

Keating Chambers BSA Update

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Welcome

to the latest edition of the Keating Chambers BSA Update

This issue of the Keating BSA Update considers a number of significant and developing issues arising under the Building Safety Act 2022.

Lucy Garrett KC examines Building Liability Orders and limitation following the Supreme Court's decision in THG Plc v Zedra Trust Company (Jersey) Ltd; while Sarah Williams considers the new provisions for Building Safety Act proceedings introduced by the 2026 edition of the Technology and Construction Court Guide. Rosemary Jackson KC and Fionnuala McCredie KC discuss the role of mediation in resolving Building Safety Act and related disputes, including the particular challenges presented by complex, multi-party claims. Alice Sims also considers the developing approach to the recovery of legal costs in Remediation Contribution Order proceedings.

Our contributors consider key decisions including THG Plc v Zedra Trust Company (Jersey) Ltd, Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd, Wallace Estates Ltd v Durkan Estates Ltd, Triathlon Homes LLP v Stratford Village Development Partnership, URS Corporation Ltd v BDW Trading Ltd, Empire Square, Hallings Wharf Studios and City of Lincoln Council v Plantview Ltd. We have also included an updated summary of legislative and other relevant developments between 7 February and 23 September 2026, and an updated Building Safety A-Z.

Keating Chambers continues to offer talks, seminars and round-table discussions on the Building Safety Act and related developments, which can be tailored for firms, clients and professional teams. Anyone interested in arranging a bespoke session is invited to contact our Practice Management team, who would be pleased to assist: clerks@keatingchambers.com.

We hope you find this edition informative and engaging.

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Lucy Garrett KC

BLOs and Limitation: After Zedra

In our BSA Update 2 I asked whether an application for a Building Liability Order under s130 of the Building Safety Act 2022 (BSA) is subject to any limitation period.¹

I identified two possibilities: that the remedy is time-barred once the underlying “*relevant liability*” is time-barred, or that no statutory limitation period applies at all, so that the expiry of time on the relevant liability is no more than a factor in the just and equitable test. I preferred the second, essentially on the construction of the words “*relevant liability*”.

The Supreme Court has since decided *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6, a case about unfair prejudice petitions which has nothing whatever to do with buildings. However, unfair prejudice petitions have some similarities to building liability orders (BLOs)

and remediation contribution orders (RCOs). The Supreme Court carried out a detailed analysis of the Limitation Act 1980, focussing on section 8 (actions on a “*specialty*”: 12-year limitation period) and section 9 (actions for “*any sum recoverable by virtue of any enactment*”: 6-year limitation period). The Court held, by a majority, that unfair prejudice petitions fall outside the statutory limitation regime altogether. The Court held, by a majority, that unfair prejudice petitions fall outside the statutory limitation regime altogether.

Zedra therefore casts some light on the possible approach of the Court to the issue of limitation under s130 of the BSA.

¹ I have not repeated here my discussion of the application of the Limitation Act 1980 in principle, nor the discussion as to limitation barring the right rather than the remedy: see [Update 2 Keating-Chambers-BSA-Update-Issue-2-23-October-2025.pdf](#)

Zedra

Zedra concerned relief under ss994 to 996 of the Companies Act 2006. These sections deal with the situation in which a member considers that the company's affairs are being conducted in a manner unfairly prejudicial to members. As set out in Zedra,² the sections do not create any substantive obligations and the conduct complained of will usually involve the breach of an obligation arising elsewhere (for example a director's fiduciary duty or the articles) but it need not involve the breach of any enforceable obligation at all, because what must be established is unfair prejudice rather than a wrong. What the sections provide is relief in respect of a state of affairs. If the petition is well founded, s996(1) empowers the court to *"make such order as it thinks fit for giving relief in respect of the matters complained of"*, with a very wide discretion as to what that order might be (including relief which no party has sought). This can include an order for payment of a sum of money.

The Supreme Court (so that we don't have to) went back to the thirteenth century in order to consider the meaning of an *"action on a specialty"* under s8 of the Limitation Act. It held that s8 includes an action on a statute³ as well as on a deed, but *"it is of the essence of an action upon a specialty that it is an action to enforce an obligation created by a deed or statute"*, and the section does not extend *"to embrace all proceedings for which a statute may make provision."*⁴ A mere statutory right to bring proceedings is not enough to amount to an action on a specialty.⁵ Sections 994-996 create no such obligation: for example, breach of a director's fiduciary duties may found a petition for relief, but those sections do not impose those duties. Likewise for breaches of the articles of association of the relevant company.⁶ This meant s8 did not apply.⁷

There is a division within the Court on the scope of s8. Lord Hodge and Lord Richards considered, obiter, that actions on a specialty are confined to actions to enforce a statutory obligation to pay money.⁸ Lord Lloyd-Jones and Lord Briggs thought s8 does apply to non-monetary statutory obligations, though not to unfair prejudice petitions under ss994-996 because those provisions create no obligation. The Court declined to decide the point.⁹ Only Lord Burrows, dissenting, would have held that s8 catches statutory remedies generally.



“It is of the essence of an action upon a specialty that it is an action to enforce an obligation created by a deed or statute.”

The Supreme Court went on to hold that, on the wording of s9, it operates as a carve out from s8 (and applies the shorter limitation period) for *"any sum recoverable by virtue of any enactment."* This is not confined to statutory debts and extends to unascertained sums and to monetary claims subject to the court's discretion.¹⁰ It does not however include a money remedy ordered under ss994-996: *"The court's order may provide for the payment of a specified sum, by way of compensation or otherwise, but that is not a sum 'recoverable by virtue of' sections 994-996. The respondent's obligation to pay it arises only by virtue of the court's exercise of its very wide discretion."*¹¹ More generally, *"claims under statutory provisions which confer a wide discretion as to remedy are not claims to which section 9 applies."*¹²

Accordingly, no statutory limitation period applied to ss994-996 petitions. Delay in making the petition would be controlled by laches, by section 36 of the Limitation Act where the remedy sought was equitable¹³ and by the Court's inherent discretion when considering a s994 petition to consider unjustified delay which adversely affects a respondent.¹⁴

² At [10], [116], [145] and [146].

³ Apparently because a statute was made under the Royal Seal, so was regarded as the highest form of deed: see [40].

⁴ At [115].

⁵ At [111] to [114].

⁶ At [116].

⁷ At [116] to [117].

⁸ At [118] to [123]. This meant that *Collin v Duke of Westminster* [1985] QB 581, where a statutory obligation on a lessor to enfranchise was held to fall within section 8, was wrongly decided.

⁹ At [129].

¹⁰ At [135].

¹¹ At [146].

¹² At [155].

¹³ At [123].

¹⁴ At [170].



Section 130 through the Zedra lens

Section 130¹⁵ provides that a relevant liability of one body corporate is “also” the liability of a body associated with the body corporate during the relevant period, where the court considers it just and equitable to make the order. It is difficult to see how this is “an action to enforce an obligation created by a deed or statute” within the *Zedra* definition. “Relevant liability” is of course defined in s130(3) by reference to the Defective Premises Act 1972, s38 of the Building Act 1984, or a building safety risk. The BSA creates no new liability for a building safety risk, so that limb means liability under an existing cause of action. This looks very similar to the position under ss994-996 in *Zedra*: a statutory power to grant relief in a wide discretion, resting on obligations created elsewhere.

On that basis, the argument goes:

1. Section 130 is not within s8, because it is not an action to enforce an obligation created by a statute. It provides a form of relief where the statutory conditions are met (like ss994-996). The nearest counterargument is *Collin*, but the lessor in that case was under a specific obligation to enfranchise, and s130 imposes nothing of that kind.
2. Section 130 is not within s9. It does not involve a claim for a sum of money at all, but an order that an associated company is liable for damages payable by another. Assuming s9 extends to unascertained sums and to monetary claims subject to the court’s discretion, per *Zedra*, then, like ss994-996, the respondent’s obligation to pay it arises “only by virtue of the court’s exercise of its very wide discretion”, not by virtue of s130 itself.
3. This is consistent with the existence of anticipatory BLOs, as discussed in *Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd*¹⁶: a BLO granted before judgment against the original contractor on liability and quantum. No money is paid under such an order (save where it follows an adjudication award); in the litigation it operates like an indemnity. An application which need never result in the payment of anything is not, it is submitted, an action to enforce an obligation created by statute, still less a claim for a sum recoverable by virtue of an enactment.
4. It is submitted that a conclusion that an application for a BLO falls outside both ss8 and 9 of the Limitation Act also avoids the difficulty that arises in relation to ascertaining the date of accrual of the cause of action under s130. The elements of the claim must include an original body corporate, a relevant liability, a specified body corporate, and association between them during the relevant period. That period begins with the carrying out of the works and ends with “the making of the order”, so a qualifying associated company can come into existence, completing the cause of action, on the day the order is made. It would, it is submitted, be surprising if s130 was subject to a limitation period which in certain circumstances did not begin to run until the court has granted the relief.
5. It is also consistent with the fact that the BSA did expressly create various new causes of action and provided for their limitation periods (see BSA Update 2), but not for BLOs or RCOs.

¹⁵ Assuming for these purposes that s.130 does create a cause of action: see BSA Update 2.

¹⁶ [2026] EWHC 789 (TCC).

BLO limitation possibilities

On this basis, it seems there are four possible answers rather than the two I suggested in Update 2:

1. A BLO application falls within s8 of the Limitation Act because Lords Lloyd-Jones and Briggs (and/or Lord Burrows) are right in *Zedra* and s130 creates “an action to enforce an obligation created by a... statute”; in this case a 12-year limitation period runs from the accrual of the cause of action.
2. A BLO application falls within s9 of the Limitation Act because s130 creates a “sum recoverable by virtue of any enactment”; in this case a 6-year limitation period runs from the accrual of the cause of action.
3. An application for a BLO is time-barred at the point at which the underlying relevant liability is time-barred.
4. No limitation period applies to a BLO, and the fact that the relevant liability is time-barred is a factor in the just and equitable test.

For the reasons discussed above, it appears well arguable, following *Zedra*, that ss8 and 9 of the Limitation Act do not bite on s130 at all (the position appearing to be clearer in relation to s9 than s8).

The third possibility, as discussed in Update 2, turns on whether the words “relevant liability” in s130(3) mean a relevant liability which is not time-barred, as opposed simply to a liability (bearing in mind that limitation bars the right not the remedy).

The fourth possibility remains my current favourite. None of the BSA authorities so far has involved a limitation point. *Willmott Dixon Construction Ltd v Prater* [2024] EWHC 1190 (TCC), *381 Southwark Park Road RTM Co Ltd v Click St Andrews Ltd* [2024] EWHC 3179 (TCC), *BDW Trading Ltd v Ardmore Construction Ltd* [2025] EWHC 434 (TCC) and *Crest* all proceed on the footing that the relevant liability must be established separately and that the BLO is a distinct remedy contingent upon it, which is consistent with the analysis above. The same is true of the FTT decisions on Remediation Orders and Remediation Contribution Orders.

This issue remains one of the many interesting points arising under the BSA which has yet to be decided.

“No limitation period applies to a BLO, and the fact that the relevant liability is time-barred is a factor in the just and equitable test.”



BSA Business in the Technology and Construction Court Guide 2026 Edition

This article reflects the law as stated on 1 September 2026.

The split jurisdiction in the Building Safety Act 2022

A now-familiar feature of Part V of the Building Safety Act 2022 (BSA) is that jurisdiction is divided between the Technology and Construction Court and the First-tier Tribunal. The court has jurisdiction for claims involving building liability orders (s130 BSA) and applications for information orders (s132 BSA). The First-tier Tribunal has jurisdiction over remediation orders (s123(2) BSA) and remediation contribution orders (s124 BSA).

This duality of jurisdiction permits the same building, and the same defects in that building, to be the subject of parallel litigation in the court and the tribunal. The split jurisdiction was presumably introduced by Parliament to take advantage of the different expertise on offer (for example, leasehold and service charge expertise in the First-tier Tribunal (FTT), construction defects expertise in the Technology & Construction Court (TCC)).

The possibility of parallel proceedings in respect of the same building does, however, introduce the possibility that the same or similar factual and technical topics may be considered by both the court and the tribunal. This brings with it an inherent potential for overlap, duplication and, at worst, inconsistency. Until now, there has been no specific mechanism in either forum to address that.



Sarah Williams

The latest edition of the Technology and Construction Court Guide (the Guide), published on 1 July 2026, now considers this possibility of parallel proceedings head-on, while preserving the distinction between the two jurisdictions embedded in the BSA.

The Building Safety Act Questionnaire

Building Safety Act work is addressed in a new Section 9 of the Guide. Section 9 is concerned with any proceedings that include either or both of ss130 and 132 BSA. Such proceedings are referred to in the Guide as “TCC BSA Proceedings”. For those types of proceedings, claimants/applicants must now accompany their claim forms, or notices as the case may be, with a Building Safety Act questionnaire in the form of new Appendix L to the Guide. Practitioners may note, however, that it is likely that the definition of ‘TCC BSA Proceedings’ will be updated in future, to include related TCC claims suitable for case management under the principle in Section 9: *Wallace Estates Limited v Durkan Estates Limited* [2026] EWHC 2133 (TCC) at [15].

The Building Safety Act questionnaire requests information from the claimant/applicant about the ‘building’ in respect of which TCC BSA Proceedings have been issued. It does so presumably because it is to the ‘specified building’ that the statutory wording of s130 BSA is directed (see further *BDW Trading Limited v Ardmore Construction Limited (No.2)* [2025] EWHC 434 (TCC); 219 Con. L.R. 1, at [13]). Section 9 therefore acts to refocus the court’s case management by reference to the building, rather than solely by reference to the claim. For those Building Safety Act claims which concern multiple buildings, the answers to the questions posed by the questionnaire may of course be different in respect of each building, and would need to be addressed by the claimant/applicant in the questionnaire.

“Section 9 therefore acts to refocus the court’s case management by reference to the building, rather than solely by reference to the claim.”

Of most interest is that the questionnaire seeks information from the claimant/applicant on whether any other proceedings have been commenced, or are contemplated, in the FTT or in the TCC in relation to the same building

and to which the applicant/claimant is (or is contemplated to be) a party. The question does not limit responses to those proceedings that concern the BSA. Nor does it limit responses solely to proceedings commenced, or to be commenced, by the applicant/claimant. The scope of the information sought is therefore potentially quite broad.

The requirement to disclose ‘contemplated’ proceedings in respect of the building may be included to assist the court to ensure that case management directions capture all foreseeable proceedings, and to avoid directions rapidly becoming obsolete. Since the court recently confirmed in *Crest Nicholson Regeneration Limited v Ardmore Construction Limited* [2026] EWHC 789 (TCC); 225 Con. L.R. 1, that it has jurisdiction under s130 BSA to make anticipatory BLOs, any such contemplated action must also now be included in the claimant/applicant’s questionnaire. This may require parties to reveal their hand earlier than previously expected. Plainly, the applicant/claimant may not be able to include details of proceedings contemplated by other parties, but it appears to be a requirement to disclose those of which it is aware.

The Guide does not detail the specific consequence if a party fails to include in its questionnaire information that it reasonably could or should have included. Paragraph 1.1.2 of the Guide sets out the general requirement that parties are expected to follow both the letter and the spirit of the Guide, and that a failure to comply may result in sanctions. For mild and inadvertent omissions in the questionnaire, there may be no material ramifications imposed. In more extreme cases, perhaps where key material is omitted or where material is omitted intentionally, the court may use its full range of case management powers including, plausibly, the use of costs sanctions.

The Allocation CMC

Section 9 provides that, following receipt of the questionnaire, the TCC judge reviews the claim/notice and questionnaire and determines next steps. This may include an Allocation CMC or an order for further submissions to determine any matters on the papers. The Allocation CMC is a new form of hearing, designed to address the case management of multiple proceedings in the FTT and the TCC in relation to the building. The Allocation CMC is expressly in addition to the pre-existing case management provisions in the Guide.

In preparation for the Allocation CMC, the Guide demands cooperation from the parties to the TCC BSA Proceedings, and also from parties to any related FTT BSA Proceedings. In the appropriate case, and following the spirit of the Guide, it is plausible that those entities anticipated to be



parties to any 'contemplated' proceedings may also be notified or involved at this stage.

Attendance at the Allocation CMC is an additional cost to the parties, and will require earlier consideration by the parties of wider case management questions previously permitted to be left until later. The benefit of such a hearing is that the parties have the opportunity to coordinate case management of the proceedings in different forums and with different rules, which itself presents an opportunity to save costs and time. It may also present an opportunity to contest the information included in the questionnaire itself, to make the court aware of proceedings 'contemplated' by the defendant/respondent of which the claimant/applicant was not aware and, potentially, to consider related wider case management issues. It is not, however, a substitute for the CMC proper. The Allocation CMC is expressly limited to one hour (unless otherwise ordered), and there does not appear to be an obligation to make oral submissions (paragraph 9.2.7(c) of the Guide).

No express guidelines are provided in the Guide on the circumstances in which the court will seek to case manage together all proceedings in respect of the same building. Principles applicable to the types of decisions to be made at the Allocation CMC can be found in *Wallace Estates Limited v Durkan Estates Limited* [2026] EWHC 2133 (TCC). Although not arising directly from Section 9 of the Guide, the case offers a useful starting point for those facing their first Allocation CMCs in the coming weeks and months.

In particular, in considering whether and how to case manage two sets of proceedings, the court emphasised familiar principles derived from the CPR and from the FTT Rules. These include whether it is likely to better dispose of the proceedings, to further the overriding objective, to deal with the cases expeditiously and fairly, to save costs and to reduce the risk of any inconsistent findings.

Where the criteria for joint case management are met, the court emphasised in *Wallace* at [21] its preference for an order that proceedings be heard together, rather than formally consolidated. This translated to an order that sought to resolve any differences between the CPR and FTT Rules. Matters of evidence were largely unified. Since the costs regimes between the court and the tribunal are very different, however, the parties were ordered to maintain a three-way cost code regime; one each for TCC work, for FTT work, and for work common to both.

In respect of the final hearing, paragraph 9.2.5 of the Guide requires consideration of whether it is desirable for the FTT BSA Proceedings and the TCC BSA Proceedings related to the same building or buildings to be determined at the same time and by the same judge in a single hearing. The parties in *Wallace* agreed that position (at [22] of the judgment) albeit in *Wallace* the court ordered a final hearing before a court/tribunal composed of two members. That outcome, of a single hearing of multiple proceedings, should not be regarded as the default position at Allocation CMCs though. The court emphasised that each set of proceedings retained its separate identity, together with its own procedural rules and judgment. This in turn preserves the distinction presented in Part V of the BSA.

Conclusions

Building Safety Act work is a fast-moving area. The Guide is likely to be updated in due course to reflect those changes and any lessons learned from the operation of new Section 9 of the Guide. For now, parties should take heed of the requirement for early cooperation and coordination across existing and contemplated proceedings, and to be ready to propose sensible case management directions in respect of the same.

Legislative Updates

(7 February–23 September 2026)



James Frampton

Building Safety Levy

The Building Safety Levy, provided for by section 58 of the BSA 2022, comes into force on 1 October 2026.

Report on Improving Building Safety

On 10 September 2026, the Government published its latest report on the implementation of the recommendations of the Grenfell Tower Inquiry to improve building safety.

Remediation Progress Data

MHCLG's monthly building safety remediation data releases have continued throughout the period, including data on the Developer Remediation Contract that underpins the Responsible Actors Scheme. The July 2026 release (the 105th such release, published 26 August 2026) reports that, as of March 2026, MHCLG's best estimate is that between 5,900 and 7,400 residential buildings 11 metres and over in height in England have, or had, unsafe cladding requiring remediation. This is equivalent to 8-14% of the residential building stock of that height. Of these, an estimated 2,800-3,700 are 11-18m and 3,100-3,700 are 18m+. As of the end of July 2026, MHCLG was actively monitoring the remediation progress of 4,697 of these buildings (64-81% of the estimated range), of which 1,833 (39%) had completed remediation, 718 (15%) had remediation underway, and 2,146 (46%) had not yet started.¹

Single Construction Regulator

On 9 July 2026, the Government published its response to the Single Construction Regulator (SCR) consultation. It confirmed that the SCR will be built on the existing Building Safety Regulator (BSR), that primary legislation will be brought forward to establish it (subject to parliamentary time, with implementation expected to begin from 2028), and that the Government is 'carefully considering' commencing sections 144 and 145 of the BSA 2022 – which would require new-build homes to be sold with a warranty meeting minimum standards, including insurer backing, enforceable redress timelines, plain-English terms and transferability to future buyers.²

Construction Products Reform: The General Safety Requirement

On 25 February 2026, the Government published its Construction Products Reform White Paper which set out its proposal to require all products to be properly assessed/regulated before being used in the building process by a "general safety requirement" (GSR).³ The Government's current intention is to introduce the GSR by construction products regulations by the end of 2026 and to bring them into force in late 2027.⁴

¹ Ministry of Housing, Communities and Local Government, *Building Safety Remediation: monthly data release – July 2026* (published 26 August 2026) www.gov.uk/government/publications/building-safety-remediation-monthly-data-release-july-2026.

² GOV.UK, 'Single construction regulator prospectus: government response' (updated 9 July 2026), sections 1, 5 and 6 (single regulator, timing and implementation) and section 4 (Building Safety Act warranty power) www.gov.uk/government/consultations/single-construction-regulator-prospectus/outcome/single-construction-regulator-prospectus-government-response.

³ GOV.UK, 'Construction Products Reform White Paper' (consultation, 25 February to 20 May 2026) www.gov.uk/government/consultations/construction-products-reform-white-paper.

⁴ GOV.UK, 'Consultation on the General Safety Requirement for Construction Products' (25 February to 20 May 2026), para 1.8, confirming regulations are intended to be introduced by end of 2026 and in force in late 2027 www.gov.uk/government/consultations/general-safety-requirement-for-construction-products/consultation-on-the-general-safety-requirement-for-construction-products.



Rosemary Jackson KC

Fionnuala McCredie KC

Mediating Building Safety Act and Related Disputes

The Building Safety Act 2022 (“BSA”) has generated a new and fast-growing category of dispute: who is responsible for the cost of remediating unsafe buildings, and how much should each party pay.

According to a recent article in *Inside Housing*:

“There are 98 claims in the High Court continuing since 2018 over who will pay for unsafe cladding after the Grenfell Tower fire killed 72 people. The cases involve developers, housing associations, councils, architects, builders and government departments, and have a combined value of more than £1.2bn. The data was collected by litigation analytics platform Solomonik and is based on claims tagged with the topics of Grenfell,

cladding, defective cladding, fire safety and fire safety engineering, the Building Safety Act, the Fire Safety Act 2021 and the Defective Premises Act. Since 2018, of the 60 claims issued referencing the Building Safety Act 2022, 32 are ongoing, with a value of more than £570m.”¹

As these disputes work their way through the First-tier Tribunal (Property Chamber) (“FTT”) and the Technology and Construction Court (“TCC”), there is an obvious and proven role for mediation in BSA disputes. This article addresses the disputes that are suited to mediation, and how to get the best out of the mediation process.

Not every BSA dispute is suitable for mediation...

Some BSA applications are not, in truth, disputes at all in the sense that mediation assumes. An application for a remediation order under section 123 BSA is made to the FTT by an “interested person” (which includes the regulator, a local authority, a fire and rescue authority, or a person with a legal or equitable interest in the building)

¹ See Grainne Cuffe, *Inside Housing* 14 September 2026.

asking the tribunal to compel a landlord to remedy specified defects within a specified time. It is, in substance, an application for a form of specific enforcement, not a bilateral argument about legal rights that a mediator can help the parties compromise. There may be no room for compromise on whether unsafe cladding needs to be removed, and a landlord facing such an application may gain little by mediating the underlying obligation to fix a dangerous building, though the timetable and methodology for works could be worth mediating in the right circumstances.

But some definitely are...

By contrast, an application for a remediation contribution order (“RCO”) under section 124 BSA raises exactly the kind of question mediation is well able to resolve: who, among a developer, its associated companies, a landlord and others in the chain, should pay for remediation costs already incurred or still to be incurred, and how much should each pay. The FTT decides RCOs on a “just and equitable” test that Parliament left largely undefined², and in *Triathlon Homes* the FTT ordered payment of close to £16.8 million to East Village across five buildings, having weighed factors such as where primary responsibility for remediation costs should fall as between developer and associated entities ([265]-[266])³ and rejected arguments based on changes in beneficial ownership or the existence of alternative fault-based claims⁴. That is precisely the territory of competing narratives about responsibility, historic conduct and ability to pay that experienced mediators deal with every week.



Moreover, even where the parties have not made applications for relief under the BSA, the same issues may arise in respect of the liability for, and costs of, remediating building safety defects, including new causes of action provided under s148 and 149 of the BSA in respect of construction products and cladding products. S148 and 149, and the extension of the limitation period have increased the scope of potential claims and have permitted claims to be made that were previously statute-barred, but there is solid experience of the successful mediation of many, usually multi-party, fire safety mediations even before the BSA came into force, where limitation was not an issue.

The Supreme Court’s recent decision in *URS Corporation Ltd v BDW Trading Ltd*⁵ (concerning structural engineering, rather than fire, safety defects) has widened the pool of parties who can be drawn into these disputes still further. The SC held that a right to contribution under the Civil Liability (Contribution) Act 1978 arises once a party has paid, been ordered, or agreed to pay compensation for the damage in question (and remedial works carried out in kind count as such payment) without any need for a prior judgment, admission or settlement establishing liability against the party from whom contribution is sought⁶. It also held that section 135 BSA’s extension of the limitation period to thirty years applies retrospectively, not only to direct claims under the Defective Premises Act 1972 but to related negligence and contribution claims too, the Court emphasising that a central purpose of the BSA, and

“Since 2018, of the 60 claims issued referencing the Building Safety Act 2022, 32 are ongoing, with a value of more than £570m.”

² *Triathlon Homes LLP v Stratford Village Development Partnership, Get Living plc and East Village Management Limited* [2024] UKFTT 26 (PC) at paragraph 236 and following. The FTT decision was appealed and leapfrogged to the CA: *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846 (8 July 2025). The appeal was dismissed: the FTT’s application of the “just and equitable” test was upheld, and so was the finding that section 124 of the BSA had retrospective effect, allowing RCOs to be made for costs incurred before the BSA commenced on 28 June 2022.

³ *Triathlon* paragraphs 265-266.

⁴ *Triathlon* paragraphs 251-254, 261-2.

⁵ [2025] UKSC 21.

⁶ *URS* paragraph 212.

of section 135 in particular, was to hold those responsible for building safety defects accountable⁷. Developers can pursue the whole supply chain for historic defects without waiting to be sued themselves first.

Multi-party liability disputes: expensive, court-hungry, and ripe for mediation

The apportionment of liability for remediation costs on larger developments is very often a multi-party dispute: developer, main contractor, subcontractors, employer's agents, architects, structural and fire engineers, mechanical and electrical engineers, suppliers of components, building control and their respective insurers may all have played some part, and each will typically say the real fault, and the real cost, lies with someone else.

The practical consequence is more parties, more issues, and more cost. Multi-party TCC litigation of this kind routinely runs into seven or even eight figures in costs alone, occupies weeks of court time and takes a long time to get to trial, even with the TCC's proactive trial management. Mediation, properly structured, can bring every contributor to the same table and produce a global, commercially sensible apportionment in a fraction of the time – a particularly valuable outcome where, in developments such as the Olympic Village in *Triathlon Homes*, the sums and the number of interested parties are large.

The courts expect it

Readers will be well aware that the overriding objective in CPR 1.1 now includes, as part of dealing with cases justly, “promoting or using alternative dispute resolution”⁸. The court's case management duties in CPR 1.4(2)(e) extend to “ordering or encouraging the parties to use, and facilitating the use of, alternative dispute resolution”, and CPR 3.1(2)(o) gives the court an express power to “order the parties to participate in alternative dispute resolution”.⁹

The TCC Guide makes clear that:

“Litigating parties are expected to give serious consideration to alternative dispute resolution (“ADR”). If ADR has not been attempted the Court will expect the parties to explain why this has not been done. The Court will normally be willing to make directions to facilitate ADR and in appropriate cases it will order the parties to engage in ADR”¹⁰.

“Multi-party TCC litigation of this kind routinely runs into seven or even eight figures in costs alone.”

Further detail on ADR and mediation specifically is included at Section 7 of the TCC Guide and there is a draft ADR order at Appendix E. Section 9 of the TCC Guide deals with BSA Business and encourages ADR for BSA cases at paragraph 9.2.9.

Given the scale, cost and multi-party character of remediation liability disputes and the heavy use of the Courts' resources involved in hearing these cases, this is exactly the kind of case in which a TCC judge, or the FTT, or the TCC and the FTT exercising joint case management powers¹¹, will expect an attempt at mediation. Moreover, the TCC Guide makes it clear that the Court may order the parties to undertake ADR and it will use that power where it is necessary and appropriate to do so¹².

The particular challenges

Mediating these disputes is not straightforward. There are usually multiple parties in the room, each with its own commercial and insurance pressures, and each inclined to allocate a high percentage of blame to everyone else and a correspondingly low percentage to itself. That dynamic, multiplied across four, five or more participants, creates rich scope for impasse: parties may dig into unrealistic positions on both liability and quantum, and the negotiation can fragment into a series of bilateral stand-offs rather than a genuine multilateral negotiation. Resolving such disputes requires skill, experience and creativity.

⁷ URS paragraphs 104-117.

⁸ CPR 1.1(2)(f).

⁹ Those amendments followed directly from *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416, in which the Court of Appeal, including the Lady Chief Justice and the Master of the Rolls, held that the court can lawfully stay proceedings or order the parties into a non-court process (paragraph 58), provided the order does not impair the very essence of the claimant's right to a judicial hearing, pursues the

legitimate aim of resolving disputes fairly, quickly and at reasonable cost, and is proportionate to that aim (paragraph 65).

¹⁰ TCC Guide Fourth Edition 2026 paragraph 1.1.4.

¹¹ See *Wallace Estates Ltd v Durkan Estates Ltd* [2026] EWHC 2133 (TCC) 10 August 2026 on joint case management by the TCC and the FTT.

¹² See TCC Guide paragraph 7.1.2 in reliance upon *Churchill* and CPR 1.1(2)(f) and CPR 3.1(2)(o).



Getting it right

A lot of factors influence settlement at mediation. These are important:

First, choose the right mediator:

- Subject-matter knowledge of building safety defects and remediation is important. Interaction with the Building Safety Fund and other remediation funding schemes, the interests of leaseholders (often unrepresented by lawyers) and the retrospective 30-year limitation period (which brings in parties, and evidence, beyond the norm for construction disputes) all add layers of complexity.
- There is a better chance of success with a mediator who has real experience of mediating genuinely multi-party disputes, with multiple insurers, and multiple layers of insurance. They need to be experienced in working through impasse when parties are not being realistic about risk allocation. There is no substitute for having done it before. If there are more than four parties, the logistics are such that it is wise to appoint two co-mediators.

Second, start early and prepare properly. Involving the mediator well before the mediation day, so that they can engage individually with each party and their advisers, is a sound investment. For example:

- It means that barriers to settlement (gaps in the technical or costs information, uncertainty over who actually has authority to settle and the limits of that authority) can be identified and resolved in advance of the mediation.
- It gives the mediator time to work to ensure that the right people attend the mediation.
- It allows the mediator to begin building the trust and confidence that a multi-party mediation of this kind will need if it is to succeed on the day.

Third, use the mediator:

- Remember that you can give the mediator material for their eyes only: to explain your position further, to identify constraints, to allow them to engage with your client's specific problems without alerting the other parties.
- If you have a problem, engage the mediator to help you solve it.
- Remember that it is the parties' process. Share your ideas/concerns with the mediator; try out offers with them; ask them for suggestions.
- Allow the mediator to be creative and be open to novel approaches to breaking impasse.

Conclusion

None of this is automatic. Construction lawyers advising on remediation liability disputes need to work out early which category a dispute falls into: a bare remediation order under section 123 will not be resolved by mediation, whatever the courts' current enthusiasm for ADR, while a multi-party RCO or contribution dispute almost always stands to benefit from it. Where mediation is right, the discipline lies in the preparation at least as much as the day itself: a mediator chosen for genuinely relevant experience rather than availability, brought in early enough to get under the skin of a multi-party, multi-insurer dispute before everyone sits down at the table. Mediation has a very high success rate. It is a nimble process which, even in complex cases, can be arranged in weeks, not years. Get that right, and mediation can produce, in a fraction of the time and cost, what years of TCC or FTT litigation might otherwise take to achieve. The costs saved can be diverted to the essential remediation work the BSA was designed to tackle.

Legal Costs in RCO Proceedings: A Jurisdiction Still in Flux



Alice Sims

The starting point

The First-tier Tribunal (FTT) is, for most purposes, a no-costs jurisdiction. Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a costs order only in defined circumstances including a case where a party "has acted unreasonably in bringing, defending or conducting proceedings".

That orthodoxy has come under pressure not from Rule 13 but from the words of S124(2) of the BSA.

Empire Square

In *Empire Square* (LON/00BE/HYI/2023/0013; LON/00BE/BSB/2024/0602, 5 June 2025), summarised by John McMillan in the March 2026 edition of this Update, the FTT held that a freeholder's legal costs of responding to a remediation order (RO) application, and of pursuing its own remediation contribution order (RCO), were "costs incurred ... in connection with relevant defects" within s124(2). The reasoning ([172]-[198]) was purposive: the litigation had driven remediation; the legal costs would not have been incurred but for the defects; and it would be "absurd" to leave them with innocent parties. Paragraph 9 of Schedule 8 of the BSA, which prevents landlords passing legal costs to qualifying leaseholders, was said to support that reading.

Hallings Wharf

Less than a year later a differently constituted tribunal declined to follow *Empire Square*. In *Hallings Wharf Studios* (LON/00BB/BSB/2024/0011, 21 May 2026) the Secretary of State, having obtained an RCO for £3.68m of completed remedial works, also sought over £1m in litigation costs, introduced by amendment at the pre-trial review.

At [146] the tribunal was "doubtful" that s124(2) could be construed to include litigation costs at all. Parliament had given illustrative examples in s124(2A) and litigation costs were conspicuously absent; and the jurisdiction had been conferred on a body which is for the most part a no-costs tribunal. In any event, the *Empire Square* reasoning depended on the proceedings being necessary to achieve remediation, which could not be said where the works were already done.



At [147]-[149] the tribunal added that, even if jurisdiction existed, it would not have been just and equitable to include costs, the claim having been sprung on a respondent which had reasonably conducted the litigation on the footing that there was no adverse costs risk. It also described as "wholly impractical" ([132]) the suggestion that it declare liability under s124(4)(aa) and leave quantification to a county court (as was done in *Empire Square*).

Lincoln v Plantview

City of Lincoln Council v Plantview Ltd (MAN/32UD/BSB/2025/0002, 15 June 2026) addressed a different question: whether a local authority's legal costs of negotiating a temporary accommodation agreement after a decant were "temporary accommodation costs" within s124(2A)(c) and s124(5). The tribunal held that they were not ([61]): the listed examples (removal, storage, travel) were costs borne by displaced occupiers and not the applicant, and the applicant's professional and legal costs were "one step removed". Of wider significance is the statement at [62] that s124 is not a general indemnity for all costs arising from relevant defects but a mechanism for defined categories which the tribunal cannot expand. That sits uneasily with *Empire Square*.

Precedent

None of these decisions binds any other tribunal; *Hallings Wharf* said so expressly of *Empire Square* at [137]. Until the Upper Tribunal (UT) addresses the point, inconsistency at first instance is to be expected.

Analysis

If *Empire Square* is right, problems follow which Parliament has arguably not addressed:

1. **Asymmetry.** A successful applicant recovers its costs in full under s124(2); a successful respondent remains confined to the unreasonable-conduct threshold in Rule 13.
2. **Mechanics.** There is no provision for the time within which such a claim must be made, for summary or detailed assessment, or for the effect of settlement offers of the kind governed by CPR Parts 36 and 44. Rule 13(5) imposes a 28-day limit on conventional costs applications; nothing equivalent exists for costs claimed as a head of recovery under s124.
3. **Historic proceedings.** Where the costs of an earlier s123 application are sought in a later s124 application, s123 itself has no costs mechanism, and it is arguable that historic litigation costs are not costs of a "relevant step" within s 120(4A).

4. Non-parties. An RCO may be sought against associates who took no part in the earlier proceedings. Making them liable for the costs of litigation to which they were strangers is hard to reconcile with any conventional costs jurisdiction.

5. Drafting. LFRA 2024, which inserted s124(2A), also expressly addressed "legal costs" in paragraph 9 of Schedule 8. The omission of express reference to "legal costs" in s124(2A) is difficult to treat as accidental.

S124 is not a general indemnity for all costs arising from relevant defects but a mechanism for defined categories which the tribunal cannot expand.

For now, *Hallings Wharf* is the more textually disciplined analysis. Whether it prevails is a question for the UT.

However, *Hallings Wharf* has difficulties of its own. Its logic is easiest to apply to a well-resourced institution such as the Secretary of State or an institutional/commercial freeholder, but if the "interested person" applicant is of modest means (e.g. a residents' management company or a group of leaseholders), those innocent parties have to fund a contested application to secure the remediation of defects which they did not create. The Secretary of State, with the works complete and a late-pleaded £1m claim, was an unattractive candidate for legal costs. A leaseholder-owned freeholder litigating to get the works done might be met with more sympathy.

The wider point is that Rule 13 was drafted for a jurisdiction of financially more modest service charge and rent disputes. RCO claims are now routinely worth many millions of pounds, are fought with leading counsel and expert evidence over multi-week hearings, and determine where the cost of remediating an entire building will fall. Every other forum handling disputes of that scale proceeds on the basis that the loser should ordinarily contribute to the winner's costs. If s124 does not supply that answer, and *Hallings Wharf* suggests it does not, the case for a bespoke costs regime, whether by amendment to the Rules or to the BSA itself, deserves serious consideration.

Building Safety Act A-Z



Jennie Wild

A

Accountable person (higher-risk building)

(UTT) *Unsdorfer v Octagon* [2024] UKUT 59 (LC): For the purpose of s72(1) of the BSA an “accountable person” for a higher-risk building did not include a manager appointed under section 24 of the Landlord and Tenant Act 1987. By virtue of s72(2) of the BSA, most RTM companies were an accountable person.

Ancillary orders

Lessees of flats at 419 High Road, Space Apartments, N22 8JS v Avon Ground Rents Ltd (FTT) (LON/00AP/HYI/2022/0017): Ancillary orders, necessary to make a s123 Remediation Order effective and workable, could be made by the Tribunal [74].

Associated (s124/125, s121)

Triathlon Homes LLP v Stratford Village Development Partnership & Ors (FTT) (LON/00BB/HYI/2022/0018-22): An associate might exist between

beneficiaries of a trust and their trustees, between current and former partners and their partnerships, between directors and their companies, and between companies with common directors or controlling interests [38] (not overturned on appeal). *Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower)* (UTT) [2026] UKUT 18 (LC): There was no doubt that the obvious purpose of the associated person provisions in paragraph (d) was to address the problem of special purpose vehicles being used as developers which were either thinly capitalised or were wound up once the relevant development project had been completed. Such associated persons included parent companies which were run through special purpose vehicles which were thinly capitalised or since wound up [189]. *Triathlon* was an “easy case” with a thinly capitalised developer, and a wealthy parent company, which was a “classic case” for making an RCO against both parties [191].

Associated (s130(4), s131)

381 Southwark Park Road RTM Company Limited & Ors v Click St Andrew Limited (In Liquidation) & Anor (2025) 219 Con LR 29: Click Group Holdings controlled or did control Click St Andrews within the meaning of s131(4) of the BSA because Click Group Holdings held all the shares of Click Above Limited and Click St Andrews was a wholly owned subsidiary of Click Above Limited. Holdings controlled Click St Andrews indirectly in the sense that it was able, through the corporate structure, to secure that the affairs of Click St Andrews were conducted in accordance with its wishes [7]. *BDW Trading Ltd v Ardmore Construction Ltd & Ors* (2025) 219 ConLR 1: For the purpose of s131 BSA the precise and carefully confined definition of “associate” was relatively extensive on account of the definition of “the relevant period” [13, obiter].

B

Building Liability Order

Crest Nicholson v Ardmore [2026] EWHC 789 (TCC): A BLO can be granted before liability is finally determined and an adjudicator's decision can be a "relevant liability" for the purpose of a BLO [125]-[214].

Building Liability Order (Quantification)

381 Southwark Park Road RTM Company Limited & Ors v Click St Andrew Limited (In Liquidation) & Anor (2025) 219 Con LR 29: the Court was not required to quantify the relevant liability at the point of making a BLO, particularly in circumstances where the Court had no figures to enable it to do so [29].

Building Safety Fund (s123)

SoS v Grey GR Limited (Chocolate Box) (FTT) (CHI/00HN/HYI/2023/0008): The obligation on a landlord to undertake BSA works did not only arise on receipt of BSF funding. There was no hint in the statutory provisions that funding played any part. A failure to make progress on BSA works due to seeking funding weighed heavily when considering whether to make a Remediation Order [259].

Building Safety Fund (s124)

Triathlon Homes LLP v Stratford Village Development Partnership & Ors [2025] EWCA Civ 846: The FTT was justified in concluding that as between the parties listed in section 124 of the BSA and the public purse as potential contributors to the works, public funding was to be seen as a matter of last resort. There was no reason to think that the Building Safety Fund was intended to displace the provisions of the BSA. In practical terms, this meant that if it was *prima facie* just and equitable to grant an RCO, that works were funded was not a reason not to make an RCO. However, there may be cases where it would not be just and equitable to make

an RCO against those in s124(3), even if the result was to leave the costs to be funded by the public. [61-65, 88].

Building Safety Risk (s120(5))

Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower) (UTT) [2026] UKUT 18 (LC): A building safety risk could not exist unless there was a defect in relation to a relevant building which had caused that building safety risk [240]. It was difficult to see a justification for imposing any kind of external gradation or limit on the level of risk which was capable of qualifying the reference to "a risk" in the definition of building safety risk. There was no qualifying adjective in s120(5) such as "significant" or "intolerable" or "low". A risk meant any risk [241] (a wider definition than given by the FTT at [72]).

Building Safety Risk (s130(3)(b))

381 Southwark Park Road RTM Co Ltd v Click St Andrews Ltd (2024) 218 Con LR 258: Breaches relating to fire and structure posed a building safety risk within the meaning of s130(3)(b) of the BSA [198], [219].

C

Cladding remediation (Schedule 8, paragraph 8)

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA): Leaseholders with qualifying leases do not have to pay any service charges in respect of cladding remediation by application of paragraph 8 of schedule 8. This applied even if the landlord did not meet the contribution condition. This implemented the Secretary of State's announcement that no leaseholder living in their own flat "would pay a penny to fix dangerous cladding" [170].

Almacantar Centre Point Nominee No 1 Ltd & Anor v Penelope de Valk & Ors (UTT) [2025] UKUT 298 (LC): Paragraph 8 of Schedule 8 applied to defective cladding that was not also a "relevant defect" within the meaning of s120 BSA [50]. The words of Paragraph 8 were clear and ambiguous, and accorded with the underlying policy of the BSA and reflected the clear ministerial statement that no leaseholder living in their own flat would pay a penny to fix dangerous cladding [51]. Paragraph 8 provided a different protection to sections 116 to 124 and the remainder of Schedule 8, for a limited group of qualifying leaseholders where the relevant building had "unsafe cladding". The BSA did not contain a definition of "cladding". Whether a building included cladding was one of fact [69]. There was no justification for the UT departing from the FTT's finding that the façade was "cladding" for the purpose of the BSA [69-70]. The "cladding system" was the outer wall of an external wall system. There was no justification for limiting paragraph 8 to structures with two separate systems and would not be met if there had only been one composite wall [74-75]. The word "unsafe" meant something more than simply out of repair, and encompassed a range of threats to the safety of the building, or its residents or nearby members of the public. It was not limited to "fire risks" [81]. (NB. Permission to appeal to CoA has been granted).

Contribution (s149)

Mulalley & Co v Sto Limited (2026) 226 ConLR 343 (TCC): the just and equitable contribution between a contractor and the manufacturer and supplier of an unsafe external cladding system was 12.5% (contractor) to 87.5% (manufacturer and supplier) [21]. The principal cause of the remedial works was the fact that Sto marketed and supplied an inherently defective product [20].



Corporate Veil

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors (Vista Tower) (2025) 218 ConLR 66 (FTT) (CAM/26UH/HYI/2023/0003): The power to make RCOs against associated companies was a radical departure from normal company law, but it did not pierce the corporate veil because it did not expose the individual members to unlimited personal liability [351] (not considered on appeal to the UT); *Triathlon Homes LLP v Stratford Village Development Partnership & Ors* [2025] EWCA Civ 846: That the beneficial owners of the respondent companies had changed was not relevant: if you invested in a company, you took the risk of unforeseen liabilities attaching to that company [118].

Costs

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors (Vista Tower) (2025) 218 ConLR 66 (FTT) (CAM/26UH/HYI/2023/0003): The tribunal was not generally a

cost-shifting jurisdiction and should not be taken to be encouraging a costs application in the context of an RCO [389] (not considered on appeal to the UT). *Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point* (2025) 221 Con LR 17 (CA): Paragraph 9 of Schedule 8 provided protection against service charges which would otherwise be payable 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, including the cost of obtaining legal advice, or in connection with proceedings before a court or tribunal, arbitration or mediation. Such protection extended to the costs of a dispensation application under section 20ZA of the Landlord and Tenant Act 1985 [44-47]. Legal and professional costs were a certain category of costs that Parliament decided should not be claimable at all from leaseholders with qualifying leases [172].

D

Developer

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors (Vista Tower) (2025) 218 ConLR 66 (FTT) (CAM/26UH/HYI/2023/0003): The developer was a key target of an RCO, at the top of the hierarchy of liability [232, 350] (not considered on appeal to the UT). *Triathlon Homes LLP v Stratford Village Development Partnership* [2025] EWCA Civ 846: The policy of the BSA is that primary responsibility for the costs of rectification works should fall on the original developer [69]. A developer responsible for the defect who retains an interest in the building should stand at the top of the hierarchy or cascade of those who will pick up the costs [87].

Damages for defective works

Wilson v HB (SWA) Ltd [2025] 4 WLR 114 (CA): A summary of principles to be applied by the court when assessing damages for defective works [25] [74-75].

E

Explanatory Notes

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA): The Explanatory Notes to the BSA were not in the same terms as those in respect of the Bill [34]. A distinction had to be drawn between explanatory notes which were available when the legislation was being enacted and those which had come into existence subsequently. Where explanatory notes in respect of a statute did not exist when it was being passed (as was the case for the BSA), there was less reason to see them as a guide to Parliament's intention [66-67]. The notes may be of persuasive authority, but they did not enjoy any

particular legal status and could be compared with academic writings [70]. *Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower) (UTT)* [2026] UKUT 18 (LC): Explanatory Notes could, at best, play only a secondary role in the process of construction. There was a distinction to be drawn between explanatory notes available when the relevant legislation was being enacted, and those which came into existence subsequently. In the latter case there was less reason to see the explanatory notes as a guide to Parliament's intention [98].

I

Impecuniosity

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors (Vista Tower) (2025) 218 ConLR 66 (FTT) (CAM/26UH/HYI/2023/0003): Impecuniosity was not a significant reason for or against making an RCO [352] (not considered on appeal to the UT).

Information Order (Respondent)

BDW Trading Ltd v Ardmore Construction Ltd & Ors (2025) 219 ConLR 1: An IO can only be made against the "original body" which had a relevant liability, and not an associated company, which was contrary to the example in the BSA Explanatory Notes [17].

Information Order (Relevant Liability)

BDW Trading Ltd v Ardmore Construction Ltd & Ors (2025) 219 ConLR 1: Information Orders under s132 BSA may only be made where "it appears to the court... that the body corporate is subject to a relevant liability". It was not necessary to have already established liability (albeit

there was no difficulty if had been by judgment, award, adjudication decision or admission) but potential liability was not sufficient. There should be no question at all of adopting anything like trial procedures to determine the question – applications should be short and uncomplicated. IOs might be made sparingly where liability was in issue [25, 27, 29].

Information Order (Scope)

BDW Trading Ltd v Ardmore Construction Ltd & Ors (2025) 219 ConLR 1: Information and documents to enable the applicant to identify associates of the respondent. In appropriate cases, also matters concerning the financial position of the associate [40, obiter].

Insurance

Tobias & Ors v Grosvenor Freeholds Limited (The Central) (FTT) (LON/00AG/BSA/2024/0008): The potential availability of Premier Guarantee insurance in respect of "relevant defects" was not given significant weight by the FTT when exercising its discretion to make a remediation order.

Interest

Helpfavour Limited & Ors v Rosco Ingo Limited & Anr (1-9 Planetree Path) (FTT) (LON/00BH/BSB/2024/0500): The FTT had no statutory power provided by the BSA or otherwise to award interest in the context of a RCO application [68-70].

J

Joint and several liability (RCO)

Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower) (UTT) [2026] UKUT 18 (LC): The FTT had power impose joint and several liability upon multiple respondents if the FTT considered it was just and equitable to take that course [137-146] [149] [160] [165] [167]. Section 124 created a new form of statutory liability, in respect of which Parliament had not concerned itself with the question of rights of contribution as between respondents to an RCO [158]. However, the issue was most likely to arise where the FTT was persuaded that associated parties should be brought into the liability, through the gateway of s124(3)(d) and in such a case, by definition, there was an element of association which might make it reasonable for the respondents to sort out contributions between themselves. Further, before making such an order, the FTT would need to be satisfied that it was just and equitable to impose joint and several liability, which was likely to require a degree of linkage between the respondents that rendered it reasonable to leave them to sort out contribution between themselves. The FTT could consider issues of alleged unfairness and/or problems in considering the just and equitable question [159].



Joint case management

Wallace Estates v Durkan Estates [2026] EWHC 2133 (TCC)/LON/00AH/BSB/2025/0611: With an RCO application before the FTT and a related contractual dispute (over termination of a remediation agreement) before the TCC arising from the same defects, Constable J sat alongside the FTT's President for the first time to approve joint case management and an eventual joint trial [1], [22]. The court left open how the two jurisdictions' differing appeal routes will ultimately be reconciled [37].

Just and Equitable (s124)

Triathlon Homes LLP v Stratford Village Development Partnership & Ors [2025] EWCA Civ 846: It was a "generous ambit of discretion" entrusted to the FTT [121]. There may be cases where it would not be just and equitable to make an RCO against those falling within s124(3), even if the result was to leave the costs to be funded by the public [61-65]. The fact that costs could in principle be claimed under regulation 3 of the 2022 regulations (which was not a discretionary matter) was a factor of considerable weight in deciding whether it was just and equitable to make an RCO [71]. The motivation of the applicant was not relevant, so long as it was an "interested party" within the meaning of the BSA [78]. A developer responsible for the defect who retains an interest in the building should stand at the top of the hierarchy or cascade of those who will pick up the costs [87].

Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors (Vista Tower) (2025) 218 ConLR 66 (FTT) (CAM/26UH/HYI/2023/0003): The s124 BSA just and equitable test was deliberately wide so that money could be found. The jurisdiction may be protean. It was helpful to ask whether the relevant remedial works/costs were within a reasonable range of responses [83, 349] (not specifically challenged on appeal).

Zampetti v Fairhold Athena Ltd (Empire Square) 221 Con. L.R. 160: The Tribunal considered relevant factors to determine what was just and equitable. This was a wider test than the principles found in section 27A of the Landlord and Tenant Act 1985 [142]. A relevant consideration was that the Tribunal found that the waking watch was a necessary measure [143]. The fact that a respondent had the deepest pockets was not a factor in isolation; it was more pertinent that the respondent was also responsible for the construction of the Building [144].

Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower) (UTT) [2026] UKUT 18 (LC): Given the breadth of the just and equitable jurisdiction, the Tribunal might take into account the risk of a respondent becoming insolvent in deciding which respondent(s) should be subject to an RCO, in order to avoid the risk of a shortfall in recovery [146]. The UT could not interfere with a determination of the FTT that it was just and equitable to make an RCO unless it concluded that the FTT had gone wrong in the exercise of their discretion in such a way as to vitiate the exercise of that discretion [171]. There had to be something more than satisfaction of the gateway conditions before the FTT could be satisfied that it was just and equitable to make an RCO [179]. It was not possible or sensible to seek to catalogue the factors upon which the FTT could rely in determining whether it was just and equitable to make the order sought [180]. The initial burden was on the applicant to put forward a case as to why it was just and equitable to make the order, but it was for the respondent(s) to prove those matters on which they relied in opposition [182]. The FTT had not treated the fact of association as sufficient to justifying the making of an RCO: they had addressed the just and equitable question [199]. On the particular facts, the fair approach

was an all or nothing one [210]. A primary purpose of s124 was to ensure that a wealthy parent company or other wealthy entity caught by the association provisions could not evade responsibility by hiding behind a separate personality: if required, there was a clear or rational nexus between the relevant body corporate and the imposition of the RCO [217]. Participation in the development or receipt (direct or indirect) of remuneration from the development was not a minimum requirement for it being just and equitable to make an RCO, but could be taken into account [219, 220].

Just and Equitable (s130)

381 Southwark Park Road RTM Company Limited & Ors v Click St Andrew Limited (In Liquidation) & Anor (2025) 219 Con LR 29: FTT considerations in *Triathlon Homes LLP* considered [9-15]. The indicators were in favour of making an order in respect of the holding company, because it was the holding company and had a common directing mind [15, 25]. However, a BLO must only relate to a relevant liability within the meaning of the BSA, and was not a "gateway" to the recovery of all losses [26-28].

L

Landlord

Triathlon Homes LLP v Stratford Village Development Partnership & Ors [2025] EWCA Civ 846: The effect of paragraph 2 of Schedule 8 of the BSA and Regulation 3 of the 2022 Regulations taken together is that were the original developer (or its associate) retains (or retained as at 14 February 2022) an interest in the building in question, lessees do not have to pay the service charges, and any other landlord who ends up

bearing the cost as a result can pass that liability to the landlord-developer or the landlord that is an associate of the developer. Unlike s124 of the BSA, regulation 3 is not a discretionary matter: regulation 3(2) provides that where the regulation applies, the responsible landlord “is liable to pay”. Recovery is triggered by the claiming landlord simply service a notice specifying the amount (regulation 3(3)). The recipient of a notice may appeal to the FTT but only on very limited grounds, namely that the remediation amount does not represent the cost of the relevant measure, or that the recipient is not a responsible landlord (regulations 3(5) and (6)) [69].

Landlord’s Certificate

Will & Anor v G&O Properties (FTT) (LON/00AT/HYI/2022/0003): The Tribunal had no jurisdiction to make an order determining whether a relevant landlord had failed to comply with the requirement to provide a Landlord’s Certificate confirming whether or not the landlord met the contribution condition (ie a net worth of £2,000,000) and/or whether or not they (or an associate) were responsible for a relevant defect, as required by the Building Safety (Leaseholder Protections) (England) Regulations 2022.

Leaseholders

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA): The BSA remediation provisions amounted to a very significant intervention by Parliament in the typical and familiar contractual scheme applicable to a block of flats. By protecting leaseholders from the significant costs that they would otherwise have to bear, the remediation provisions undoubtedly cause very substantial disruption to the contractual allocation of risk. That costs which would otherwise have fallen on the leaseholders have to be borne by someone else (including landlords who may be as blameless for the



original defects as the leaseholders) was a necessary consequence of Parliament’s decision to relieve leaseholders of such costs [163]. The focus of the protections was squarely on individual leaseholders living in their flats: leaseholders with larger portfolios were left to bear the costs as per the contractual provisions for service charges in their leases [167].

Legal and professional costs

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA): Paragraph 9 of Schedule 8 provided protection against service charges which would otherwise be payable 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, including the cost of obtaining legal advice, or in connection with proceedings before a court or tribunal, arbitration or mediation. Such protection extended to the costs of a dispensation

application under section 20ZA of the Landlord and Tenant Act 1985 [44-47]. Legal and professional costs were a certain category of costs that Parliament decided should not be claimable at all from leaseholders with qualifying leases [172].

Limitation (s135)

BDW Trading Ltd v URS Corporation Ltd (2025) 220 Con LR 1 (SC): The retrospective limitation period established by section 135 of the BSA was not restricted to actions brought under s1 Defective Premises Act 1972, but could equally apply to actions merely dependent on s1, such as a claim for damages in negligence or for contribution [103, 113, 114, 163, 295, 297, 304]. (Obiter) The retrospective limitation period did not apply to s2A of the Defective Premises Act 1972 because it was not a “relevant provision” already in force [269].

P

Parties (to main claim, BLO)

Willmott Dixon Construction Ltd v Prater (2024) 214 Con LR 164: the BSA did not require a party against whom a Building Liability Order (s130) is sought to be made a party to the main claim/substantive claim, or to participate in those proceedings. However, if a BLO was contemplated it would generally be sensible and efficient for the party against whom the order was sought to be made a party and for the BLO application to be heard together with the main claim [17], [18], [21], [22], [24], [25]. In *381 Southwark Park Road RTM Co Ltd v Click St Andrews Ltd* (2024) 218 Con LR 258 the Court confirmed that there was no requirement on a party to claim a BLO within existing proceedings: “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” [31].

Prejudice (s123)

Lessees of flats at 419 High Road, Space Apartments, N22 8JS v Avon Ground Rents Ltd (FTT) (LON/00AP/HYI/2022/0017): Where a respondent to a claim for a Remediation Order pursuant to s123 BSA engaged with the process and was willing to complete works the Tribunal considered the balance of prejudice which would be caused by, on the one hand, making the order and, on the other hand, not making it. The Tribunal concluded that the greater prejudice would be caused to the lessees if no order were made [59-64].

Principal Accountable Person (ss73 and 75)

Brompton Estates Nominees No.1 Limited & Anor v Wall Properties Limited (FTT) (LON/00AW/

BSG/2024/0001): There was no guidance in the BSA as to how the Tribunal was to determine which accountable person was appropriate to be the principal accountable person. The parties had agreed that the respondent would be the most appropriate given it was under a repairing obligation in relation to the structure and exterior surfaces of the majority of the building and the common parts generally within related floors, which was consistent with the provisions and purpose of Part IV of the BSA [17-18].

Purpose

BDW Trading Ltd v URS Corporation Ltd (2025) 220 Con LR 1 (SC): A central purpose and policy of the BSA in general, and section 135 in particular, was to hold those responsible for building safety defects accountable [104, 106].



R

Regulation 3 Notices

Stratford Village Property Holdings v East Village Management (FTT): the FTT can rule on Reg.3's application [36], the "but-for" recoverability test looks only at lease-term payability (not reasonableness or funding conditions) [50], liability to pay must be unconditional and Reg.3 operates retrospectively [93]. (NB. Permission to appeal to the Upper Tribunal has since been granted).

Relevant Building (s.117)

A2Dominion South Ltd v BDW Trading Ltd (FTT: LON/00AT/BSB/2025/0608). A four-storey section of a mixed development (Flats 29-40) formed part of the same "relevant building" as the adjoining seven-storey section (Flats 1-28), given their structural interdependence via a shared stair core and transfer beams [16], [100]-[102] [124]-[128] and the shared electrical and water services [149], [153]. Flats

29-40 were therefore brought within the RCO application [155].

Relevant Defect

Waite v Kedai (FTT) LON/00AY/HYI/2022/0005 and 0016: Whether something is a relevant defect was to be assessed at the date of the FTT hearing [75]. Whether or not works or construction complied with the then extant Building Regulations in force at the time was not the relevant question. Instead, the correct question was whether there was a defect that caused a building safety risk in the light of today's knowledge [75 and 80]. *Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors (Vista Tower) (2025) 218 ConLR 66 (FTT) (CAM/26UH/HYI/2023/0003)*: A "relevant defect" for the purpose of s120 of the BSA was not confined to cases of non-compliance with the Building Regulations [68] (not the subject of the subsequent appeal, but

the UTT wished to "note" that the FTT concluded that non-compliance with the building regulations was "merely one way, and not the only way, in which something could be a defect for the purposes of the Act" [2026] UKUT 18 (LC) at [35]). *Barclays Nominees (George Yard) Ltd v LDC (Oxford Road Bournemouth) Ltd (2025) 220 ConLR 105 (FTT)*: A cost-risk analysis was not relevant in determining whether or not there was a "relevant defect" [227]. *SoS v Canary Riverside Estate Management Ltd (LON/00BG/BSA/2024/0005 & LON/00BG/BSB/2024/009)*: The relevant date for assessing whether something was a relevant defect was the date of the FTT hearing [30]. There was no threshold in s120, and words such as "tolerable", "low" or "medium" were noticeably absent: the adoption of such language as a threshold test was unwarranted [37]. The FTT was to identify whether, at the date of the hearing, and in the light of current knowledge, there were defects present at the building that constituted a risk to the safety of people in or about the building arising from the spread of fire, or collapse of the building, or any part of it. It was not appropriate to assess the degree of that risk, nor whether the risk exceeded that ordinarily present in a building of the given nature [38]. The degree of risk was relevant to remediation [42]. A Tribunal might decide that it was not just and equitable to make an RCO in respect of costs incurred in remedying a relevant defect where it considered those costs were unnecessarily incurred [43]. *SoS for HCLG v EDR Builders Ltd (Hallings Wharf) (2026) 226 Con LR 48*: Whether something is a "defect" is not to be assessed by reference to Building Regulations in existence at the time of construction – they might have been complied with but there is still a 'risk' to the health of people in or about the building [32].



Relevant Landlord

Mirchandani v Java Properties International LLP [2025] (FTT) (LON/00AE/BSA/2024/0007, 0500 and 0502): Under s123(3) of the BSA (for the purpose of an RO application), a “relevant landlord” was a “landlord under a lease of the building, who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect”. Section 123(3) required the landlord to have a repairing obligation, and a landlord had no such obligation where management functions had been transferred to an RTM company by virtue of s96 of the Commonhold and Leasehold Reform Act 2002.

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA): If the person responsible for the defect (the developer or the person who commissioned the works), or someone associated with them, retained an interest in the building, they had to bear the costs of dealing with the defect by application of paragraph 2 of Schedule 8, which provided that if a relevant landlord was responsible for the defect, no service charge was payable in respect of a relevant measure. This applied whether or not the lease in question was a qualifying lease [165].

Relevant Liability (s130, BLO)

Willmott Dixon Construction Ltd v Prater (2024) 214 Con LR 164: Whether there was a “relevant liability” within the meaning of s130 of the BSA might not simply be a matter of law or one that flows inexorably from judgment in the main claim [18], [21], [22], [24], [25].

Remediation Contribution Order (s124)

Arjun Batish & Ors v Inspired Sutton Limited & Ors (FTT) (LON/00BF/HYI/2022/0002): It was just and equitable to make an RCO if the



lessees paid for the cost of works which ought to have been met by the respondent. An RCO could be made in relation to service charge costs incurred and paid prior to s124 and Schedule 8 coming into force [48-50]. *Triathlon Homes LLP v Stratford Village Development Partnership & Ors* [2025] EWCA Civ 846: It was necessary to interpret s124 by reference to the purposes of Part 5 of the BSA, which included the protection of leaseholders from financial risk, or to ensure that risks from historical defects were remedied without the leaseholders having to bear the potentially very large costs [151]. An RCO could be made in respect of costs incurred before 28 June 2022 [155]. *Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point* (2025) 221 Con LR 17 (CA): An RCO could be made against the landlord to whom service charges had been paid in respect of costs incurred by the landlord in connection with work to remedy relevant defects (Newey LJ at [85(vii)]).

Remediation Contribution Order (costs in remedying or otherwise in connection with)

Triathlon Homes LLP v Stratford Village Development Partnership & Ors (FTT) (LON/00BB/HYI/2022/0018-22): Remedy and its variants was readily capable of being applied to measures short of eliminating the existence of a defect altogether [103]. The interpretation of s124 should focus on the practical outcome of the things done or to be done rather than any interpretation which tends to narrow its scope [106]. *Flats 1-14, 171 Tower Bridge Road, London SE1 2AW* (FTT) LON/00BE/LSC/2023/0335 ('Tower Bridge Road'): the words “in connection with” indicate that the provision is much wider than either just ‘for’ or ‘because of’ a relevant defect. There did not have to be certainty that there was a relevant defect or of liability in order for any professional report to be caught by the provision [51]. *Zampetti v Fairhold Athena Ltd* (*Empire Square*)

(2025) 221 Con. L.R. 160: costs in this context could include legal costs associated with steps to achieve the listed outcomes and would otherwise fall to innocent parties [176, 192, 195, 196]. The phrase “in connection with” was a very wide term, consistent with the powers Parliament had seen fit to give the Tribunal generally [177]. The list of matters that might be relevant costs for an RCO in s124(2A) was not definitive and did not proscribe the Tribunal from finding that a class of costs was within its power to make an RCO that was not identified in the list [178]. *SoS for HCLG v EDR Builders Ltd (Hallings Wharf)* (2026) 226 Con LR 48: Where RCO sought after defects had been remedied, legal costs incurred in seeking RCO not incurred in connection with remedying the building and therefore it was doubtful that litigation costs were recoverable under s124 [146]. The inclusion of litigation costs in an RCO, without detailed particulars, was wholly impractical [132].

Remediation Contribution Order (specified amount)

Zampetti v Fairhold Athena Ltd (Empire Square) (2025) 221 Con. L.R. 160: The Tribunal undoubtedly had jurisdiction to make an order for reasonable costs if it was not presented with a specified amount [168].

Remediation Contribution Order (s27A Landlord and Tenant Act 1985)

St John Street Property Services Limited v Riverside Group Limited (FTT) (LON/00AU/LSC/2021/0255): The potential availability of an RCO was not taken into account when determining whether a social housing lessee was required to pay a service charge pursuant to s27A(1) of the Landlord and Tenant Act 1985 in respect of cladding remediation costs, even where there were strong grounds for such an application, in circumstances where an application had not yet

been made. It could not be said that the prospect of an RCO being made meant that the service charges otherwise payable were not reasonable or should be reduced [161-165].

Remediation Order (s123)

Waite & Ors v Kedai Limited (FTT) (2024) 210 ConLR 166: The focus of the BSA was on building safety and the improvement of standards. There was no guidance in the BSA as to how the FTT should assess the risk to the safety of people in or about the building, or the scope of the works required to remedy relevant defects, or the standard to which remedial works should be carried out. The wording of the BSA was in deliberately broad terms, to enable the FTT to find the best and most practical, outcomes-focused solutions to myriad circumstances [66] [77]. It was an evidenced-based exercise, led predominantly by inspection reports and expert evidence, but also informed by the FTT’s own experience and expertise. Once the FTT determined that relevant defects existed, it was for the Tribunal to make an order to remedy those defects within a specified time [81].

SoS v Grey GR Limited Partnership (Vista Tower) (FTT) (CAM/26UH/HYI/2022/0004): Remediation Order made even though works had started. The Tribunal had both the power and a discretion as to whether to make a Remediation Order [117]. It was not difficult to image circumstances in which experts and leaseholders agreed that some relevant defects remaining in a building represented a tolerable risk relative to the difficulty of remedying them [119]. A Remediation Order was a novel remedy. The focus was on remediation of life-threatening building safety defects in tall residential buildings rather than redress for non-compliance with a legal obligation. If the pre-qualification criteria were

met and there were relevant defects, it was likely that the Tribunal would make an order, subject to the facts of each case. The facts of the case, the works required and the situation of the parties were more relevant to the exercise of discretion than unreasonable delay or political motivation [121-122] (not considered on appeal to the UT).

SoS v Grey GR Limited (Chocolate Box) (FTT) (CHI/00HN/HYI/2023/0008): The approach to the exercise of discretion cannot be far from “just and equitable”. Given that “equitable” essentially means fair, the test cannot be far from one of justice and fairness [255].

Li Jing v Avon Ground Rents Limited (FTT) (LON/00BK/BSA/2024/0004): If satisfied that the statutory criteria in s123 BSA are met, the Tribunal’s starting point was that a Remediation Order should be made: other considerations were secondary [149-150].

Monier Road Limited (Smoke House) Blomfield & Ors (2025) 220 ConLR 86 (UTT): The Tribunal had no power under s123 to specify which materials or contractors were to be utilised in the remedial works [49] [55].

SoS v Grey GR Limited Partnership (Focus Apartments) (FTT) (CAM/42UD/HYI/2023/0007): A Remediation Order served as “a backstop”, reassuring the applicant and leaseholders that the remaining remedial works would be carried out within a reasonable time [18]. Given the inherent risks (or probabilities) of delay in construction projects it was unrealistic to place a deadline that was the same or shortly after the estimated completion date. A deadline of six months after the estimated completion date was imposed [26-28].

Barclays Nominees (George Yard) v LDC (Oxford Road Bournemouth) (2025) 220 ConLR 105 (FTT): An expert can and should offer opinion on whether or not something



amounts to a relevant defect under the terms of the Act [211]. A Remediation Order was granted on the basis of evidence of defects requiring substantial remediation works, particularly in circumstances where the Respondent had been aware of the defects for 5 years but had not commenced works [239].

Zampetti v Fairhold Athena Ltd (Empire Square) (2025) 221 Con. L.R. 160: Departing from *The Chocolate Box*, the Tribunal is not satisfied that “fair and just” is the applicable test for making an RO [83]. The lack of any formulation of a test to apply to the otherwise unfettered discretion in s123 BSA was a deliberate choice by Parliament [85]. This part of the BSA was in deliberately broad terms to enable the Tribunal to find the best and most practical, outcomes-focused solutions across a wide range of circumstances. The BSA was solution focused rather than blame focused, and was concerned with the building rather than the parties to the application. The Tribunal should ask itself what the best answer was in the application to achieve remediation of the relevant defects for the safety of

the leaseholders. The outcome of the assessment should be within a range of reasonable decisions, but would not be open to challenge unless no reasonable decision maker, on the facts known to it, could have come to the same decision. This test was qualitatively different from an argument that a decision was not just and equitable because of some key feature or behaviour of a party [85]. The fact that the respondent was the developer and responsible for the defects and had signed self-remediation terms was at best *neutral* on the RO. The context surrounding the willingness and progress towards the remediation were legitimate considerations that may take the position from one of neutrality to either positive or negative [89].

Remediation costs (s124, reasonable responses)

SoS for HCLG v EDR Builders Ltd (Hallings Wharf) (2026) 226 Con LR 48: provided the remediation carried out was within the band of reasonable responses, the fact it could have been done more cheaply was not of itself a basis for reducing the amount of an RCO [55].

Responsible Actors Scheme

R (on the application of Rydon Group Holdings Limited) v Secretary of State for Levelling Up Housing and Communities [2024] EWHC 3234 (Admin): there was an arguable case with a realistic prospect of success that decisions made by the SoS in relation to the Responsible Actors Scheme, established by Regulation 5 of the Building Safety (Responsible Actors Schemes and Prohibitions) Regulations 2023 (which were made in exercise of the powers conferred by ss126, 127, 128, 129 and 168 of the BSA), were amenable to judicial review [25] [62].

Responsible Landlord

Triathlon Homes LLP v Stratford Village Development Partnership & Ors (FTT) (LON/00BB/HYI/2022/0018-22): Any landlord (or any right to manage company or leaseholder owned management company) which paid or was liable to pay the costs of a relevant measure which would have been recoverable from leaseholders but for paragraph 2(2) of Schedule 8, had the right to pass those costs on to a “responsible landlord” pursuant

to regulation 3 of The Building Safety (Leaseholder Protections) (Information etc) Regulations 2022. The recipient of such a notice could appeal to the FTT, but only on the limited grounds that they were not a responsible landlord or that the sum claimed was more than the cost incurred. There was no right of appeal on the ground that it was not just and equitable for the responsible landlord to have to pay [39] (not overturned on appeal).



S

Schedule 8

Lehner v Lant Street Management Company Limited (UT) [2024] UKUT 135 (LC): A headline list of questions a decision maker should address when determining whether service charges were payable in respect of work to which the leaseholder provisions may apply were set out at [45]. On the facts, the lease was a qualifying lease and the leaseholder was not liable to pay the service charges as they related to cladding remediation.

Schedule 8 (legal or other professional services)

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA): Paragraph 9 of Schedule 8 provided protection against service charges which would otherwise be payable 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, including the cost of obtaining legal advice, or in connection with proceedings before a court or tribunal, arbitration or mediation. Such protection extended to the costs of a dispensation application under section 20ZA of the Landlord and Tenant Act 1985 [44-47].

Schedule 8 (retrospective effect)

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA) (by a majority of 2:1): The effect of paragraph 9 of Schedule 8, was that, from 28 June 2022, no further service charges of the relevant type were payable, whether the underlying costs had been incurred, or whether service charges had been demanded or fallen due [204, 206].

Service out

HB (WM) Ltd v Sto Ltd [2026] EWHC 1833 (TCC): Application to set aside service out of the jurisdiction of s130 and s149 claims against a German manufacturer and parent company dismissed [108]. Where English law governs the underlying liability there is no difficulty in applying the BSA to an associated company, in this case a foreign one [77]-[81].

Specified Building

BDW Trading Ltd v Ardmore Construction Ltd & Ors (2025) 219 ConLR 1: A BLO concerned a relevant liability "relating to a specified building" (s130(2)). Therefore, a BLO could not make associated companies liable for the entire liability of the original body across a number of developments. Discrete orders would need to be made [13, obiter].

Specific Performance (commercial lease)

Essendi UK Hotels 2 Limited v London Property Company Limited (2026) 226 ConLR 133 (TCC): specific performance of landlord covenants under a commercial lease requiring removal and replacement of ACM cladding panels in circumstances where a RO was not available pursuant to the terms of the BSA.

Storey

Blomfield & Ors v Monier Road Limited (Smoke House) (FTT) (LON/00BG/HYI/2023/0024): A rooftop garden was a "storey", such that the building was a higher risk building under BSA Part IV [62]. Government guidance (which suggested a garden was not a storey) was not followed, and did not constitute a reliable method of interpretation of law [74]. (NB. The Government's webpage states that the Ministry of Housing, Communities and Local Government is currently consulting relevant stakeholders on a proposal to amend the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations to make clear that roof gardens should not be considered a storey: <https://www.gov.uk/guidance/criteria-for-determining-whether-an-existing-building-is-a-higher-risk-building-during-building-work>).

T

Timing (BLO application)

Nothing in s130 BSA made it a precondition to the making of a BLO that the relevant liability of the “original body” (s130(2) BSA) needed to already have been established. BLO applications could be made before the trial of the original body’s liability, could proceed in tandem with the litigation against the original body or, in a given case, be convenient to defer consideration until after trial against the original body (*BDW Trading Ltd v Ardmore Construction Ltd & Ors* (2025) 219 ConLR 1 [14, obiter]; *Willmott Dixon Construction Ltd v Prater* [2024] EWHC 1190 (TCC), 214 ConLR 164; *381 Southwark Park Road RTM Company Limited v Click St. Andrews Limited* [2024] EWHC 3179 (TCC)).

U

Ultimate responsibility

Adriatic Land 5 Limited v The Long Leaseholders at Hippersley Point (2025) 221 Con LR 17 (CA): Whoever ends up bearing the costs (as a result of the leaseholder protections) is given new rights against those ultimately responsible by way of: (i) an extended limitation period under the DPA 1972 (s135 BSA); and (ii) a new cause of action against those manufacturing or mis-selling cladding protects (s149 BSA). In addition, the High Court is given power to make associated companies liable for breaches of the DPA 1972 (s130) [175]. *Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower) (UTT)* [2026] UKUT 18 (LC): Once Parliament had made the decision to intervene in the

contractual scheme of obligations by protecting leaseholders from the full extent of their service charge liability, it was necessary for Parliament to deal with consequential matters, including who would pick up the costs that were no longer to be met through the service charges, and what rights the latter would have to make claims over those ultimately responsible. The jurisdiction in s124 was part of this Parliamentary purpose [110].

V

Variation (RCO)

Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower) (UTT) [2026] UKUT 18 (LC): Whether a s124 RCO could be varied, for example to re-arrange apportioned shares, in reliance on s124 was seriously doubted. The FTT’s case management powers, to amend, suspend or set aside earlier directions (Rule 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013), did not permit such variation [140-141].



Contributor's to this Update



Lucy Garrett KC
E: lgarrett@keatingchambers.com



Sarah Williams
E: swilliams@keatingchambers.com



James Frampton
E: jframpton@keatingchambers.com



Rosemary Jackson KC
E: rjackson@keatingchambers.com



Fionnuala McCredie KC
E: fmccredie@keatingchambers.com



Alice Sims
E: asims@keatingchambers.com



Jennie Wild
E: jwild@keatingchambers.com

Get in Touch

Keating Chambers
15 Essex Street
London WC2R 3AA

T: +44 (0)20 7544 2600

E: clerks@keatingchambers.com

www.keatingchambers.com

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