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Building Safety Act Conference

4 February 2026

Welcome and introduction

Katharine Holland KC

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Brick by Brick: The latest Building Safety Case Law

Justin Bates KC

Rupert Cohen

Sophie Gibson

What are we talking about?

Trying to do the most recent cases on…

- Relevant Defect
- Relevant Building
- Accountable people
- The odd bits coming out of the TCC

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“Relevant Defect”

- *Canary Riverside* (FTT) and *Vista Tower* (FTT, UT)
- Why is cladding different? *Centrepoint* (FTT, UT)
- Standard and nature of work – *Empire Square* (FTT)

Section 120, Building Safety Act 2022

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(1)This section applies for the purposes of sections 122 to 124 and Schedule 8.

(2)"Relevant defect", in relation to a building, means a defect as regards the building that—

- **(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and**
- **(b)causes a building safety risk.**

(3)In subsection (2), "relevant works" means any of the following—

- (a)works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;
- (b)works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;
- (c)works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

"The relevant period" here means the period of 30 years ending with the time this section comes into force.

(5)For the purposes of this section—

"building safety risk", in relation to a building, means a risk to the safety of people in or about the building arising from—

(a) **the spread of fire**, or
(b) the collapse of the building or any part of it

(1) *Vista Tower* – FTT

Vista Tower, Stevenage SG1 1AR
CAM/26UH/HYI/2023/0003

16-storey, 49.5-meter high-rise building originally offices then converted into flats

(1) *Vista Tower* – FTT

- The conversion to flats included combustible panels in external walls, ineffective fire stopping and compartmentation
- 2024 – Remediation Order made against freeholder, Grey GR Limited Partnership
- January 2025 – Grey secured in FTT a Remediation Contribution Order for over £13mil against 76 companies associated with original developer of Vista Tower
- Joint and severally liable

- **Issue: How do you determine whether something is a "relevant defect" within s.120?**
- Is there a threshold of "risk" which must be surpassed?
- Role of compliance with Building Regulations?
- Interaction with the PAS 9980:2022 fire risk appraisal of external wall systems?
- Low, Medium, Medium Tolerable, High

(1) *Vista Tower* – FTT

- Panel = Judge David Wyatt, Judge Andrew Sheftel, Mr Matthew Williams

- [68] “Defect” does not only mean non-compliance with Building Regulations. Non-compliance is ONE way to be a “defect” but not the ONLY way. No reference to Building Regulations in s.120

- [71-72] “Building safety risk”

- Fire safety experts considered that PAS 9980 “Medium Tolerable” was NOT a building safety risk.

(1) *Vista Tower* – FTT

[71] Mr Morris argued that whether something causes a "building safety risk" for the purposes of section 120(5) depends on whether the risk is tolerable, having regard to the other features and characteristics of the building….

[72] We think the better view is that **any risk above "low" risk** (understood as the **ordinary unavoidable fire risks in residential buildings** and/or in relation to PAS9980 as an assessment that fire spread would be within normal expectations) **may** be a building safety risk...

(2) *Canary Riverside* - FTT

- Canary Riverside Estate (LON/00BG/BSA/2024/0005 LON/00BG/BSB/2024/009)
- 4 residential towers, hotel, Virgin Active gym, swimming pool, restaurants
- Common ground that the 4 residential towers are each a “Relevant Building” within s.117 BSA 2022
- March 2024: RO and RCO applications by Secretary of State against Landlords

- **Preliminary issue – what are the relevant defects?**

- Common ground that defects identified arose as a result of something done, or not done, to the building (i.e. s.120(2)(a) satisfied)
- Landlords’ fire safety expert adopted *Vista Tower* approach
- SoS’s fire safety expert disagreed

(2) *Canary Riverside* - FTT

- Decision handed down 6 January 2026
- Panel = Judge Vance, Judge Rushton KC, Mr Andrew Thomas
- Adopted a different approach to "relevant defect" than the FTT (but not the UT) in *Vista Tower*

- [31] LLs argued s.120 cannot mean any risk because all buildings have some degree of risk of fire spread, and so there must be some defects where the risk is so low that they cannot amount to a RD – e.g. PAS 9980 assessment of "low risk" means that the defect is not a RD

- FTT disagreed

(2) *Canary Riverside* - FTT

[37] The reference to "building safety risk" in s.120 **is to *any* risk, however small**, to the safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part of it. **We disagree with [the LLs] that there is a threshold below which a risk should be considered as tolerable, or as an ordinary, unavoidable risk present in residential buildings of this type**. There is no threshold test in s.120, and words such as "tolerable," "low," "medium," high" or "ordinarily unavoidable" are noticeably absent".

[42] … **the threshold for establishing the presence of a relevant defect is a low one**. However, this does not necessarily mean that steps will need to be taken to remediate a defect identified as a building safety risk...

[43]…A tribunal may decide that it is **inappropriate to order remediation if it considers that the level of risk posed by a relevant defect does not warrant it**. Similarly, on an application for a Remediation Contribution Order, a tribunal may decide that it **is not just and equitable** to make such an order in respect of costs incurred in remedying a relevant defect where it considers **those costs were unnecessarily incurred.**

(3) *Vista Tower* – UT

- **[2026] UKUT 18 (LC); Edwin Johnson J**
- **Respondents to the RCO application appealed the making of the RCO on various grounds**
- **Ground 3: The Tribunal wrongly concluded (at [72]) that a "building safety risk" for the purposes of Section 120 is any risk above "low" risk, so as to include tolerable risks. The Tribunal should have directed themselves that only an "intolerable" risk could be a "building safety risk"**
- **Academic – relevant to one Wall Type but permission to appeal that issue was refused**
- **[58] "I am asked by all the parties to address the issue raised by Ground 3, with a view to giving guidance to other tribunals on the question of what constitutes a building safety risk."**
-

(3) *Vista Tower* – UT

- [231]-[255]
- FTT correct to reject the argument that ”risk” in s.120(5) means “intolerable risk”. It means any risk.
- BUT wrong hold that a risk needs to be above low risk
- Other parts of the BSA and related Regulations do define “risk” as being a particular level – e.g. “critical risk” in s.101, risk of a significant number of deaths in Regulation 6 of Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023/907
- If a risk is a low risk, it is still capable of qualifying as a risk for the purposes of s.120(5), but whether it will be a “building safety risk” will depend upon whether it can satisfy the other conditions for the existence of a building safety risk – i.e. s.120(2)
- It is wrong to impose an “initial filter”. However, reading as “any risk” does not mean that the definition is “unrestrained”
- If it is a low risk but still a “building safety risk”, then this will affect remedial action required

Why is cladding different?

Almacantar Centre Point Nominee No.1 Ltd & Anor v Penelope de Valk & Ors [2025] UKUT 298 (LC)

1) Policy difference?
2) Wording difference in Sch.8?

Ask Simon and Mattie!

CA forthcoming

Zampetti v Fairhold [2025] 221 Con. L.R. 160

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- Self-remediation Terms / Developers Remediation Contract: Clause 6.1 of the SRTs requires the Developer to undertake, procure or fund the remediation works "in accordance with the Standard applicable at the date of the of the relevant Works Contract". So far as "the external wall construction or cladding of a Building" is concerned, that is the PAS 9980 which requires that the risk is reduced to a "tolerable" level.
- **Terms of the FTT's order**:

  "*The standard of remediation to be imposed by any RO is not specified in the Act. In the caselaw that has so far arisen, it has been interpreted to mean that works of remediation of the relevant defects should meet an outcome that satisfy the building regulations/standards in force at the time of their remediation. That achieves the elimination of the identified risk (or mitigation of it, where it cannot be fully eliminated).*" [208]

  "*We find that the works to **remove the specified relevant defects** should be carried out in compliance with the Building Regulations applicable at the time the works are carried out, **so that the relevant defects no longer exist** and such that the works achieve approval by the Building Safety Regulator. The purpose of Part 4 is to provide for relevant defects to be cured, not simply reduced to 'tolerable' (whatever that term might mean in context) where their removal is possible*" [228]

Zampetti v Fairhold [2025] 221 Con. L.R. 160

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- App for PTA: "*In other words, the BSA and/or the BRs **do not impose absolute standards**, and they **do not require the "elimination" of risks,** or that defects are "removed" or "cured" so that they no longer exist as the only means by which their provision can be satisfied … On the contrary, the BSA and/or the BRs are concerned (amongst other things) with the management and treatment of risk and defects so that they are reduced to reasonable, acceptable or tolerable levels, **and it is clear that compliance with the BSA and the BRs can be achieved by carrying out remedial works in accordance with PAS 9980***".
- The effect of the FTT decision was to **impose a higher standard of remedial works** than that required **in the SRTs and BRs.**
- PTA refused: "*The distinction between the works proposed and which were the subject of evidence before the FTT and works to reduce the risks created by the building safety defects to a tolerable level requires evidence. The applicant adduced no evidence identifying any lesser work which it was willing to carry out. It is too late for it to do so now. If the applicant is right that there is an internal inconsistency in the FTT's order, such that the work which it proposes to carry out may satisfy Building Regulations and may meet with the approval of the Regulator, but may not eliminate, or cure, or remove relevant defects, the proper response would not be to bring an appeal on undetermined facts, but once that work is identified to apply to the FTT for directions and, if necessary, for a variation of the orders*"
- **Storing up a problem** where a developer has signed SRTs because it means the LL cannot get funding from the BSF?

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“Relevant Building”

Problems posed by *The Courtyard RTM Co Ltd v Rockwell Ltd [2025]* UKUT 39 (LC); [2025] L. & T.R. 11

Section 117, Building Safety Act 2022

(1)This section applies for the purposes of sections 119 to 124 and Schedule 8.

(2)“Relevant building” means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—

(a)is at least 11 metres high, or

(b)has at least 5 storeys.

This is subject to subsection (3).

(3) Relevant building” does not include a self-contained building or self-contained part of a building [that falls within one of the 4 exceptions]

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(4)For the purposes of this section a building is "self-contained" if it is structurally detached.

(5)For the purposes of this section a part of a building is "self-contained" if—

(a)the part constitutes a vertical division of the building,

(b)the structure of the building is such that the part could be redeveloped independently of the remainder of the building, and

(c)the relevant services provided for occupiers of that part—

(i)are provided independently of the relevant services provided for occupiers of the remainder of the building, or

(ii)could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building.

(6)In subsection (5) "relevant services" means services provided by means of pipes, cables or other fixed installations.

Related Statutory Provisions

Identical, or materially identical language, used in other statutes to describe the "qualifying premises"

- **Section 3(1)-(2) of the Leasehold Reform, Housing and Urban Development Act 1993**
  - Premises which qualify for collective enfranchisement

- **Section 72 of the Commonhold and Leasehold Reform Act 2002**
  - Premises which qualify for acquiring the right to manage

- **Clause 115 in Part 2 of the new Draft Commonhold and Leasehold Reform Bill 2026**
  - Clause 115(5) is identical to the "self-contained part of a building" test
  - These are the buildings to which the proposed ban on granting new long residential leases of flats would apply

- **Do these Acts (and maybe the Bill) all therefore apply to the same premises?**
- **Same purpose in each Act? Cf *The Courtyard* at [45] – 1993 Act, vertical division and flying freeholds**

The Courtyard – UT

- [2025] UKUT 39 (LC); [2025] L. & T.R. 11 - Martin Rodger KC

- Two joined cases – The Courtyard and 14 Park Crescent

- Common Issue: Are the Premises part of a self-contained building within s.72 of the Commonhold and Leasehold Reform Act?
  - *The Courtyard* – The Plaza Boulevard, five blocks of flats above ground all resting on podium slab underground beneath which is an open-plan car park serving all five blocks, one RTM Co per block
  - *14 Park Crescent* – Old Central London County Court, Grade I listed mid terrace built 1812-20

- *The Courtyard* – FTT = No. UT = No
- *14 Park Crescent* – FTT = Yes. UT = Yes

The Courtyard – UT

- **[7] … Each statutory regime [1993 Act, 2002 Act, 2022 Act] therefore applies to a self-contained building, meaning one which is structurally detached, and to a self-contained part of a building, meaning one which satisfies the conditions in section 72(3) and (4) .**

- **S.72(5)(a) "vertical division" test not satisfied in The Courtyard due to the presence of the open plan car park in respect of which management would have to be split between the RTM Companies and the freeholder**

- **[102] The blocks are not each self-contained parts of a building because they each include parts of the undivided basement car park**

Consequences of *The Courtyard* - UT

- **Court of Appeal hearing listed for 29 and 30 April 2026**
- **Does this mean that there can be no RO or RCO over a block of flats if it has a shared, open-plan basement car park?**
- **Or would the whole development have to be one ”self-contained building”?**
- **Should the definitions be interpreted identically across all Acts?**
- **Difficulties in construing one development with multiple towers as one “building”**
  - Canary Riverside LON/00BG/LRM/2025/0022, RTM decision dated 12 December 2025
  - 4 residential towers, hotel, Virgin Active gym, swimming pool, restaurants = one “self-contained building” within s.72 Commonhold and Leasehold Reform Act 2002
  - Towers sat on a podium slab beneath which is a 2-storey open plan car park, BUT common ground in RO/RCO application that each tower is a “relevant building”
  - Not a common thread after all? Cf Martin Rodger KC in *The Courtyard*
  - [88] FTT accepted that s.117 BSA 2022 cannot assist in interpreting s.72 2002 Act, and that each statutory provision needing to be construed in its particular context. Need not be applied consistently

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Accountable People

Unsdorfer v Octagon Overseas Ltd [2024] UKUT 59 (LC); [2024] L. & T.R. 22

How do you become an AP?

- Need obligations “under a lease” (direct or headlease)
- S.24 LTA 1987 manager does not derive power from the lease

- By virtue of an enactment
- Means implied terms such as s.11 LTA 1985

Appeal to CA was discontinued

Globe House (LON/OOBE/BSG/2025/0600) – 28 July 2025

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- S.75 BSA 2022 – who is an accountable person? Leaseholder registered as an AP pursuant to s.72(1)(a) but claimed it did not fall within the statutory definition of an AP because it did not have repairing obligations in relation to common parts (pursuant to s.96 CLRA those had been transferred to the RTM company). RTM company as principal AP.
- S.75: "(*1) An interested person may apply to the tribunal for a determination, as regards a higher-risk building, of any of the following— (a) the person or persons who are accountable persons for the building … (3) In this section "**interested person" means** (b) a person who holds a legal estate in any part of the common parts (or who claims to hold such an estate), or (c) **a person who is under a relevant repairing obligation in relation to any part of the common parts** (or who claims to be under such an obligation)….*"
- S.72(1)(a): "*In this Part an "accountable person" for a higher-risk building is (a) a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or (b) a person who does not hold a legal estate in any part of the building but **who is under a relevant repairing obligation in relation to any part of the common parts***". "relevant repairing obligation": a person is under a relevant repairing obligation in relation to anything if the person is required, **under a lease or by virtue of an enactment, to repair or maintain that thing**".
- Leaseholder granted sub-leases. S.11 LTA 1985: implied covenant – effect on service installations?
- FTT held that leaseholder not "under a relevant repairing obligation" due to s.96 CLRA.

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What is the TCC up to?

Worth keeping an eye on our construction law colleagues…

381 Southwark Park Road RTM Company Ltd & Ors v Click St Andrews Ltd & Anor [2024] EWHC 3179 (TCC)

BDW Trading Ltd v Ardmore Construction Ltd [2025] EWHC 434 (TCC)

Willmott Dixon Construction Ltd v Prater & Ors [2024] EWHC 1190 (TCC)

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Q&A

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Remediating Buildings: Executing the Work and Enforcement

Aaron Walder

Poppy Kemp

Introduction

Hackitt Report:

"The sanctions and enforcement tools currently available are weak and significantly under-utilised in practice. The recommendations aim to create a more proportionate and effective system that genuinely focuses incentives on the creation of reliably safe buildings from the outset and has serious penalties for those who choose to game the system and place residents at risk."

Roadmap:

- ROs & RCOs
- Enforcement in the context of HRBs
- Who do you enforce against? Issues that have been adjudicated and some more to consider.

Remediation Orders - Background

- S.123(2):

A “remediation order” is an order, made by the First-tier Tribunal on the application of an interested person, requiring a relevant landlord to do one or both of the following by a specified time—

(a)remedy specified relevant defects in a specified relevant building;

(b)take specified relevant steps in relation to a specified relevant defect in a specified relevant building.

- FTT jurisdiction to make such an order (s.123(1) BSA and reg 2(2) Building Safety (Leaseholder Protections) (Information etc) (England) Regulations 2022)– “the FTT may, on an application made by an interested person, make an RO”.

Interested persons

S.123(5) – defines interested person as:

The regulator

LA for the area in which the relevant building is situated

A few and rescue authority for the area in which the building is situated

A person with a legal or equitable interest in the relevant building or any part of it, or

Any other person prescribed by the regulations.

Relevant landlord

- A “landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect” (s.123(3))
- “Landlord under a lease” includes “any person who is a party to the lease otherwise than as a landlord or tenant.
- A potential lacuna? See *Mirchandani v Java* [2025] (FTT) (LON/00AE/BSA/2024/0007, 0500 and 0502)

The application

- Prescribed requirements under regulation 2(3) Building Safety (Leaseholder Protections) (Information etc) (England) Regulations 2022:

Must state it is an application under s.123

Must identify the building to which the application relates

Identify the defects to the building for which a remediation order is sought

Identify the landlord which the applicant considers is responsible for repairing or maintaining anything related to the relevant defects.

Use prescribed form BSA1

The FTT's jurisdiction

- No prescribed requirements
- Test is **not** just and equitable, instead, a purposive approach should be taken – see *Robert Zampetti & Ors v Fairhold Athena Limited v Berkeley Group Holdings plc* (2025).
- Motivation does not matter – see *Tobias v Grosvenor Freeholds Ltd* (2025).

The order itself

- Baseline principles in *Waite v Kedai Ltd* (9 Aug 2023, First-tier Tribunal, LON/00AY/HYI/2022/0005 & 0016)
- Additional issues which are not included in the RO - *Monier Road Ltd v Nicholas Alexander Blomfeld* [2025] UKUT 157 (LC).

Remediation Contribution Orders – In brief

- S.124(2):

An order "requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building".

- Can be made by the FTT upon the application of an interested person if the Tribunal considers it "just and equitable" to do so (s.124(1))

Enforcement in relation to HRBs – The BSR

Establishment of the Building Safety Regulator

Has specific enforcement powers allowing it to investigate and prosecute accountable persons that act in breach of their obligations.

Who are accountable persons and what are their duties?

S.72(1) BSA

(1)In this Part an “accountable person” for a higher-risk building is—

(a)a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or

(b)a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts.

This subsection is subject to subsection (5) (special rule for commonhold land).”

Various duties as set out in s.83-86 BSA 2022

Compliance notices and criminal sanction

Compliance notice may be given by the BSR to an accountable person for an HRB (see section 99) who appears to the regulator to have contravened, be contravening or be likely to contravene a relevant requirement.

Two types: urgent and non-urgent.

Contravention of a notice is an offence:

Summary conviction, up to six months or a fine or both

Conviction on indictment, up to two years, a fine or both

Further fine for each day the default continues post initial conviction

Practical problems in enforcement

Who to enforce against?

The “Two Body” problem – Enforcement and Management Entities

The “Missing Body” problem – Forfeiture (and, for another time, disclaimed leases)

Management Entities

Accountable person – Only in relation to Higher Risk Buildings

- A tribunal appointed manager
- An RTM
- A management company in a Tri Party lease (RMC)
- TMO's in local authority blocks

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72 Meaning of “accountable person”

(1) In this Part, an “accountable person” for a higher-risk building is—

(a) a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or

(b) a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts.

(6)… “relevant repairing obligation”: a person is under a relevant repairing obligation in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing

who is under a relevant repairing obligation in relation to any part of the common parts.

…required, under a lease or by virtue of an enactment, to repair or maintain that thing

Unsdorfer v Octagon Overseas Ltd [2024] UKUT 59 (LC)

Upper Tribunal considered if Tribunal Appointed Manager could be an AP

The second limb of the definition of AP refers to a relevant repairing obligation in relation to any of the common parts, but only where the source of the obligation is ‘under a lease or by virtue of an enactment’: s.72(6) of the 2022 Act. This has a narrow interpretation. An obligation is ‘under a lease’ where it is imposed by the lease contract or by the acquisition of the leasehold estate or reversion. It is ‘by virtue of an enactment’ where it is imposed on a party directly by the enactment, such as a statutory implied term, but not where imposed indirectly, such as pursuant to a court order issued under the authority of an enactment. The narrow interpretation of this element of AP might have significance where, for example, a manager with responsibility to repair common parts is appointed by the court; the manager’s obligation arises under the court order, thus he falls outside the definition of AP, and the AP status remains with the landlord who would have been AP in the absence of any court-appointed manager – Emmet & Farrant on Title 28.401

Mirchandani v Java [2025] (FTT)

- Not a case about AP. About Relevant Landlord for purposes of RO. But shows attitude of FTT to RTM's?
- "Relevant Landlord" required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect by s.123(3)
- S.96(2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company
- S.96(5) "Management functions" are functions with respect to services, repairs, maintenance, improvements, insurance and management.

Hastings BC v Braer [2015] UKUT 145 (LC)

- Case about Improvement Notices under Housing Act 2004

The improvement notice must in such a case be served by the local housing authority on a person who “(a) is an owner of the specified premises concerned, and (b) in the authority’s opinion ought to take the action specified in the notice.”

“I suggest that the following persons might properly be the recipients of an improvement notice given under paragraph 4. First, the freeholder, who satisfies the description of “owner” in s. 262(7)(a), as being entitled to dispose of the fee simple of the premises in reversion. Secondly, some or all of the lessees of individual flats with leases for unexpired terms exceeding 3 years, each of whom is “an owner of … part of the Building” in accordance with s. 262(7)(b). Every such lessee is also within the extended definition of owner in paragraph 4(3) in relation to common parts. The RTM company itself is not an owner and cannot be the recipient of an improvement notice.”

But…

Definition of “Owner” under s.262(7) of the 2004 Act includes “a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceed 3 years”.

If service charge reserved as rent, is it “holding…. the rents…under a lease of which the unexpired term exceeds 3 years”?

Could not apply to an RTM, but to an Tri Party MC?

Tri- Party Leases

Manager appointed under the lease:

a) Required under a lease to repair, so AP

b) A Relevant Landlord for purposes of RO under BSA

c) An owner for purposes of LA enforcement

TMOs

- Housing (Right to Manage) (England)) Regulations 2012
- Modular Management Agreement contained in Part 2 of the Right to Manage: Statutory Guidance
- Effectively and enforced contractual management
- On the face of it, certainly no obligation required by a lease, and given contractual nature of management, no enactment

Regulatory Reform (Fire Safety) Order 2005

In this Order “responsible person” means—

(a) in relation to a workplace, the employer, if the workplace is to any extent under his control;

(b) in relation to any premises not falling within paragraph (a)—

(i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or

(ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.”

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By paragraph 17 of the RRO, a responsible person's duties are:

"*—(1) Where necessary in order to safeguard the safety of relevant persons* ***the responsible person must ensure that the premises*** *and any facilities, equipment and devices provided in respect of the premises under this Order or, subject to paragraph (6), under any other enactment, including any enactment repealed or revoked by this Order,* ***are subject to a suitable system of maintenance and are maintained in an efficient state, in efficient working order and in good repair****."* (emphasis added)

But…Paragraph 5

(3) Any duty imposed by articles 8 to 22B or by regulations made under article 24 on the responsible person in respect of premises shall also be imposed on every person, other than the responsible person referred to in paragraphs (1) and (2), who has, to any extent, control of those premises so far as the requirements relate to matters within his control.

(4) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

(a) the maintenance or repair of any premises, including anything in or on premises; or

(b) the safety of any premises,

that person is to be treated, for the purposes of paragraph (3), as being a person who has control of the premises to the extent that his obligation so extends. (my emphasis)

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Duties under these regulations do not impact interpretation of BSA.

But, different result in *Unsdorfer*?

Different result for TMOs?

Different result for forfeiture cases?

Question asked – Am in going to get blamed if the building burns down tomorrow?

Forfeiture

Usual scenario

A is freeholder

B is headlessee with structural repairing obligations

C are residential underleasees

A (due to insolvency, rent arrears or disrepair) forfeits headlease

Where do the obligations rest?

Original position

B holds legal estate in common parts, so is AP (A does not)

B is required to repair under lease, so is relevant landlord (A is not)

B is (most likely) the responsible person in relation to fire safey order

How is forfeiture undertaken:

Following **Driscoll v Church Commissioners for England** [1957] 1 QB 330, where a landlord re-enters by service of proceedings, rather than peaceable re-entry, the tenancy is not fully determined against the tenant until judgment for possession. In the period between the service of proceedings and judgment for possession, the tenancy continues to have a "shadowy existence", per **Meadows v Clerical, Medical and General Life Assurance Society** [1980] 1 All ER 454

Most likely scenario as residential property involved.

Further, if (as is usual) there is a claim for relief from the residential undertenants

Liverpool Properties Ltd v Oldbridge Investments Ltd [1985] 2 EGLR 111 (and also **Sambrin Investments v Tabon** [1990] 1 EGLR 61) this “shadowy existence” or “twilight period” is continued during the pendency of a subsisting application for relief from forfeiture.

Following **Official Custodian of Charities v Mackey (No.2)** [1985] 2 All ER 1016, the (head)tenant can rely upon his own title during this twilight period to collect rent due from subtenants, although he may not be entitled to keep it if his application for relief fails.

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So, during any “twilight period”

B remains the “person who holds legal estate in the common parts” under s.72 BSA

Furthermore, if head lease is registered, s.58 LRA 2002 deeming provision for conclusiveness if title not closed.

And, given landlords covenants continue, it remains a relevant landlord.

But Fire Safety Order and Owner

NB – the issue of disclaimed leases also throws out a number of questions that we don’t have time for today!

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Q&A

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Unjust and inequitable? The RCO jurisdiction and the FTT

Myriam Stacey KC

Tom Morris

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Remediation Contribution Orders

"Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one, as if they should make his foot the standard for the measure we call a Chancellor's foot; what an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot; 'tis the same thing in the Chancellor's conscience."

John Selden, 1689

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Building Safety Act, s. 124

(1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so.

Building Safety Act, s. 124

"Interested Person":

(a) The Secretary of State,

(b) The regulator,

(c) A local authority for the area,

(d) A fire and rescue authority for the area,

(e) A person with a legal or equitable interest in the relevant building or any part of it,

(f) Any other person prescribed by regulations.

Building Safety Act, s. 124

s.124(2):

"Remediation contribution order", in relation to a relevant building, means an order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying, or otherwise in connection with, relevant defects (or specified relevant defects) relating to the relevant building.

Building Safety Act, s. 124

s.124(4):

An order may –

(a) Require the making of payments of a specified amount,

(aa) If it does not require the making of payments of a specified amount, determine that a specified body corporate or partnership is liable for the reasonable costs of specified things done or to be done;

(b) Require a payment to be made at a specified time, or to be made on demand following the occurrence of a specified event.

Building Safety Act, s. 124

(3) A body corporate or partnership may be specified as a person required to make payments only if it is—

(a) a landlord under a lease of the relevant building or any part of it,

(b) a person who was such a landlord at the qualifying time,

(c) a developer in relation to the relevant building, or

(d) a person associated with a person within any of paragraphs (a) to (c).

Building Safety Act, s. 124

"Developer": a person who undertook or commissioned the construction of the building (or part of the building) with a view to granting or disposing of interests in the buildings or parts of it

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Summary

Section 124 allows an interested person to apply to the FTT for an order requiring a current or former landlord or developer of the building, or someone associated with them, to meet costs incurred or to be incurred in remedying relevant defects.

An interested person includes any person with a legal or equitable interest in the relevant building or any part of it.

The subject of the order must be a company or a partnership.

The ‘specified person’ does not need to be ‘interested person’ applying for the order.

Building Safety Act, s. 121

(3) A partnership is associated with any person who was a partner in the partnership, other than a limited partner, at any time in the period of 5 years ending at the qualifying time…

(4) A body corporate is associated with any person who was a director of the body corporate at any time in the relevant period.

(5) A body corporate is associated with another body corporate if –

(a) at any time in the relevant period a person was a director of both of them, or

(b) at the qualifying time, one of them controlled the other or a third body corporate controlled both of them.

Building Safety Act, s. 121

Body corporate controls a company if:

- at least half of the issued shares
- at least half of the votes exercisable in general meetings
- entitled to at least half of the distributed income
- entitled to at least half of assets on winding up.

Body corporate controls limited liability partnership if controls voting rights.

Body corporate controls another body corporate if has the power *directly or indirectly* to secure its affairs are conducted in accordance with its wishes.

Policy objectives

-- *Triathlon Homes LLP v Stratford Village Development Partnership* [2025] EWCA Civ 846; [2026] 1 P.& C.R. 8, at [148]

(1) To ensure historic building safety defects are remediated.

(2) To protect leaseholders.

(3) To ensure that those responsible for the defects were held liable.

(4) To restore liability to the lending market.

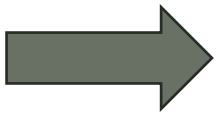
Triathlon Homes LLP v Stratford Village Development Partnership

Get Living PLC

(R2: Parent)

Triathlon Homes LLP

(A: social housing provider)



Stratford Village Development Partnership

(R1: Developer)

Triathlon Homes LLP v Stratford Village Development Partnership

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Irrelevant factors:

- The applicant's motivation in bringing the applications.
- The existence of other possible respondents to other applications.
- The fact that Triathlon had only sought to recover its share of the costs, and not the larger amount to be incurred by the management company.
- The changing identify of the ultimate beneficial owners of SDVP and Get Living.
- The fact that Triathlon had remedies in contract, which would produce a fairer outcome.

Triathlon Homes LLP v Stratford Village Development Partnership

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Important factors:

- SVDP was the developer: the primary target.
- It depended on Get Living for financial support
- The uncertainty if there was a shortfall between the works' cost and the Building Safety Fund funding.
- The undesirability of the public purse being left with the bill.

Vista Tower

Grey GR Limited Partnership v Edgewater (Stevenage) & Ors

Grey GR Partnership v Edgewater

“Having provided only limited information as to why they say it would not be just and equitable to make an order against them, it appears just and equitable to make them all responsible. We hope they will be able to arrange for those more closely linked to pay so that independent investors do not suffer, but in this case these Respondents must know that they are each liable for the entire sum if the others do not pay.”

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors [2026] UKUT 18 (LC)

(1) There has to be something beyond satisfaction of the gateway conditions before the FTT can be satisfied that it is just and equitable to make an order: [179].

(2) Initial burden is on the applicant to put forward a case as to why it is just and equitable: [181] (*echoing the 'prima facie' case test for service charge unreasonable: see Spender v FIT Nominee Ltd* [2025] EWCA Civ 1578).

(3) The burden is not a heavy one: 'initial burden' only.

(4) The respondents must then put their case in response, proving matters on which they rely in support of their case that it is is not just and equitable to make the order.

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors [2026] UKUT 18 (LC)

"[211]... Once it is accepted… as I have now decided, that the Tribunal were entitled to make remediation contribution orders on a joint and several basis, it was open to the Tribunal to decide that joint responsibility should be imposed upon the Specified respondents without differentiation."

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors [2026] UKUT 18 (LC)

"[216] Provided that the gateway conditions are satisfied, the question for the FTT is whether it considers it just and equitable to make a remediation contribution order. While this is a separate exercise to the question of whether the gateway conditions are satisfied, the question of what is just and equitable is left at large. It is for the FTT to decide what is just and equitable, on the facts of the particular case before the FTT. As the Tribunal correctly noted… decisions on what is just and equitable are very fact-sensitive".

"[219] There is no requirement for direct participation or receipt of profits."

Appeals against findings of fact

Ingenious Games LLP v HMRC [2019] UKUT 0266

- Finding without any evidence or upon a view of the facts which could not be supported.
- ‘”Irrationality”

Georgiou v Customs and Excise Commissioners [1996] STC 463

“for a question of law to arise in the circumstances, the appellant must first identify the finding which is challenged; secondly, show that it is significant in relation to the conclusion; thirdly, identify the evidence, if any, which was relevant to that finding; and fourthly, show that that finding, on the basis of that evidence, was one which the tribunal was not entitled to make. “What is not permitted, in my view, is a roving selection of evidence coupled with a general assertion that the tribunal’s conclusion was against the weight of the evidence and was therefore wrong.”

Tips for Applicants (1)

(1) Heed this warning of the President in *Vista Tower:*

"[316] Where there are multiple respondents to an application for a remediation contribution order, joint and several liability is not the starting point in every case where the FTT is persuaded to make the order against multiple respondents. The FTT is required to consider carefully, in relation to each respondent, what constitutes the appropriate just and equitable outcome. The appropriate just and equitable outcome may not be joint and several liability. It may be an apportioned liability. It may, as in the present case, be no liability at all in the case of particular respondents. It may be something else…"

(2) Always plead as a fallback that liability should otherwise be apportioned.

Tips for Applicants (2)

(3) Head off challenges to quantum by pre-action letters giving respondents a chance to have their say on the scheme of works.

(4) Rely on professional advice on the extent of defects and the scheme of the remedial works proposed.

(5) Ensure that there is a paper trail between those professional advisers and any technical objections to scope of works raised by prospective respondents.

(6) Do not assume an order will be made just because the gateway elements are pleaded: identify why an order would be just and equitable so as to discharge initial burden.

(7) Consider a 'staged' approach, where money is tight?

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Tips for Respondents

(1) If threatened with an application at an early stage, consider promptly instructing experts to visit the building and to give input on defects and scope of remedial scheme.

(2) If met with an application for a joint and several order, heed the President's warning in the postscript to his judgment: *"…it is important that the respondents explain clearly to the FTT the nature and extent of their relationship"*.

(3) Full and frank disclosure early: burden 'shifts'.

(4) Evidence that no benefit or involvement may be powerful.

(5) Identify and prove the existence of independent investors.

(6) Consider whether there are other companies who should be in the firing line.

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Q&A

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Levy and let live: Planning law and the BSA

Joel Semakula

Kimberley Ziya

Introduction

- Overview of the Levy
- How it works
- What it means for developers and funders

Overview of the Building Safety Levy

- Tax on new residential buildings in England collected by local authorities
- The Building Safety Levy (England) Regulations 2025
- Building Safety Levy: Guidance
- Applies to building control applications and initial notices for works that result in new dwellings or new bedspaces in purpose-built student accommodation (PBSA) and change of use to residential properties.

Exemptions

- Developments under 10 dwellings (or 30 bedspaces for PBSA): reg. 6
- Other exemptions:

Social housing and supported housing: reg. 8; reg 15

Care homes and hospices: Sch. 1

Hospitals: Sch. 1

Children's homes and residential family centres: Sch 1

Monasteries, nunneries, seminaries, and similar establishments: Sch. 1

School accommodation (for schools, not universities): Sch. 1

Hotels and hostels: Sch 1

Prisons and secure accommodation: Sch. 1

Temporary accommodation for homeless people: Sch.1

Accommodation for victims of domestic abuse: Sch. 1

Almshouses and accommodation for armed forces: Sch. 1

MoD or Crown properties: Sch. 1

How will it work – levy charging conditions ?

- In order to be chargeable, the works in the application or notice must meet all three charging conditions.

Charging Condition 1: the works must constitute, or form part of, a major residential development

Charging Condition 2: the works must result in the creation of new residential floorspace: see reg. 10 for definition

Charging Condition 3: the client is not an 'exempt person': see reg. 13 for definition

How will it work – triggers?

24.— Levy due date

(1) Building safety levy charged in respect of a chargeable application must be paid on or before the earlier of—

(a) the completion notice date, and

(b) the first date of occupation.

How will it work - calculating the levy?

- Chargeable floorspace is the new residential floorspace that will be created as a result of the works in the application, or notice being carried out: reg. 17
- Levy calculated based on the gross internal area of chargeable residential floorspace: reg. 12; Sch. 3

The local authority area of	Previously Developed Land levy rate (£)	Non-Previously Developed Land levy rate (£)
Newcastle-under-Lyme	9.89	19.79
Newham	23.61	47.23
North Devon	14.42	28.84

How will it work - the spot check?

- LAs required to spot check a minimum of 10% of levy information submissions received each quarter: reg. 47
- What is involved?

Review supporting evidence - floorplans, photographs, S106 agreements, signed agreements with registered providers - alongside the planning permission and any other reasonably available information

May measure floorplans to verify floorspace figures

Check whether site genuinely qualifies for the brownfield discount

Verify the accuracy of any exemptions claimed

Confirm whether works are indeed part of a major residential development.

Site visit not required

How will it work – timing?

- LA's have approx. 5 weeks (or 8 weeks if a spot-check is being conducted) to assess the levy and issue either a levy liability notice or a notice of no charge.
- Levy can be paid any time after the liability notice is issued, but must be paid in full **before** completion certification
- No staging!

How will it work – transitional arrangements?

- The levy will come into effect on 1 October 2026.
- Anyone submitting an application for building control approval relating to the provision of one or more dwellings and/ or one or more PBSA bedspaces on or after that date will be liable to pay the levy, save where an exemption applies.
- Levy does not apply to existing applications for dwellings or PBSA that were submitted before 1 October 2026.
- If such existing applications are varied after 1 October 2026, levy still does not apply to such applications, provided the original application was submitted before the implementation date.

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What now for developers and funders?

- Viability and land acquisition
- Strategic timing
- Cashflow management
- Design considerations
- Project structuring
- Programme risk
- Transaction documents
- Anti-avoidance

Introduction

- The local authority’s role
- Disputes

The local authority's role

Which authority?

- Local authorities with building control statutory responsibilities: Reg. 4
- Even where works are carried out under initial notices submitted by registered building control approvers (RBCAs) or under apps to the Building Safety Regulator
- If a building is located on the boundary b/w more than one area, look at greater part of the building

The local authority's role

Significant administrative burden:

- Receive levy info with building control apps, at commencement stage & following any changes to works
- Calculate the levy charge
- Issue liability notice or notice of no charge – proforma
- Carry out spot checks
- Receive a levy payment & issue certificate - proforma
- Issue building control completion certificate
- Issue refunds (less admin cost)

The local authority's role

How can LAs fund this?

- Set-up costs via s.31 grant in advance of levy coming in
- Ongoing admin costs recovered from levy revenue – costs recovery basis

Disputes: Reviews and Appeals

Requests for reviews

- Client may request a review of: (1) levy charge - inc. update charge following spot check; (2) refund amount; (3) the decision to charge a levy at all; (4) the decision not to issue a refund: reg.71
- Request in writing w/in 28 days
- Request must contain various info prescribed by reg. 71(3)
- May be accompanied by supporting info/evidence

Disputes: Reviews and Appeals

Carrying out the review

- LA must carry out the review w/in 28 days of receiving the request
- Reviewer must not have been involved in original decision & must be senior to person who made that decision
- Inform client of outcome w/in 28 days inc. reasons if decision upheld

Disputes: Reviews and Appeals

Appealing a review to FTT

- Client may appeal outcome of review to FTT w/in 28 days of receiving the decision
- Can also appeal against failure to notify of the outcome
- Grounds:

  Error of fact (e.g. miscalculated floorspace)

  Wrong in law (applied levy charge to exempt building)

- Tribunal may uphold or issue new decision

Disputes: Reviews and Appeals

Other appeals

- Rejection of an app for BCA w/ full plans due to failure to include levy info → Building Safety Regulator
- Rejection of initial notice or amendment notice due to failure to include levy info → FTT
- Refusing to issue a completion certificate due to non-payment of the levy → Building Safety Regulator → FTT
- Rejection of a final certificate due to non-payment → FTT

Worked examples

- Process maps

Worked examples

Example 1

- Local authority building control route
- Straightforward major residential development
- Meets the levy charging conditions

Worked examples

Example 1

- Step 1: developer submits full plans app w/ levy info
- Step 2: developer serves 1st commencement notice w/ levy info
- Step 3: LA calculates levy & issues liability notice or notice of no charge w/in determination period (subject to spot-checks & info requests)
- Step 4: developer pays levy
- Step 5: LA issues levy payment certificate w/in 2 weeks
- Step 6: Completion certificate

Worked examples

Example 2

- More complex
- Registered Building Control Approver route used
- During delivery tenure changes trigger an update to levy info

Worked examples

Example 2 cont.

- Step 1: developer instructs an RBCA which submits initial notice to LA that includes the required info as an annex
- Step 2: LA determines chargeability, calculates levy & issues liability notice or notice of no charge – sends copy to RBCA
- Step 3: Developer pays the levy
- Step 4: LA issues levy payment certificate w/in 2 weeks

Mix of dwellings changes mid-project; some units move from chargeable to exempt

- Step 5: Developer submits a levy update notice to LA w/ updated levy info requesting a revised determination

Worked examples

Example 2 cont.

- Step 6: LA issues revised levy determination – new liability notice or notice of no charge
- Step 7: LA issues refund & revised levy payment certificate

Developer disputes revised determination

- Step 8: Developer requests a review & appeals outcome to FTT
- Step 9: FTT upholds LA’s decision

Worked examples

Example 2 cont.

Completion

- Step 10: Developer makes compliance declaration to RBCA incl. levy liability statement
- Step 11: RBCA signs final cert. & sends to LA
- Step 12: LA checks that levy position is correct before accepting final certificate

Any questions?

We will now answer as many questions as possible in the time available

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Q&A

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Paying for Remediation:

Schedule 8 and Beyond

Simon Allison KC

Mattie Green

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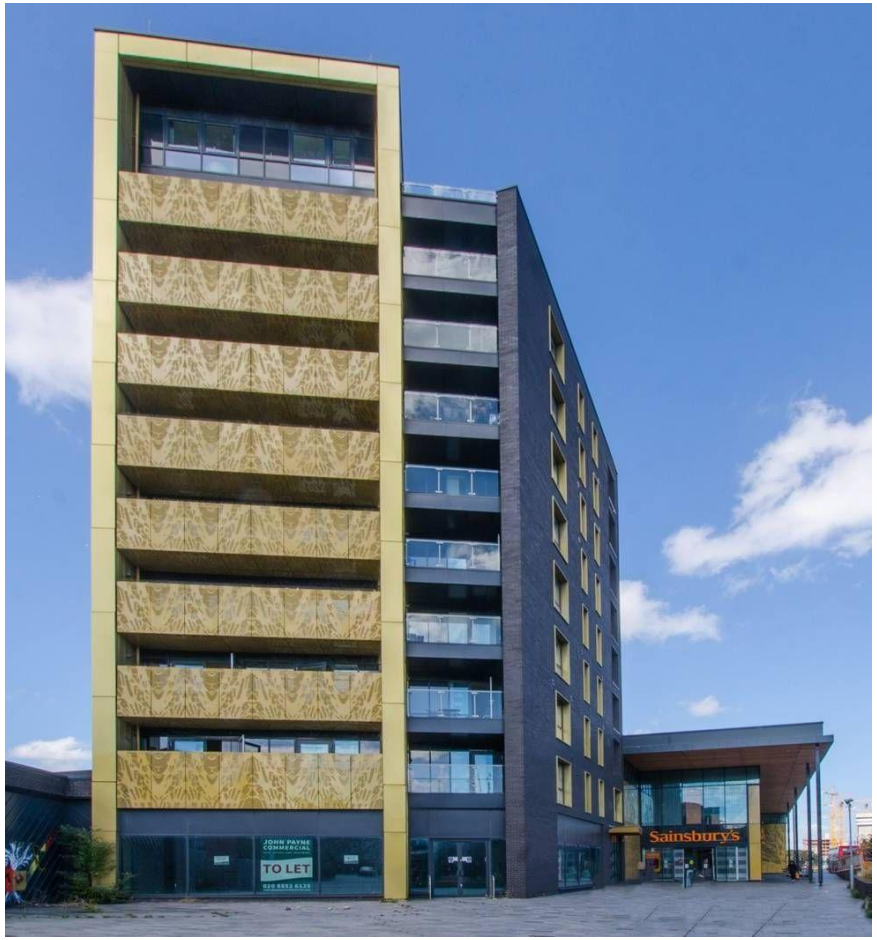
What we will cover

- The *Hippersley Point* appeal – the question of retrospectivity
- *Triathlon Homes* appeal – the question of retrospectivity
- *Centre Point House* – Cladding
- *Some specific RTM/RMC considerations and challenges*
- *SPVH v EVML* Reg 3 appeal

Hippersley Point

***Adriatic Land 5 Limited v Leaseholders of Hippersley Point*:**

- Starts life as an application to the FTT for dispensation in relation to major building safety works
- UT: MRKC, in giving permission, spots BSA point
- UT: Allows appeal on s.20ZA issue, but confirms para.9 Sch.8 will restrict recovery of costs against LH with qualifying leases.



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Hippersley Point

By way of reminder, para 9(1) of Sch.8 says this:

> "No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect."

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Hippersley Point

Supplemented by para 10(2):

Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing—

(a)no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else)—

(i)are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge payable under the lease, or

(ii)are to be met from a relevant reserve fund;

(b)any amount payable under the lease, or met from a relevant reserve fund, is limited accordingly (and any necessary adjustment must be made by repayment, reduction of subsequent charges or otherwise).

Hippersley Point – Court of Appeal

- The arguments for the appellant on retrospectivity:
  - No express provision requiring retrospective effect unlike other parts of the BSA (see s.135, where amendments to the Limitation Act are "*to be treated as always having been in force*").
  - A construction that allows for retrospective operation is contrary to the common law rules against appropriation and retrospective legislation: Wilson v First County Trust Ltd
  - What about A1P1? A retrospective construction would allow for the deprivation of accrued property rights without compensation.
- ***Accordingly…***
- Para 9 Sch.8 BSA has no application to costs incurred pre-BSA coming into force

Hippersley Point – Court of Appeal

- **Position of the Respondent leaseholders:**
  - Once BSA enacted, leaseholders were relieved of all liability to pay for such costs for the future but ALSO became entitled to recover sums paid in respect of any such costs paid in the past (pre-BSA) – without limitation. Relying, in part, on Explanatory Notes.

- **Position of the Secretary of State (intervening):**
  - Line drawn in the sand as at date BSA came into force (28 June 2022)
  - From that date, no leaseholder has any liability to pay toward such costs by way of service charge (whether incurred prior to or after that date)
  - As a result, unpaid SC sums no longer payable, but if you did pay, no right to recover
  - [In essence, adopting the UT's conclusions]

Hippersley Point - Decision

- ***Split decision – 2:1*** *(Newey: allow, Nugee and Holgate: dismiss)*

Newey:

- Explanatory Notes that post-date Act of limited effect – akin to academic article
- Arbitrary results on both A's and SoS's position
- Presumptions were firmly engaged, but must consider fairness (L'Office Cherifien)

  'The factors relevant to fairness seem to me to come down against retrospectivity and do not, in my view, displace the presumptions.' (§86)
- SC decision in BDW v URS did not affect his conclusion
- On A1P1 issue, considers effect of para 9 is a 'control of use' rather than a 'deprivation', and that a wide margin of judgment was applicable.
- An exceptional intervention to deal with a crisis – lack of compensation not fatal.

Hippersley Point - Decision

- ***Split decision – 2:1*** *(Newey: no retrospective effect, Nugee and Holgate: dismiss appeal)*

Nugee (Holgate agrees):

- Agree on Explanatory Notes and A1P1 but…
- On retrospectivity, takes view that *whatever* the answer, prospectively, the Act causes 'serious disruption to the orderly collection of service charges'.
- Line has to be drawn somewhere, and not significantly more unfair to draw it as the SoS suggests than as Appellant suggests.
- Language of the Act favours SoS / UT construction.
- SoS construction is more consistent with the purpose and scheme of the wider remediation provisions and only way to give effect to Parliament's (presumed) intention.

Hippersley Point – Supreme Court

- Single ground of appeal:

  Does paragraph 9 of Schedule 8 to the Building Safety Act 2022 ("BSA 2022") preclude the recovery of legal or professional costs by way of service charge from leaseholders holding a qualifying lease where those costs were incurred before the BSA 2022 came into effect?

- Yet to be listed but likely to be this year. To be heard alongside Triathlon.

Hippersley Point – Supreme Court

- **What is the proper application of the common law presumption against retrospective takings of property with respect to the BSA? Does it matter that the interference with property rights is uncompensated? How much weight should be afforded to this factor?**
- **Is there a 'rule' of construction at play (in which case, how does it operate here)?**
- **Is the presumption against retrospectivity simply a factor to be taken into account when interpreting the BSA, or something stronger than that?**
- **Does the language of Paragraph 9 require a retrospective construction? Is it ambiguous?**
- **If it does, how much retrospective effect is 'clearly necessary'?**
- **Was Nugee LJ right to take the view (at §203) that, given the unfairness to landlords resulting from the application of paragraph 9 *prospectively*, application *retrospectively* to accrued rights did not add 'very much'.**
- **What, if any, interaction is there between the 'Leaseholder Protections' in Schedule 8 and the ability to apply for a RCO? If s.124 operates such that costs incurred prior to 28 June 2022 can be recovered by way of a RCO, how does that affect the proper construction of Paragraph 9?**

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Triathlon Homes

Triathlon Homes

- ***Triathlon Homes LLP v Stratford Village Development Partnership***, FTT (19 January 2024)
  - A decision by the FTT about RCOs
  - FTT application concerned five residential blocks in Stratford, originally developed by Stratford Village Development Partnership to provide accommodation during the 2012 Olympic Games.
  - At the time of development SDVP was owned by the Olympic Delivery Authority. After the Olympic Games, SDVP was sold to Get Living Plc.
  - Following the Olympics, Triathlon, was established to provide affordable housing at East Village. It therefore became the long leaseholder of all the social and affordable housing units.

Triathlon Homes

- ***Triathlon Homes LLP v Stratford Village Development Partnership***, FTT (19 January 2024)
  - In 2020 serious fire safety defects were identified.
  - A waking watch, alarm and heat detection systems were installed as interim measures.
  - A substantial programme of works were where devised by the management company to replace unsafe cladding (with a BSF application having been made).
  - Triathlon lodged five applications for RCOs under section 124 of the BSA 2022 against SVDP and Get Living to cover the five blocks seeking a contribution of nearly £18m to be paid to EVML towards the remediation costs.

Triathlon Homes – in CA (after UT 'leapfrog')

- **One key question was whether an RCO can require repayment of sums already spent prior to 28/6/22. Answer? YES**
    - Obvious overlap with Hippersley issues – but the answer isn't necessarily the same. There are logical reasons why one, or both, or neither of Sch 8 and RCOs might have retrospective effect and to an extent – as part of one overall scheme - they might have been intended to work together.
    - In URS v BDW the SC had given a clear steer (albeit obiter) that it considered s.124 was to be given a retrospective interpretation. That should guide the CA unless it was clearly wrong.
    - Part of the purpose of Part 5 of the Act was to ensure leaseholders and others who had already paid out sums toward remediation would have redress.
    - Any potential unfairness was recognised in the fact it had to be just and equitable to make an order (contrast with Hippersley position – absolute).
    - A retrospective construction makes the BSA work as a whole. If s.124 cannot be used to pass on costs incurred before 28/6/22, a RMC/RTM Co with no income other than service charges may be left without an obvious remedy: [154].

Triathlon Homes – Supreme Court

- **Single ground of appeal:** Was the Court of Appeal wrong to conclude that a remediation contribution order under s124 Building Safety Act 2022 can be made in respect of costs incurred before that provision came into force on 28 June 2022?

- To be heard at the same time as the *Hippersley* appeal

Almacantar v Leaseholders of Centre Point House

Upper Tribunal: 16/9/25 [2025] UKUT 298 (LC)

- Application brought by landlord pursuant to s.27A, Landlord and Tenant Act 1985 for a determination of payability in relation to planned works

- The intended works involve the replacement of the façade of Centre Point House, costing over £7M

- The building had neither been converted or constructed in the 30 years before the BSA was introduced

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Centre Point House

- Leaseholders argued that the works to replace the façade were caught by para 8. Sch.8, BSA, such that leaseholders with a qualifying lease would not be liable to contribute towards the costs.
- By way of reminder, para 8 provides as follows:

> *"(1) No service charge is payable under a qualifying lease in respect of cladding remediation.*
>
> *(2) In this paragraph "cladding remediation" means the removal or replacement of any part of a cladding system that—*
>
> *(a) forms the outer wall of an external wall system, and*
>
> *(b) is unsafe."*

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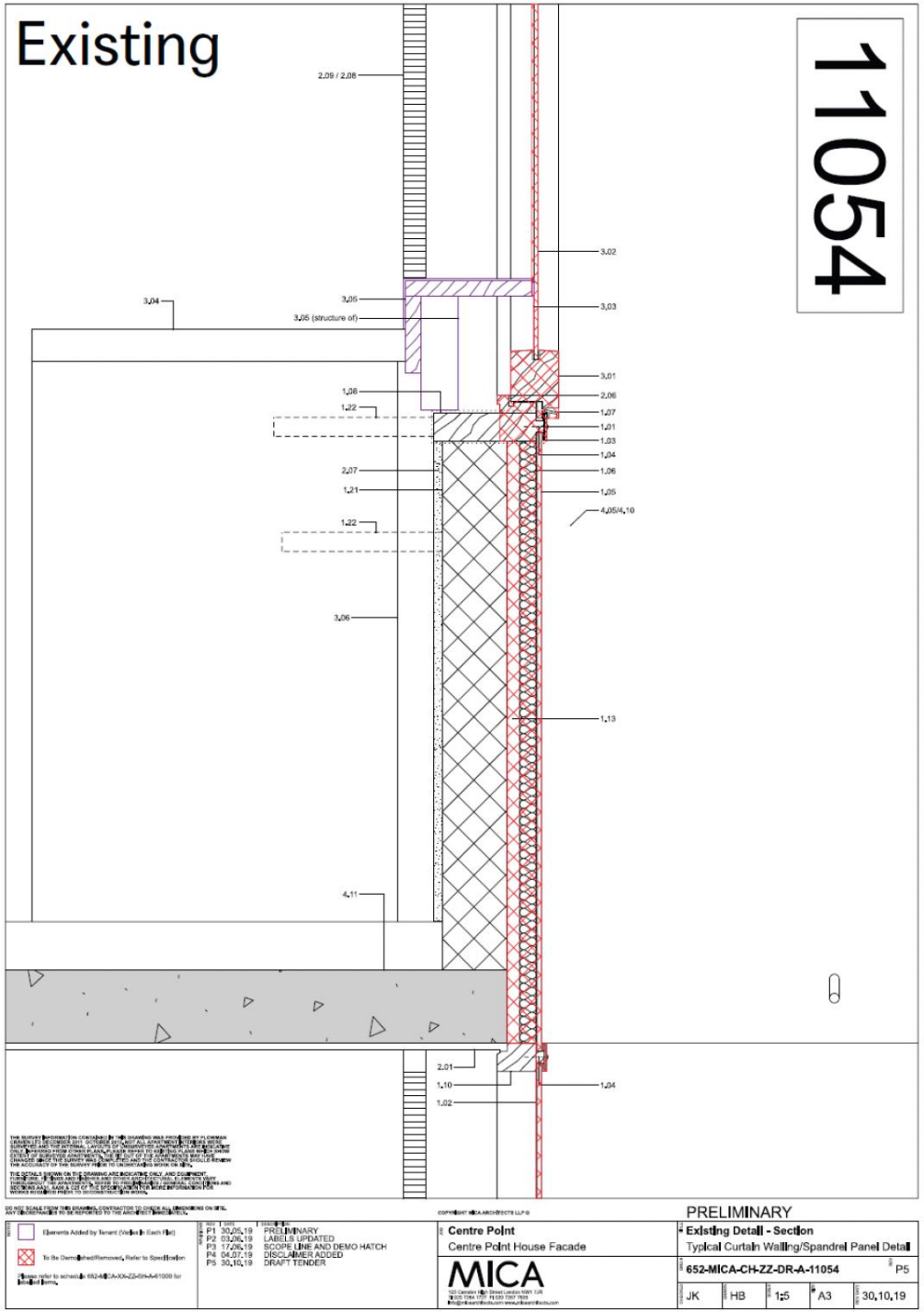

Centre Point House

- What the FTT had said:
  - Notably, there is no use of the defined term ‘relevant defect’ in para 8:

“We are satisfied that the ordinary and clear meaning to be given to the words of paragraph 8 is that cladding remediation is to be treated as a distinct protection outside of the waterfall, not contingent on there being a ‘relevant defect’ and therefore not incorporating the requirement that the cladding in question needs to have been put on the building within the relevant period - the 30 years preceding 14 February 2022” [220].

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- What the FTT said:
  - *"What is the effect of the ordinary and natural meaning of the words used in paragraph 8? Primarily, that no qualifying leaseholder will ever have to pay for unsafe cladding remediation. That is neither unclear or ambiguous, and does not lead to absurdity. It accords with the schema of the 2022 Act."* [225]
  - *"We have no hesitation in accepting that there is no universally accepted definition of cladding in the construction industry, as the professionals told us. We consider that is perfectly appropriate - as buildings differ enormously one to the next, there can be no 'one size fits all' definition."* [253]

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- UT (President of FtT + surveyor):
  - Para.8 protection is not limited to relevant defects
  - Words were clear and unambiguous and reflects the ministerial statement pre-dating the amends to the Building Safety Bill that no leaseholder would have to pay to fix dangerous cladding.
  - The fact that the LL cannot recoup against e.g. developers by way of an RCO (as >30 years) was explicable: §56. The same was true in terms of leaseholders seeking an RO.
  - The word 'unsafe' in para 8 arguably isn't required if limited to relevant defects.
  - Guidance in Lehner v Lant Street [2024] UKUT 0135 was not binding or intended to be binding on this point (wasn't argued).

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- As to the other points (more fact specific):
    - Question of whether a building has ‘cladding’ is one of fact. FtT reached a conclusion it was entitled to and its findings unassailable (remember: no appeal on findings of fact!).
    - Same was true of its finding that the façade comprised ”the outer wall of an external wall system” – finding of fact. Not need for 2 identifiable systems.
    - The word ‘unsafe’ is to be construed widely – not limited to fire risk.
    - Note discussion as to the operation of the presumption re: holding a qualifying lease (para 13, Sch.8). Question whether presumption rebuttable (notwithstanding FtT’s finding) not determined

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- Predictably enough – Almacantar have appealed.
- PTA granted by the UT.
- To be heard by the CA in 2026 (not yet listed)

BSA: Specific issues in RTM/RMC context

- Particular issues are arising in practice:

    a) Slow decision making.

    b) Lack of critical analysis of expert input.

    c) Chronic lack of funding (/breach of trust concerns for directors!).

    d) HRBs a particular issue: Overwhelm in duties/responsibilities, little guidance

    e) Developer Remediation Contract: Developers taking advantage?

BSA: Specific issues in RTM/RMC context

What can help?

a) A good managing agent with experience of remediation projects.

b) If possible, peer review of critical reports, particularly if conflicting views.

c) Consider appointment of a Building Safety Director (NB £££) – s.111

c) Funding options (beyond BSF and DRC):

- Freeholder engagement inc. loans and legal assistance
- RCO
- OFTEN forgotten: LPI Regs (2022/859)

BSA: Specific issues in RTM/RMC context

The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022

- Enables services of notice on LL requiring payment of cost of relevant measures relating to relevant defects
- See regs 3-5:

    3: Where LL developer or associated with developer (para.2 Sch 8)

    4: Where LL meets contribution condition (para.3 Sch 8)

    5: All other cases (split between all relevant LLs)

- Very limited grounds on which can appeal – 30 day period
- Much quicker & cheaper than an RCO (potentially!) / Unclear why so little used.

Reg 3 Appeal: *Stratford Village Property Holdings 1 Ltd & anor v East Village Management Ltd*

- SVPH are joint freehold owners of East Village, Stratford—buildings constructed as the Athletes' Village for the London 2012 Olympic Games and later converted into residential flats
- EVML manages 11 plots across East Village, comprising approximately 63 relevant buildings and 2,500 residential flats, and is contractually responsible for remedying defects
- All relevant buildings suffer from multiple fire safety defects to external walls, balconies, and internal compartmentation
- Buildings on Plot N26 have had external walls remediated, partly funded by the Building Safety Fund ("BSF") under a Grant Funding Agreement ("GFA")
- Two regulation 3 notices were served: (1) the N26 Notice for £10,270,544.94 and (2) the OPEX Notice for £2,305,026.15

Issues in dispute:

The Strike Out Issue: Whether the Tribunal has jurisdiction to determine regulation 3 conditions and notice validity

The "But For" Issue: Whether costs funded by BSF can be recovered via regulation 3, given the GFA prohibits recovery of grant-funded costs from leaseholders

The Contingent Costs Issue: Whether EVML can recover costs it was under a future/contingent liability to pay at the date of service of the N26 Notice

The Retrospectivity Issue: Whether regulation 3 applies to costs paid prior to its commencement on 21 July 2022

Outcome:

Tribunal Jurisdiction: The Tribunal **does** have jurisdiction to determine whether regulation 3(1) conditions are met and whether a notice is valid

"But For" Issue: Appeal **dismissed**—the condition is met where, but for paragraph 2 of Schedule 8, a lessee would have been liable under their lease to pay the remediation cost; BSF funding is not relevant

Contingent Costs Issue: Appeal **allowed**—the responsible landlord's liability under regulation 3 is restricted to costs for which the remediating landlord is immediately liable and does not extend to future estimated or contingent costs

Retrospectivity Issue: Appeal **dismissed**— Following *Hippersley*, regulation 3 costs can include costs paid by the remediating landlord prior to the Regulations coming into force on 21 July 2022

Overall Result: Save for Ground 4 (contingent costs) of the N26 Notice appeal, the Appeals fail

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Thank you for attending!

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