

Fire Safety Responsibilities: Beyond the Responsible Person

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Introduction

- Relevant legal principles
- Case Study 1: The Risk Assessor / Risk Assessment
- Case Study 2: The Director
- Practical steps

Relevant Legal Principles

- The Regulatory Reform (Fire Safety) Order 2005
- Article 5(3)

Duty on persons other than responsible persons to comply with the Order to the extent that they have control of premises.

Relevant Legal Principles

- Article 5(4)

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.

Relevant Legal Principles

- Article 32(8)

Where an offence under this Order committed by a body corporate 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, he as well as the body corporate is guilty of that offence, and is liable to be proceeded against and punished accordingly.

Relevant Legal Principles

- Article 32(10)

Where the commission by any person of an offence under this Order, is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

Who can be prosecuted?

- Anyone with responsibilities that affect fire safety:
 - Director
 - Manager - especially Registered Managers of care
 - Risk Assessor
 - Fire equipment supplier / fitter
 - Maintenance man
 - Employees

Case Study 1: The Risk Assessor

- Investigation:-
 - Two Public Houses with sleeping accommodation above
 - The risk assessments at both premises

Case Study 1: The Risk Assessor

- *Liu* - the licensee and a responsible person for the purposes of the Order under Article 3 for both premises.
- *O'Rourke* - carried out fire risk assessments at both premises and was responsible under Article 5(3) of the Order for ensuring that the risk assessments were suitable and sufficient.

Case Study 1: The Risk Assessor

Deficiencies at the premises included:

- Fire risk assessments were not suitable and sufficient
- inadequate fire doors at the premises compromising exit routes
- an emergency exit was locked
- emergency lighting at the premises was inadequate
- inadequate fire detection at the premises
- fire extinguishers were not sufficiently maintained
- the fire alarm and emergency lighting were not sufficiently maintained

The Risk Assessor

- O'Rourke had produced the risk assessments in return for payment.
- There was a clear contract between the premises operator (Liu) and the risk assessor (O'Rourke) in accordance with Article 5(4) thereby engaging the provisions of Article 5(3).

The Risk Assessment

- The risk assessments failed to identify a number of deficiencies including, with:-
 - means of escape
 - fire separation and fire warning systems
- Fire precautions at both premises were of such a low standard that persons were at risk of death or serious injury in the case of fire
- Significant deviations from 'HM Government Guidance for Fire Risk Assessment' in places providing sleeping accommodation

Decision to Prosecute

- The Responsible person
- The Article 5(3) person
- Or both?

The Outcome

- Liu and O'Rourke were both sent to prison for eight months
- Liu was ordered to pay the prosecution costs in the sum of £15,000
- O'Rourke was ordered to pay the prosecution costs in the sum of £5,862.38
- Judicial comment

The Appeal

- Liu and O'Rourke lodged appeals against sentence
- Liu withdrawal
- O'Rourke hearing
- The outcome / Judicial comment

Case Study 2: The Director

- Investigation:-
 - Followed a fire in a pile of wood and processed wood at a waste management site, started deliberately
 - Fire burned for weeks
 - Resulted in hundreds of thousands of pounds in firefighting and environmental clear up costs

Case Study 2: The Director

- *Arcwood Recycling* - the company that operated the site - now insolvent.
- *Luke Barker* - the sole director of the company, who had a 'hands-on' role on site.

The Breaches

Fire safety breaches at the premises included:

- A pile of wood roughly the volume of Pride Park football stadium, despite previous warnings and promises to reduce it
- Near to buildings, gas governors and motorway
- No fire risk assessment
- Lack of site security, despite previous local arson incidents and promises to improve
- Inadequate firefighting equipment
- Inadequate staff training

Decision to Prosecute

- *Arcwood Recycling*: the Responsible Person - important to mark the offence despite insolvency.
- *Luke Barker*: clear neglect - received the previous warnings and in full control of site - deterrent effect required.
- Environment Agency also prosecuted - care taken to avoid overlapping offences

The Outcome

- *Arcwood Recycling*: Guilty pleas - £40,000 fines + £15,000 costs.
- *Luke Barker*: Guilty pleas - 10 months immediate imprisonment + disqualified as director for 8 years.

Practical steps

- Know the legislation
- Know the guidance documents
- Qualifications / Courses / Training
- Experience
- Beware of precedents/templates - Premises Specific
- Keep up to date
- Work with the Fire Service

For further information or advice, please contact:-

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