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Panel 2: Building Liability Orders and Associates (ss 130-131), Information Order (s 132)

Keating Chambers BSA Symposium
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BLO and BIOs: what (jurisprudentially) even ARE they?



130 Building liability orders

- (1) The High Court may make a building liability order if it considers it just and equitable to do so.
- (2) A “building liability order” is an order providing that any relevant liability (or any relevant liability of a specified description) of a body corporate (“the original body”) relating to a specified building is also—
 - (a) a liability of a specified body corporate, or
 - (b) a joint and several liability of two or more specified bodies corporate.
- (3) In this section “relevant liability” means a liability (whether arising before or after commencement) that is incurred—
 - (a) under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
 - (b) as a result of a building safety risk.

132 Order for information in connection with building liability order

- (1) A person of a prescribed description may apply to the High Court for an information order.
- (2) An “information order” is an order requiring a specified body corporate to give, by a specified time, specified information or documents relating to persons who are, or have at any time in a specified period been, associated with the body corporate.
- (3) An information order may be made only if it appears to the court—
 - (a) that the body corporate is subject to a relevant liability (within the meaning of section 130), and
 - (b) that it is appropriate to require the information or documents to be provided for the purpose of enabling the applicant (or the applicant and others) to make, or consider whether to make, an application for a building liability order.



“As a matter of principle, it seems to me that the legislation **does not require a party against whom a Building Liability Order is sought to be made a party to what I would call the main claim** or to participate in those proceedings. ... However... it will generally be sensible and efficient for the company against whom that order is going to be sought to be made a party to the litigation and for that application to be heard together with the main claim, although ... that does not and would not in any way bind a judge to determine that application as part of the main claim and leave it open to the judge as a matter of case management to direct a further hearing in that respect.”



“There are a number of reasons why it would generally be sensible and efficient for matters to progress with the main claim and additional claim being heard together. Firstly, it seems to me that the legislation assumes that the associated company will not be able to challenge a finding or even an agreement establishing liability of the original entity. But that does not mean that it may not be open to the associated company to argue that the circumstances in which that liability was established mean that it is not just and equitable to make a Building Liability Order. Such arguments are avoided if the associated company is party to the proceedings.”



“Having said all of that, the applicants argue that it would impose an undue burden on them to participate in the trial of the main claim. The answer to that point is that it is often the case in respect of contingent claims. But it is also often the case that the party against whom a contingent claim is made needs or wants actively to participate in the main proceedings, that is, calling its own expert evidence and so forth. ...it seems to me that the objection to the costs of participation in the trial of the main claim can be met both by proper case management and any costs order that may be made in the future.”

“The Building Safety Act 2022 says little about the procedure to be adopted by a party wishing to seek a BLO but it certainly **does not require a party to make that claim within existing proceedings**. It would be surprising if it did since **the circumstances in which it might be just and equitable to make the order may not arise until after proceedings to establish a relevant liability** are concluded and a BLO could be sought against a corporate body that did not even exist at the time of those proceedings. But where it is already in contemplation that an order will be sought against a particular associated company, it seems to me sensible and efficient for that claim to form part of what might be called the main proceedings, as is, in effect, the case here... **that does not preclude a subsequent claim for a BLO against some other associated company.**”

“...the Act does not require a party to be identified in pleadings or joined into proceedings before such an order is made. That is because it may not be apparent that a particular company will be pursued, and which company may be pursued may turn on changeable financial arrangements, or the company against whom the order is sought may not even exist at the time of the original proceedings. Before the order is made, the relevant body corporate must be specified but it does not follow that the associated company must be named or specified in the substantive proceedings. It is fair to say that I have observed in another context that where it is known that an application will be made against a particular party, it is sensible to join them into the ongoing proceedings to ensure that all issues are dealt with, but that does not preclude the seeking of a Building Liability Order against a party not joined.”

“I cannot, however, see anything that requires me to quantify the liability in respect of the relevant liabilities as set out in my judgment at the point of making the Building Liability Order. That is particularly relevant here because of the potential issues in identifying what losses, beyond the cost of remedial works, flow from the relevant liability and not the water ingress. It may in future often be the case that such a Building Liability Order will be made in terms of liability for an amount, particularly if, as here, the order is being made following a trial which has identified the extent of the liability in monetary terms. But it does not seem to me that I am required to do that and to make an order in an amount. At present, there are no figures before me which would enable me to do so, or at least to do so without considerable further interrogation of the spreadsheets that have been produced for the purposes of this hearing. That is not a reason not to make the order in terms that reflect the wording of section 130.”

“Therefore, the order that I will make, subject to any further refinement of the language, is a Building Liability Order providing that the relevant liability of Click St Andrews Limited to the leaseholders, as set out in my judgment, is also the liability of Click Group Holdings to the same leaseholders.”

“... I can see nothing in section 130 that makes it a precondition to the making of a building liability order that the relevant liability of the original body shall already have been established.... I do not read any of [Jefford J’s] observations in those cases, made in specific factual contexts, as meaning that a building liability order cannot be made before the existence of a liability of the original body is established. If they did have such a meaning, I would respectfully be of a different opinion, for the following reasons...”

“(3) It makes perfectly good sense to allow a building liability order to function as what might be termed an indemnity (“If this original body has any relevant liability in respect of this specified building, this associate shall also have that liability”). In a given case, it may be very convenient to know in advance that an associate will be liable, if the original body’s liability is subsequently established, so that the associate knows where it stands when it seeks to defend the substantive allegations.”

“(6) Subsection (5) makes clear that a building liability order can be made even if the original body has been dissolved. This clearly envisages that the original body does not have to be restored to the register—if it were restored, mention of its dissolution would be pointless. There is nothing to suggest that the original body must have had liability established against it before its dissolution, and in view of the circumstances in which the Act was passed (the appreciation, after Grenfell, that many buildings had serious but hitherto latent safety issues) and the extended limitation periods provided for in section 135 of the Act (15 or 30 years), section 130 is clearly designed to catch the situation where the original body has passed into history and either could not be restored to the register or, if it were restored, would be a mere empty shell.”

Actions founded on simple contract

5 Time limit for actions founded on simple contract.

An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Actions for sums recoverable by statute

9 Time limit for actions for sums recoverable by statute.

- (1) An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Limitation Act 1980 – amendments introduced by the BSA 2022

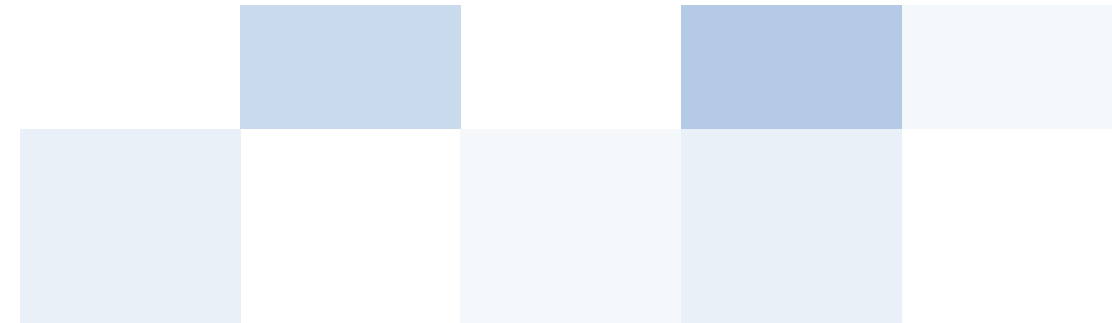


[F3] 4B Special time limit for certain actions in respect of damage or defects in relation to buildings

- (1) Where by virtue of a relevant provision a person becomes entitled to bring an action against any other person, no action may be brought after the expiration of 15 years from the date on which the right of action accrued.
- (3) In this section “relevant provision” means—
 - (a) section 1 or 2A of the Defective Premises Act 1972;
 - (b) section 38 of the Building Act 1984.
- (4) Where by virtue of section 1 of the Defective Premises Act 1972 a person became entitled, before the commencement date, to bring an action against any other person, this section applies in relation to the action as if the reference in subsection (1) to 15 years were a reference to 30 years.

[F8] 10B Special time limit for actions relating to construction products

- (1) An action under section 148 of the Building Safety Act 2022 shall not be brought after the expiration of 15 years from the date on which the right of action accrued.
- (2) An action under section 149 of the Building Safety Act 2022 shall not be brought after—
 - (a) if the right of action accrued before the commencement date, the expiration of the period of 30 years from the date on which it accrued, and
 - (b) if the right of action accrued on or after the commencement date, the expiration of the period of 15 years beginning with the date on which it accrued.



38 Interpretation.

(1) In this Act...

“action” includes any proceeding in a court of law...

McGee on Limitation Periods (9th Ed)

Effect of barring of remedy

2.056 A number of potentially significant consequences follow from holding that the claimant’s right is not extinguished. First, limitation is a matter which must be specifically pleaded by the defendant if he wishes to take advantage of it ⁹⁸ and the claimant’s cause of action is not regarded as time-barred until that plea is made. ⁹⁹ A defendant who considers it unconscionable to take advantage of the lapse of time need not do so, ¹⁰⁰ though it is possible that this rule does not apply to trustees defending an action relating to the trust property. ¹⁰¹ Secondly, if the claimant is able to assert his right in some way other than by the bringing of an action (and which does not involve any other unlawful act) then his right will be recognised by the law: all that is taken away is the possibility of obtaining a judicial remedy to enforce his right. ¹⁰² Thirdly, a mortgagee is entitled

Accrual of the cause of action - what is the relevant date?



- Cause of action in contract accrues on the date of breach
- Cause of action in tort accrues on the date of damage
- Accrual of cause of action under statute depends on construing statute but typically:
 - The date on which all elements of the cause of action are complete, or
 - The date prescribed by the statute

1 Duty to build dwellings properly.

(1) A person taking on work for or in connection with the provision of a dwelling (whether the dwelling is provided by the erection or by the conversion or enlargement of a building) owes a duty—

- (a) if the dwelling is provided to the order of any person, to that person; and
- (b) without prejudice to paragraph (a) above, to every person who acquires an interest (whether legal or equitable) in the dwelling;

to see that the work which he takes on is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.

(5) Any cause of action in respect of a breach of the duty imposed by this section shall be deemed, for the purposes of [\[F1 the Limitation Act 1980\]](#), to have accrued at the time when the dwelling was completed, but if after that time a person who has done work for or in connection with the provision of the dwelling does further work to rectify the work he has already done, any such cause of action in respect of that further work shall be deemed for those purposes to have accrued at the time when the further work was finished.

What does the BSA provide?

ss. 148 and 149 Liability relating to construction products



148 Liability relating to construction products

- (8) For the purposes of section 10B(1) of the Limitation Act 1980 and section 18ZD(1) of the Prescription and Limitation (Scotland) Act 1973, the right of action that a person has by virtue of this section is to be regarded as having accrued—
- (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
 - (b) in any other case, when the works are completed.

149 Liability for past defaults relating to cladding products

- (8) For the purposes of section 10B(2) of the Limitation Act 1980 and section 18ZD(2) of the Prescription and Limitation (Scotland) Act 1973, the right of action that a person has by virtue of this section is to be regarded as having accrued—
- (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
 - (b) in any other case, when the works are completed.

What is the statutory test?



Section 130(1):

“The High Court may make a building liability order if it considers it just and equitable to do so.”

Section 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.”

381 Southwark Park Road RMT Co Ltd v Click Street St Andrews Ltd (In Liquidation) [2024] EWHC 3569 (TCC)



“The only case to date in which that short phrase has been considered is the decision of the First Tier Tribunal, albeit an FTT constituted by the President of the Upper Tribunal, Lands Chamber, and the Deputy President of the Upper Tribunal, Lands Chamber, in Triathlon Homes LLP and Stratford Village Development Partnership [2024] UKFTT 26 (PC). The application before the FTT was for a remediation contribution order under section 124 of the Building Safety Act 2022. That provides a somewhat different jurisdiction from the jurisdiction of the High Court to make a Building Liability Order but it is also a necessary element of the making of that order that it should be just and equitable to do so. The FTT was therefore concerned with the words that also appear section 130.”
(Emphasis added)

381 Southwark Park Road RMT Co Ltd v Click Street St Andrews Ltd (In Liquidation) [2024] EWHC 3569 (TCC)



“This case seems to me to have similarities to that scenario in that Click St Andrews, to whom the relevant liability attaches, was a special purpose vehicle whose sole existence was to acquire the freehold of the property, in due course to develop the top floor of the property, and then to divest itself of the freehold as it sought to do through the Freehold Purchase Agreement. It was inevitably thinly capitalised and dependent on inter-company or inter-group loans for its financial wellbeing. Those are matters that were considered in the course of the applications for a freezing injunction and the evidence that was adduced at those hearings supports that position.” (Emphasis added).

“The difference, if there is a relevant difference, here is that the description of Click Group Holdings as a wealthy parent may well be misplaced. Indeed, one of the reasons why the freezing injunction was not continued against Click Group Holdings was the perception that, in truth, it had no real assets. There remains considerable doubt as to the financial standing of Click Group Holdings.” (Emphasis added).

Cited with approval para 255 in Triathlon:

“...It is common ground that Get Living has the resources to enable it to comply with any order the Tribunal may make, but even if there had been doubt about it we think it would be an unusual case in which the source or the extent of a respondent’s assets or liabilities will carry much weight when deciding what is just and equitable to order it to bear the cost of remediation.” (Emphasis added).

381 Southwark Park Road RMT Co Ltd v Click Street St Andrews Ltd (In Liquidation) [2024] EWHC 3569 (TCC)



“...it has been submitted to me in the course of this application that one of the few reasons that might militate against it being just and equitable to make the order would be if the body against whom that order was sought had not had the opportunity to have a fair trial in respect of the making of the order.

In this case, that potential argument does not run because Click Group Holdings participated in the trial and not only had the opportunity to have fair trial but did have a fair trial, and the arguments that were advanced in opposition to the application to amend had no merit for the reasons I have just given.”

(Emphasis added).

Wilmott Dixon Construction Ltd v Prater

[2024] EWHC 1190 (TCC)



D2 contended that the BLO claim should be heard at the same time as the main claim. Court agreed and refused a stay:

- “...if [the German parties] wish to make submissions or cross-examine or whatever it may be in relation to issues that arise as to whether there is a relevant liability or whether it is just and equitable to make a Building Liability Order, it is far more sensible and efficient they do so in the context of the main claim and not in a subsequent and separate hearing dealing with a series of discrete points that are now said to arise that have not perhaps appeared to arise in the main claim and be the subject matter of the judgment.”

Did not have to consider what considerations may apply for a BLO to be “*just and equitable*”

Wilmott Dixon Construction Limited v Prater



WILLMOTT DIXON CONSTRUCTION LIMITED				Claimant
-and-				
1. PRATER & ORS				
2. LINDNER EXTERIORS HOLDING LIMITED				
3. SHEPPARD ROBSON LIMITED				
4. AECOM INFRASTRUCTURE AND ENVIRONMENT UK LIMITED (formerly URS SCOTT WILSON LIMITED).				Defendants
5. AIS SURVEYORS LIMITED (formerly APPROVED INSPECTOR SERVICES LIMITED)				
-and-				
LINDNER PRATER LIMITED				Third Party
-and-				
LINDNER BUILDING ENVELOPE GmbH				Fourth Party
-and-				
LINDNER FASSADEN GmbH				Fifth Party
-and-				
LINDNER GROUP KG				Sixth Party
-and-				
SHEPPARD ROBSON ARCHITECTS LLP				Seventh Party

Just and Equitable: Possible further considerations



- Payment of unusual dividends or corporate restructuring that have the purpose or effect of rendering the index company unable to meet a judgment.
- Claim against index company is time-barred.
- Commercial entities have contracted on the basis of a particular framework with regards to liability (i.e. a PCG or limit of liability clause)
- Whether the BLO target company (a) was incorporated or acquired after the works were carried out (b) benefits financially from the index company (c) has a commonality of directors (d) was involved in some way in the construction project (e) carries on a business of an entirely different nature.
- Availability of insurance to the party seeking the BLO.
- BLOs are an example of piercing the corporate veil and should be used sparingly where the index company is not thinly capitalized or a SPV.

What is an Information Order?



Section 132(2):

“An ‘information order’ is an order requiring a specified body corporate to give, by a specified time, specified information or documents relating to persons who are, or have at any time in a specified period been, associated with the body corporate.”

Section 132(1):

“A person of a prescribed description may apply to the High Court for an information order.”

Regulation 12 of the Building Safety (Leaseholder Protections) (England) Regulations 2022 (SI 2022/711):

“... any person making, or intending to make, an application for a building liability order under section 130 of the [Building Safety] Act may apply to the High Court for an information order.”

Section 132(3):

“An information order may be made only if it appears to the court—

- a) that the body corporate is subject to a relevant liability (within the meaning of section 130), and
- b) that it is appropriate to require the information or documents to be provided for the purpose of enabling the application (or the applicant and others) to make, or consider whether to make, an application for a building liability order.”

Section 130(3)

“In this section **‘relevant liability’** means a liability (whether arising before or after commencement) that is incurred—

- a) under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
- b) as a result of a building safety risk.”

Example of an Information Order (as set out in the Explanatory Notes to the BSA 2022)



“A 14-storey residential building is developed by body corporate A. A few years after it is completed, it is discovered that there are serious fire compartmentation issues within the building, and the local fire and rescue authority orders the building to be evacuated until the risk from fire is reduced. To seek recompense for the remediation costs, a leaseholder within the building speaks to lawyers about whether they can make a civil claim. The lawyers advise the leaseholder that they can make a claim under the Defective Premises Act as the building is unfit for habitation.

The leaseholder discovers the development company was dissolved once the building was completed and the freehold sold off. The leaseholder suspects that the development company’s parent company is associated, therefore, they wish to be able to apply for a building liability order in order to seek damages from the parent company. However, the leaseholder is unable to show that the parent company is associated to the degree needed to be granted a building liability order.”

Example of an Information Order (as set out in the Explanatory Notes to the BSA 2022)



(continued) “The leaseholder applies to the High Court for an information order to be applied to the parent company. The leaseholder must show that they intend to seek damages under a relevant liability (in this instance the Defective Premises Act) and that the information order could support them in applying for a building liability order.

In this example, the request for an information order is granted. The High Court places an information order on the parent company, and they are then required to share with the leaseholder details of all companies which were associated with them during a time period specified by the courts. The leaseholder now has the information required to show that the parent company is associated with the development company, as the parent company directly controlled the actions of the development company.

The leaseholder is then able to apply for a building liability order, to support them in making a claim under the Defective Premises Act against the parent company.”

- BDW engaged Ardmore Construction Ltd (ACL) to design and build five residential projects between 1999 to 2005.
- Post-Grenfell, fire safety and/or structure defects were discovered in those developments.
- BDW funded remedial works and sought contribution from ACL under the Defective Premises Act 1972.
- BDW sought a BLO under s.130 BSA and applied for Information Orders under s.132 to obtain financial details (a) against ACL, and (b) against R2-R4, its parent and group companies.

HHJ Keyser KC: Both applications dismissed.

- Information Orders can only be made where it appears the company is subject to a relevant liability, not where liability is merely potential.
- IOs cannot be granted against associates; only the body corporate with the relevant liability can be ordered to provide information.

- Click St Andrews contracted with the RTM Co. to add an extra storey by installing three modular rooftop units.
- Works were guaranteed by its parent company, Click Holdings
- After discovery of water damage, fire safety and structural defects, RTM Co brought a claim against Click St Andrews and Click Holdings.

Mrs Justice Jefford: Information Orders made against D1, D2 and a third-party subsidiary.

A far-reaching order was granted requiring full disclosure of

- (a) the consideration given in respect of share ownership in the subsidiary,
- (b) the personal benefits received by the shareholders and directors of the holding company, and
- (c) the current asset and liability position of the subsidiary.

- Limited case law leaves key questions on information orders unresolved.
- TCC restricts orders to bodies already subject to a relevant liability, not merely associates suspected of having such a liability.
- Uncertainty remains over what is expected at hearings where liability is undetermined.
- Courts must balance avoiding an assessment of the merits with the need for evidence of apparent liability.

Keating Chambers BSA Symposium 4 November 2025

Thank you for joining.