

Could you claim against your contractor?

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*Property owners need to ensure that they are sufficiently protected in the event of damage to property caused by third party contractors. The issue arose in *John Innes Foundation v Vertiv Infrastructure Limited* ([2020] EWHC 19 (TCC)) where a management company was employed to take on responsibility for repair and maintenance of the subject property. This included entering into contracts with relevant contractors.*

Such contracts either need to be entered into between the property owner and contractor directly (so as to create a direct contractual relationship) or, if entered into between the management company and contractor, should entitle the property owner as an interested third party to bring a claim in the event of default. Alternatively, the property owner may want to have the benefit of appropriate collateral warranties.

In the John Innes Foundation case, the property was damaged by a fire caused by faulty batteries in the building's emergency lighting system. It transpired that the contractor had failed to undertake any maintenance inspections for 2 years.

Unable to bring a contractual claim, the property owners (and tenants whose plant had been damaged) brought a claim in tort on the grounds that the contractor owed them a duty of care. The tort of negligence is complex and, in this case, the Court disagreed noting that establishing the existence of a duty of care is much harder in relation to omissions than it is in relation to positive acts. It was also hard to reconcile an assumption of responsibility by the contractor to the property owner where responsibility for repair and maintenance of the property had been expressly transferred to the management company.

