

Building Liability Orders and Limitation: Navigating Uncharted Waters

The BSA introduced several new remedies to address fire safety defects in buildings, including in particular BLOs under section 130. The BSA does not expressly provide for the limitation period applicable to a BLO, the Guidance Notes are silent and there is as yet no authority on point. This article considers when, if at all, time might expire.



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The Limitation Act 1980

The Limitation Act governs the time within which “actions” must be brought. If a particular claim is not covered by the Limitation Act, it is in principle not subject to any time bar: limitation is a creature of statute. Different causes of action have, of course, different prescribed periods.

For each of these, the Limitation Act refers to the relevant type of “action” and provides that time starts to run on the date on which the cause of action accrues. An “action” is defined in section 38(1) of the Limitation Act as “any proceeding in a court of law...”. The effect of the Limitation Act is prevent the action, i.e. to bar the claim. It does not extinguish the underlying liability for breach of contract, etc.¹ This is usually referred as limitation barring the remedy (e.g. for damages), not the right.

A cause of action accrues when all the elements legally necessary for that particular claim are present. The elements of the cause of action are of course different for different claims and therefore the cause of action accrues at different times. For causes of action under a statute, the statute itself often specifically prescribes a date (as the DPA does).

The Nature of BLOs

The BSA does not include any such express provision regarding the accrual of the cause of action in relation to BLOs nor does it for Building Information Orders (“BIOs”) under s.132 (which of course relate to information needed for a BLO), ROs or RCOs under ss. 123 to 124.

On the other hand, the BSA does make express provision in sections 148(8) and 149(8) for the date on which the cause of action accrues “for the purposes of section [10B(1)] [10B(2)] [as applicable] of the Limitation Act 1980...” for the new liability relating to construction products in section 148 and the new liability for past defaults relating to cladding in section 149.

This distinction is made, it is suggested, because the new rights to obtain a BLO, a BIO, an RO and an RCO do not in fact involve the creation of a new cause of action. They certainly involve the creation of a new remedy, but the remedy in each case is based on the existence of a separate cause of action:

- For BLOs, the new remedy is that any “relevant liability... of a body corporate” is also the liability of an associated (as defined) body corporate. The “relevant liability” is defined in section 130(3) as either a liability incurred pursuant to the DPA or section 38 of the Building Act 1984 or “as a result of a building safety risk,” which is (in summary) a fire-related risk affecting people’s safety. The BSA does not create any new liability for such a risk so this involves a liability for breach of contract or in tort or under another statute not the DPA or the Building Act 1984 (such as the Civil Liability (Contribution) Act 1978); that is, it involves a liability pursuant to an existing cause of action. A BIO

¹ Save for certain causes of action relating primarily to the recovery of land, where the Limitation Act 1980 provides expressly that the right is extinguished.



is similarly available if the body corporate “is subject to a relevant liability (within the meaning of section 130).”

- ROs (requiring the remediation of defects) are available against “relevant landlords.” This is defined in section 123(3) as, “in relation to a defect in a relevant building, means 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” [emphasis added]. Again, the remedy is new, but the availability of the remedy depends on the landlord’s existing liability, and thus the cause of action, to repair or maintain under a lease or an enactment.
- RCOs are of course the BLO equivalent in relation to ROs. Similarly, it makes specified entities liable to contribute to the cost of remedying defects in what is referred to in the cases as a hierarchy or cascade of responsibility,² starting with the landlord and the developer and finishing with persons associated with the landlord or the developer.

As above, there is no authority directly on point, but this analysis is consistent with the approach of the TCC in the decided cases so far, which proceed on the basis that the “relevant liability” has to be established separately and that the BLO or BIO is a separate remedy which is contingent on this liability.³ All the key FTT decisions so far dealing with the grant of ROs or RCOs also treat them as additional remedies rather than a freestanding cause of action.⁴

Two Competing Approaches to Limitation

Given this analysis, two possibilities emerge regarding limitation periods for BLOs:

- **Time-Barred with Underlying Liability:** BLOs are subject to the limitation period of the underlying “relevant liability.” If a claim under the DPA or for a building safety risk is time-barred, the BLO application would also be barred.
- **No Limitation Period:** BLOs are not subject to statutory limitation periods, and the limitation status of the underlying liability is merely a factor in the “just and equitable” test for granting a BLO.

The first possibility aligns with traditional limitation principles. The BSA’s detailed amendments to the Limitation Act, including retrospective extensions for existing causes of action, suggest no intent to allow BLOs to bypass time bars. Public policy favours certainty,

enabling defendants to assess their commercial exposure.

However, it is suggested that the second possibility is likely the correct one. The BSA refers to a “relevant liability.” As set out above, the Limitation Act 1980 does not extinguish liability for any such claim, it merely provides a defence to it; a defence moreover on which a given defendant can decide not to rely. It is difficult to read the phrase “relevant liability” under the BSA as meaning “relevant liability subject to any limitation defence which may apply.” That is simply not what the words say.

This construction obviously does not provide the respondent to a BLO application with a bright line defence or certainty as to when/whether a time-barred relevant liability will mean it is not just and equitable to grant the order. However, the application of the just and equitable test will enable a court to protect a respondent in appropriate cases. Further, this construction serves the overall purpose of the BSA: to ensure that fire safety defects in buildings are rectified, and that money is available for that purpose from anyone sufficiently associated with the original contractor who has funds.

Application of the Just and Equitable Test

The application of the just and equitable test in a limitation context will be highly fact dependent. It is suggested that the fact that limitation has expired will be relevant but not determinative. It is relevant to note here that the passage of time could be very significant before any relevant liability was time barred. Under the just and equitable test, if a claimant waited 25 years to bring its DPA claim (well within time), a respondent to a BLO application could presumably rely on the prejudice caused to it by the lapse of time whether or not the underlying relevant liability claim was technically time-barred. It seems likely, however, that the respondent would need to point to some specific prejudice or change in the factual/commercial situation resulting from the delay.

As with many other aspects of the BSA, practitioners and industry will await the first decisions on these points with interest.

² See *Triathlon Homes LLP v Stratford Village Development Partnership & Others* [2024] UKFTT 26 (PC) at [11]. *Triathlon* was appealed to the Court of Appeal; the appeal was handed down in July 2025 and upheld the FTT decision: [2025] EWCA Civ 84. See the detailed discussions in Keating’s BSA Update 1 and latter in this Issue.

³ *Jefford J in Wilmott Dixon Construction Limited v Prater & Others* [2024] EWHC 1190 (TCC) and *381 Southwark Park Road RTM Company Limited v Click St Andrews Limited (in liquidation) & Others* [2024] EWHC 3179 (TCC) and HHJ Keyser KC in *BDW Trading Limited v Ardmore Construction Limited & others* [2025] EWHC 434 (TCC).

⁴ *Waite & others v Kedai Limited* [2023] LON/00AY/HYI/2022/0005 & 0016, *Triathlon and Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Others* [2025] CAM/26UH/HYI/2023/0003.