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Assigned Certifier: Liability and Legal Implications

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Introduction

- What is the purpose of the BCARs?
- Duties of Assigned Certifier
- Sources of Assigned Certifier's liability
- Limitation of liability
- Certificate of Compliance on Completion
- Reasonable skill, care and diligence

What is the Purpose of the Regulations?

- Accountability
- Traceability
- Transparency
- Prevent another Priory Hall scenario



Primary Duties of Assigned Certifier

- Prepare inspection plan
- Inspect the building or works
- Co-ordinate inspection work of others
- Co-ordinate ancillary certification
- Certify compliance with Second Schedule of Regulations

Assigned Certifier - Concerns

- Associated liability
- Poor template documentation
- Lack of guidance
- Building Control Authorities
 - No uniformity of approach
 - Lack of resources



Sources of Assigned Certifier's Liability

- Contract
- Statute
- Tort



Sources of Assigned Certifier's Liability – Contract

- With whom does the AC have a contract?
 - ✓ Building Owner
 - ✗ Building Control Authority
 - ✗ Other – Third Party
- Elements required to form contract:
 - Offer
 - Acceptance
 - Intention to create legal relations
 - Consideration
- Standard of care - contractual



Sources of Assigned Certifier's Liability – Statute

- Do the BCARs create new statutory obligations?
- If so, to whom does the AC owe statutory obligations?



Sources of Assigned Certifier's Liability – Tort

- Negligent misstatement
- Tortious duty of care
- Who could suffer loss or damage?



Limitation of Liability

- Can only be done contractually
- Examples:
 - Monetary cap
 - Limitation in time
 - Net contribution
 - Exclusion of indirect losses



Certificate of Compliance on Completion

“Based on the above, and relying on the ancillary certificates scheduled, I now certify, having exercised reasonable skill, care and diligence, that the building or works is in compliance with the requirements of the Second Schedule to the Building Regulations, insofar as they apply to the building or works concerned.”



Reliance on Ancillary Certificates

- The Builder should:

“ensure the coordination and provision of all test certificates and confirmations to the satisfaction of the Assigned Certifier or other designated inspectors or certifiers providing Ancillary Certificates”



Reliance on Ancillary Certificates (contd.)

- Designers should:

“provide the Ancillary Certificates when required by the Assigned Certifier”

and:

“arrange to provide sufficient information to the Assigned Certifier to enable them to fulfil their role”



Reasonable Skill, Care and Diligence

- Show of hands
- What does this mean?
 - Common Law
 - Code of Practice



Benefits of Assigned Certifier Role

- Someone has to do it!
- That “someone” has to get paid for it!



Thank you!



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