still stands, would this ever stand up in court?

The problem here is always that you are both professionals and should you both not therefore share the responsibility as the main contractor should not have insisted (he is a professional after all and should be doing the job correctly) and the installer should not have laid the floor (he is a professional after all and should be doing the job correctly!) in the first place?

Technically both parties, it could be argued, are complicit in the failure. And it must not be forgotten that the customer is involved too – replacing flooring causes inconvenience and down time and wanted the job done correctly in the first place.

The fact is I really don't know the answer, but I would not like to predict the outcome of any legal challenge or test case as there would be implications for those who have actually taken the time and trouble to accept a letter of indemnity.

Of course should you ever accept a letter of indemnity? How well have they been tested; with ever tighter deadlines, penalty clauses, main contractor pressure and competition, they may well be appearing more and more frequently and a full and thorough test of their validity may be just around the corner.

In the real-world it's a dilemma – there are some contractors that will walk away from the problem regardless of indemnity letters, but is this a good stance?

It may mean walking away from business and we all know there's a guy down the road who will always lay the floor regardless letter or indemnity or not.

The CFA's approach is pretty much the same as that of the British Standards and reflects whether it is a domestic or a commercial job.

Domestic – you are the professional and therefore it is your responsibility.

For commercial installations, where both parties are assumed to be professionals, it is the main contractor's responsibility.

The installer can only protect himself and should not proceed without that all important waiver from the main contractor... whatever it is worth!

