# Keating Chambers BSA Update

MARCH 2026

# Welcome

## to the latest edition of the Keating Chambers BSA Update

> I am pleased to introduce the third Keating Chambers BSA Update, which reflects the continued rapid growth of work in this field. There continues to be significant new cases and developments.

As well as featuring the regular Legislative Update (James Frampton), an Updated Building Safety Act A to Z (Jennie Wild) and summaries of three recent cases of interest (namely Empire Square, Secretary of State for Housing and Communities and Local Government v Canary Riverside and 1-9 Planetree Path, by John McMillan, James Frampton and Harriet Di Francesco respectively) this Update includes articles on the interaction between private law and the BSA regime (by Professor Susan Bright and Professor Ben McFarlane of Oxford University) and (a follow-up) on contribution claims and RCOs (by Simon Hargreaves KC), together with a commentary on the Vista Towers case (by Alice Sims).

Keating Chambers is proud to be at the forefront of the development of the law and thinking associated with the BSA and any client that would be interested in taking part in a Chambers seminar or round table discussion on the various topical issues associated with the BSA should contact one of the practice managers at clerks@keatingchambers.com


**Editors:**

**Vince Moran KC**

**John McMillan**

**Jennie Wild**

**James Frampton**

# In this issue:

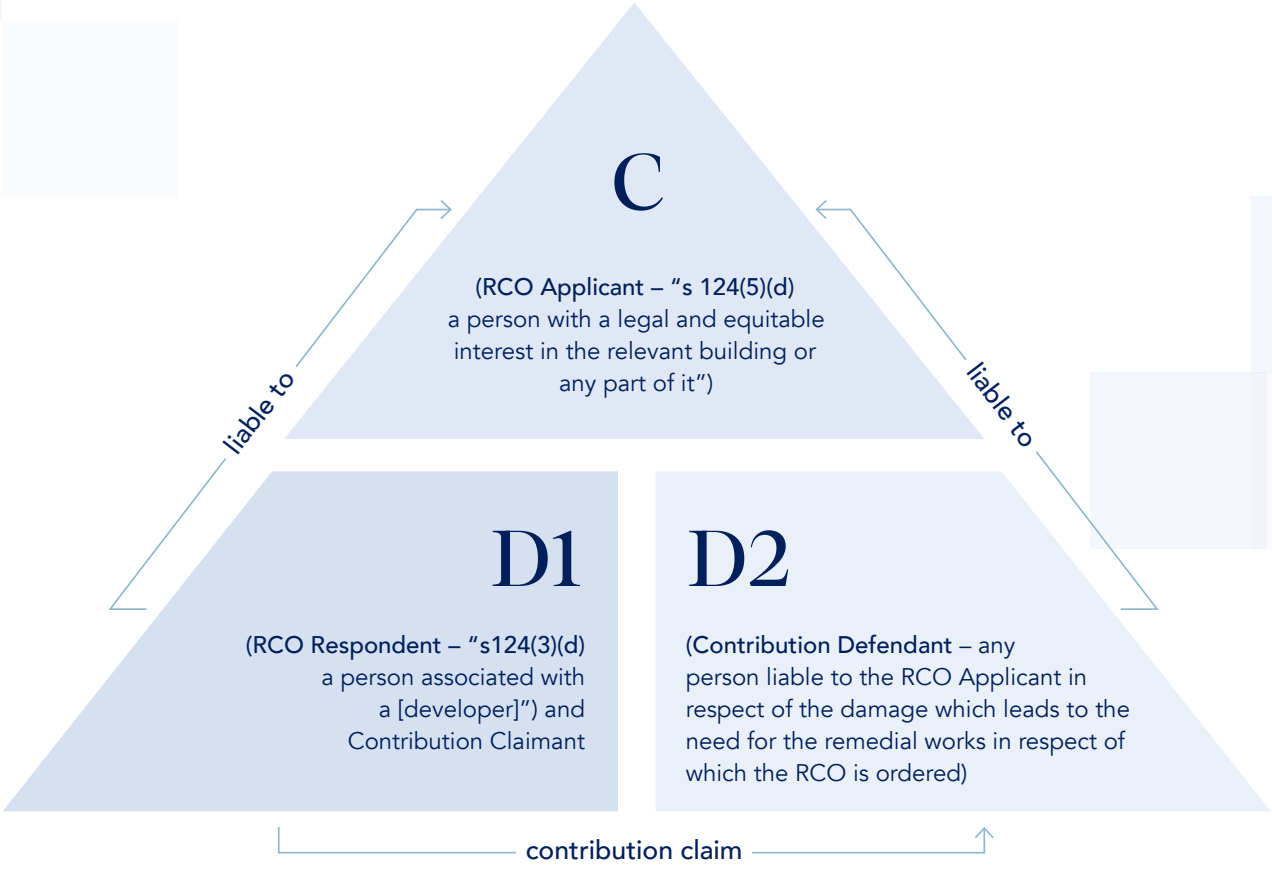


# Could a Contribution Claim be Founded on an RCO? (Part 2)

Simon Hargreaves KC

**In the Keating Chambers BSA Update for July 2025, I addressed the question of whether a contribution claim could be founded on a remediation contribution order ("RCO").**

I formed the view that a contribution claim could indeed be founded on an RCO, but that the likely compass of any such claim would appear to be limited to just one of the five applicants for an RCO, viz the "interested persons" in section 124(5), namely, "(d) a person with a legal and equitable interest in the relevant building or any part of it" and just one of the four respondents to an application for an RCO, viz the "specified persons" in section 124(3), namely "(d) a person associated with a person within any of paragraphs (a) to (c)" and, of those, "(c) a developer …". In short, the respondent against whom the RCO is ordered (ordered because he is liable to the applicant for an RCO under s 124 in respect of meeting costs incurred or to be incurred in remedying or otherwise in connection with relevant defects relating to the relevant building) can bring contribution proceedings against any other party liable to the applicant in respect of the damage which leads to the need for the said remedial works. Given the breadth of obligations owed to "(d) a person with a legal and equitable interest in the relevant building or any part of it" (the applicant) under the DPA, including those responsible by design or workmanship for the original defects, there seems to me to be no reason why the respondent to the RCO (viz the person associated with the developer) could not bring proceedings in contribution in respect of his liability under the RCO to the applicant. Bearing in mind the "contribution triangle", in this example the diagram looks like this:



# Could a Contribution Claim be Founded on a BLO?

**I am now asked by the Editors of the Keating Chambers BSA Update (March 2026) whether a contribution claim could be founded on a building liability order ("BLO").**

Who might be parties to such a contribution claim, and what might contribution be sought in respect of? There are two relevant groups of persons.

The first group comprises the three persons involved with a BLO application under s 130. First, the person applying for a BLO, which I will call the "BLO Applicant". Second, the body corporate which is liable for the purposes of s 130(2), which I will call the "Original Body". Third, the body corporate specified in the BLO, which I will call the "Specified Body".

The second group comprises those persons liable for a "relevant liability" (as defined in s 130(3)) and those persons to whom they are so liable. A "relevant liability" is a liability under the DPA, or a liability in respect of a "building safety risk", in turn defined by s 130(6) as "a risk to the safety of people in or about the building arising from the spread of fire or structural failure". I will call these "DPA / BSR liabilities".

A claim for contribution can only be made by B in respect of an identifiable amount of money to which C can be ordered to make contribution: *BDW Trading Ltd v URS Corporation Ltd* [2025] 2 WLR 1095 [SC] at [224-231]. However, it should be possible, depending upon the shape of the proceedings in which the BLO is claimed, to claim contribution in respect of monies likely to be recovered in the proceedings via the BLO because proceedings for contribution can commence before the right to contribution has accrued by operation of rules of court in legal proceedings in which A sues D1 [238].

How might a claim for contribution unfold alongside a claim for a BLO? Let us take a simple example. The Owner sues the Original Body (say, a developer) for damages under either s 1 DPA or in respect of a building safety risk. The Owner also sues the Specified Body for a BLO on grounds that the Specified Body is associated with the Original Body. The Specified Body wishes to sue others in the development chain, but is owed neither DPA duties, nor duties in contract or tort. However, in circumstances where the Owner's claim for a BLO is successful, the Specified Body becomes, by definition, liable to the Owner in respect of the Original Body's DPA / BSR liabilities and so can claim contribution from others liable to the Owner in respect of DPA / BSR liabilities. In short, the Specified Body can bring contribution proceedings under Part 20 against another person liable to the Claimant for the same damage in respect of which the Original Body is liable to the Claimant. The contribution defendant can then in turn claim contribution from anyone else liable to the Owner in respect of DPA / BSR liabilities, and so on.

> This seems less straightforward. It may well be pointed out that the parent of the developer can only conceivably be liable in respect of the original developer's liability if a BLO is ordered.

But what about this example? An original developer (now insolvent) would have been liable to the Owners under s 1 DPA for serious structural defects. The parent of the original developer decides to carry out remedial works in respect of the structural defects on the basis that it (the parent) was associated with the original developer and so was at risk of having a BLO ordered against it in respect of the original developer's liability.

The parent of the developer wishes to recover from the original contractor, but that too is now insolvent, and so turns to the original contractor's parent. Can the parent of the developer in these circumstances recover contribution from the parent of the contractor?

This seems less straightforward. It may well be pointed out that the parent of the developer can only conceivably be liable in respect of the original developer's liability if a BLO is ordered. Until a BLO is ordered against the parent of the developer, its claims cannot even get off the ground. What is the answer to this?

One possibility is that the parent developer reminds itself that "liable" in section 1(1) of the Civil Liability (Contribution) Act 1978 means not "held liable" but "responsible in law" [252]. On that basis, it would be open to the parent developer to plead and prove that, had someone (for example, the Owners) claimed a BLO against it, such a claim would have succeeded. That, it could be argued, would be sufficient for a finding — in proceedings brought by the parent developer against the parent contractor — that the parent developer was "liable" to the Owners for the purposes of a claim for a BLO and an accompanying claim for contribution, without the need for a BLO actually to have been ordered against the parent developer. One potential difficulty with this approach is that the remedy of a BLO is discretionary, not relief that follows as a matter of right given certain premises. It might be sought to distinguish the position in other types of proceedings, where if claims are proved there is a right to relief, from the position in the case of a BLO, where the remedy is discretionary. The answer to this might simply be that no more is required than to prove that the discretionary element would have been met, but it is by no means clear.

Another possibility is that the parent developer seeks a BLO *in respect of itself* as part of a claim for a BLO against the parent contractor so that, if successful, the parent developer becomes liable in respect of the original developer's liability to those (including Owners) to whom the original developer was liable. So armed, the parent developer may now seek a BLO against the parent contractor in respect of the original contractor's liability and then seek contribution in respect of their now mutual liability to Owners. The notion that the parent developer seeks a BLO in respect of itself might be thought obscure, and probably amounts to another article in its own right. I say no more about it for now save these two things. First, such a notion is unlikely to have figured much in Parliament's thinking when enacting the BSA. But second, there seems to be nothing on the face of s 130 which (at first blush) prevents it. Whether or not the prospect is a realistic one will need to await a future edition of the Keating Chambers BSA Update. Food for thought.

# Vista Towers commentary

**Alice Sims**

**The Upper Tribunal ("UT") has now issued its long awaited ruling in the Vista Tower case, dismissing in full the appeal brought by the original respondents who had been made subject to RCOs.**

The judgment offers clearer appellate level guidance on how several of the statutory requirements for granting an RCO under Section 124 of the Building Safety Act 2022 (BSA) should be interpreted and applied.

In the decision, Mr Justice Edwin Johnson (President of the Upper Tribunal) considers a number of significant points, including:

(a) Whether an RCO can impose joint and several liability on multiple respondents for the same financial amount.

(b) How the "just and equitable" test should properly be approached.

(c) The threshold or test for a "building safety risk".

(d) The assessment of "reasonableness" in the context of remedial works.

## Background Facts

The RCO was made on the application of the Respondent to the appeal, Grey GR Limited Partnership (Grey). The RCO application related to a building known as Vista Tower (the Building). In 2018 Grey purchased the freehold interest in the Building from the developer, who was the first respondent to the RCO application, Edgewater (Stevenage) Limited (Edgewater). Following the Grenfell Tower Tragedy, investigations revealed significant fire safety defects in the Building's external walls.

Grey sought to recover the cost of remedial works (estimated at over £13m) from Edgewater and various associated corporate entities. By the time Grey's RCO application came to a hearing before the First-tier Tribunal ("FTT") there were some 96 respondents to the RCO application but the FTT determined that the RCO should be made against 76 of them (the Specified Respondents).

By the RCO the Tribunal ordered the Specified Respondents to make payments to Grey in the total sum of £13,262,119 on the basis that they were "associates" of Edgewater's and that it was "just and equitable" to do so. Under the terms of the RCO, the liability of the Specified Respondents to make these payments was declared to be joint and several; with the effect that each one of the Specified Respondents could potentially be liable for the full £13,262,119 if the others failed to pay.

On appeal, the Appellants (the Specified Respondents) argued that the FTT were wrong to make the RCO, either in whole or in part. It was asserted that the RCO should be set aside and, depending upon the outcome of the various grounds of appeal, remade in a reduced form either as an RCO against only one or alternatively two of the Specified Respondents.

## Decision

The Appellants challenged the decision on four primary grounds, three of which were rejected by the Upper Tribunal and one of which was found to be academic but upon which the UT nevertheless gave guidance for the reasons explained below:

### Ground 1

The first ground of appeal was that the FTT erred in making a single RCO pursuant to which a large number of Specified Respondents were made jointly and severally liable. The Appellants argued that s 124 did not give the FTT jurisdiction to make an order of this kind or, in the alternative, if such jurisdiction did exist it would only have been "just and equitable" to order each Specified Respondent to pay a fixed and separate share of the total sum due.

The UT rejected that interpretation, finding instead that the correct construction of s.124 of the BSA was that the FTT had the power to order payment by two or more respondents on a joint and several basis.

The UT approached the construction of s 124 by reference to the legislative purpose and scheme of the Act, which it considered was to protect leaseholders from the full extent of their contractual service charge liabilities.

The language of s 124(1) identified the jurisdiction to make an RCO in relation to "a relevant building", and s 124(2) identified an RCO as "an order requiring a specified body corporate or partnership" to make payments to a specified person. The Appellants relied upon those singular terms to argue that it was not open to the FTT to make orders imposing joint liability on two or more respondents.

The UT, however, held that there was no reason why those singular references could not be read as plural (in accordance with s 6 of the Interpretation Act 1978). That interpretation would accord with the purpose Parliament intended for s 124 of the BSA.

Further, a construction precluding the imposition of joint and several liability would have constrained the FTT to apportion the sums payable under the RCO between Specified Respondents. That would have created an obvious problem with enforcement if one or more of them turned out to be impecunious. The UT concluded that this would frustrate the statutory purpose of s 124 which was to secure for leaseholders the necessary funds for remediation.

### Ground 2

The Appellants argued that the FTT erred in its approach to determining whether it was "just and equitable" to make the RCO against the Specified Respondents and, in doing so, wrongly eroded the principle of separate corporate identity beyond both the purposes and limits authorised by the BSA. In particular, the Appellants said that the FTT:

(a) Failed to recognise that participation in the relevant development, or the receipt of remuneration from that development, was a minimum requirement or "touchstone" for it being "just and equitable" to make an RCO.

(b) Wrongly imposed an evidential burden on respondents to an RCO application to show why it would not be just and equitable to make such an order against them.

(c) Wrongly drew adverse inferences against the respondents on the basis of a supposed failure to discharge that evidential burden.

In rejecting this ground of appeal, the UT confirmed that in determining whether it was "just and equitable" to make an RCO for the purposes of s 124(1), it is not sufficient for the FTT to consider whether the gateway conditions for the making of an RCO under s 124 are satisfied; there has to be something more. However, the breadth of the "just and equitable" discretion is very wide. The factors that can be taken into account in any particular case are not limited by s 124(1) and cannot be exhaustively classified.

Whilst the initial burden of proof lies on an applicant to put forward a case as to why an RCO was just and equitable, it is then for the respondents to present their case in response. However, in this case, the Specified Respondents were not carefully delineated entities but part of an opaque network and structure which had not been explained in detail in the FTT proceedings.

The UT held that it is good practice for associated entities to explain clearly to the FTT the nature and extent of their relationship with the principal.

The obvious purpose of the "association provisions" in s 124(3)(d) was to ensure that a wealthy parent company or other wealthy associated entity could not evade responsibility for meeting the costs of remedying the relevant defects by hiding behind the separate personality of a development company. Contrary to the arguments made by the Appellants, there is no requirement for participation in the relevant development by the associated entity or for the direct or indirect receipts of profits from the development (although those are matters that can be taken into account when deciding what was "just and equitable").

### Ground 3

The FTT concluded that a "building safety risk" for the purposes of s 120 is any risk above a "low" risk under a PAS 9980 assessment, so as to include tolerable risks. The Appellants said that the FTT should instead have directed itself that only an "intolerable" risk under a PAS 9980 assessment could be a "building safety risk".

However, both the FTT and the UT had refused permission to appeal against the decision of the FTT to include the costs of replacing the Type 2 Wall within the RCO. The question of what constituted a "building safety risk" would only have been relevant to an appeal about the Type 2 Wall. Nevertheless, the UT was asked by all the parties to address the issue raised by Ground

3, with a view to giving guidance to other tribunals on the question of what constitutes a "building safety risk".

The UT held that the FTT had wrongly concluded that "a building safety risk" for the purposes of s 120(5) was any risk above a "low" risk in a PAS 9980 assessment. It was difficult to see a justification for imposing any kind of external gradation or limit on the level of risk which is capable of qualifying the reference to "a risk" in the definition of "building safety risk". There is no such qualifying wording in s 120(5) and there is no justification for reading in such words. The reference to "a risk" in s 120(5) referred to any risk, including a low risk.

### Ground 4

The Appellants challenged the reasonableness of the costs incurred in relation to some aspects of the remedial works. This was on the basis that the expert witnesses had agreed that the total removal of insulation from the external wall was not required from a technical perspective.

The UT found, however, that there were a number of factors in the evidence on which the FTT was entitled to rely and did rely in concluding that it was reasonable for Grey to replace the entirety of the insulation, including a FRAEW Report from 2023 which had supported that course of action. This was not a case where the FTT findings were either unexplained or unsupported by any evidence. On the contrary, the findings were both explained and grounded in the evidence which was before the Tribunal.

# Conclusion

In what will likely be seen as another applicant friendly decision, the UT has confirmed that respondents to an RCO application should do all that they can to explain the nature and extent of their relationship to the principal entity (i.e. the developer). Respondents who fail to give full and detailed explanations of their corporate structures are likely to get short shrift from the FTT.

Whilst the joint and several basis of apportionment was considered appropriate in this case, there is some glimmer of hope for respondents as the UT suggested in its concluding remarks that "… joint and several liability is not the starting point in every case where the FTT is persuaded to make an order against multiple respondents." A just outcome could also be apportioned liability, or no liability at all in the case of some respondents.

Applicants will also welcome the decision that "associates" do not necessarily have to have participated in the original development or have made a direct financial gain from it. However, it is suspected that respondents to future RCO applications where those features are absent may have better prospects on this point than did the Specified Respondents, if a detailed case is put forward on the corporate structure and any financial and corporate distance of the "associate" from the development.

The decision also confirms that there is no limit on the level of risk that is capable of amounting to a "building safety risk". This interpretation removes any threshold or grading and means that each case is going to turn on its own facts. Thus PAS 9980 assessments are unlikely to provide any determinative answer.

The UT also confirmed the long-established principle that a reasonable remedial scheme does not necessarily mean the minimum that is technically necessary. Applicants will be allowed a certain degree of leeway in determining whether or not a remedial scheme is reasonable, particularly if they have relied on contemporaneous third-party advice given the competing tensions at play in these kinds of cases.

# Private Law and Building Safety

**In this article, Profs Susan Bright and Ben McFarlane take a broader view and look at some of the difficulties that private law has faced in responding to the building safety crisis.**

## The challenge

To what extent can private law assist victims of the building safety crisis? This question is at the heart of Private Law and Building Safety,[1] a book we co-edited with colleagues from Melbourne Law School, in which academics and practitioners examine the different challenges that the building safety crisis has posed for private law across the globe.

Private law is only one of the mechanisms that can address aspects of building safety. Nonetheless, as shown by the contents of the principal legislative response in the UK, the Building Safety Act 2022, private law certainly has an important role to play.

Prior to the Act, however, there were significant obstacles.



**Ben McFarlane**

**Susan Bright**

[1] Bell, Bright, McFarlane and Robertson (eds), 'Private Law and Building Safety', Hart, 2025.
[2] [2015] 1 WLR 3663.
[3] [2025] UKSC 21 at [271].
[4] Ibid, at [104].

## Property law

The rules of English property law lead to fragmented ownership of multi-occupied property as between freeholder and leaseholders, and this can cause problems when it comes to getting blocks fixed and recovering costs from responsible third parties. Consider, for example, leaseholders in the New Capital Quay development (NCQ) in Greenwich, completed in 2014 with around 1000 flats. Safety problems were discovered there only a few months after the Grenfell Tower fire. Although leaseholders at NCQ benefited from leasehold covenants, the wording of landlord repairing covenants does not usually extend to fixing defective cladding or other inherent defects. Further, if the blocks were remediated, leaseholders would have to pay through the service charges. Additionally, the absence of a collective legal entity of leaseholders makes claims against third parties hard to pursue, as noted below. By contrast, as Fabiana Bettini and Marco Cappelletti show in their chapter of Private Law and Building Safety, Italian condominium law automatically gives unit-owners collective governance and clearer powers to obtain remediation. The leasehold system disadvantages leaseholders.

## Procedural rules

The general problem of the costs, time and stress involved in private law litigation is clearly relevant in this context: leaseholders at the Celestia site in Cardiff have been pursuing claims in relation to defective construction, including fire safety defects, for more than a decade. The fragmentation of ownership also causes procedural problems, by limiting the potential for representative or class actions. In *Rendlesham Estates plc v Barr Ltd,*[2] for example, it was not possible for a representative action to be brought on behalf of all leaseholders, even though their claims stemmed from the same breach of duty. This was because, under the Defective Premises Act 1972 (DPA), each claim depended on showing that the specific apartment was unfit for habitation.

Whatever the substantive rights of a party, procedural difficulties can render those rights ineffective. Following the BSA, the FTT has a crucial role to play, but as Simone Degeling and Jodi Gardner show in their chapter, the FTT's procedural rules are under-developed. The procedural rules need to change to allow for the burden of costs to be shared amongst all those who benefit from a remedy, and to adopt a more expansive view of when representative actions can be brought.

> Private law is only one of the mechanisms that can address aspects of building safety. Nonetheless, as shown by the contents of the principal legislative response in the UK, the Building Safety Act 2022, private law certainly has an important role to play.

## DPA and limitation

It is striking that the BSA retrospectively extended the limitation period under the DPA to as much as 30 years. As Lord Leggatt noted in *URS v BDW* it is "a strong thing to legislate to revive a limitation period that has already expired because doing so is unfair to those who can now once again be sued".[3] The explanatory notes to s 135 of the BSA state that the 30 year period "has been chosen as evidence shows that this period captures all buildings affected by the relevant safety issues". So the limit was set not by balancing the claimant's need to vindicate their rights with the defendant's need to be protected from stale claims, but rather by the aim of ensuring that recourse is available to innocent parties.

The DPA itself was already an extension of private law concepts, combining aspects of contract law and tort law to create a duty that resembles a contractual warranty, but which cannot be excluded by a contrary contractual intention, and is available to parties who did not contract with the defendant but later acquired a right in the relevant premises. It might be thought that in *URS,* given the "presumption" against retrospective legislation, the Supreme Court would have been keen to adopt a narrow interpretation of s 135. However, the court rejected that argument: the scope of s 135 was rather shaped by the "central purpose and policy of the BSA in general and section 135 in particular, [which] was to hold those responsible for buildings safety defects accountable".[4]

## Tort and contract

In *URS*, the Supreme Court noted that a party such as the claimant should not be worse off as a result of having taken matters into its own hands, and paying for remediation work as soon as a risk was known, rather than waiting for a claim to be made against it: the rules should not penalise developers who are responsible by being "proactive in investigating, identifying and remedying building safety defects"[5]. In its consideration of the incentives that the law creates, this point echoes one made by LaForest J in the Canadian Supreme Court case of *Winnipeg Condominium Corporation No 36 v Bird Construction Co Ltd*.[6] The court there agreed with the House of Lords in *D&F Estates Ltd v Church Commissioners for England* that loss suffered by a building owner in repairing a potentially dangerous defect was pure economic loss.[7] The Canadian court nonetheless held that such loss was recoverable in the tort of negligence, even in the absence of a contract or assumption of responsibility, as "[m]aintaining a bar against recoverability for the cost of repair of dangerous defects provides no incentive for plaintiffs to mitigate potential losses and tends to encourage economically inefficient behaviour".[8]

In the book, Erika Chamberlain considers the impact of the decision in Canadian law, whilst Donal Nolan focusses on the English position and cautions against judicial reform of the general principle that there is no claim in the tort of negligence for pure economic loss. It may well be, however, that if judges, as in *URS*, are willing, when interpreting a statute, to recognise the policy aim of providing redress to innocent parties affected by defective buildings, that same aim will influence the development of the common law too.

Certainly, as Jonathan Morgan notes in his chapter, common law rules of contract and tort are often important when applying statutory causes of action, and will be drawn on by the courts if section 38 of the Building Act 1984 is brought into force.

## New powers

It is clear that the BSA has made some radical changes to previous private law patterns of liability. As can be seen in the provisions for associate liability, the BSA is also willing to dispense with some fundamental ideas, such as that of separate corporate personality. In *URS*, Lord Leggatt stated that an aim of the BSA is to ensure that "historical building safety defects are remedied without the leaseholders having to bear the cost".[9] This does not require that those responsible, directly or vicariously, for the defects must pay; only that the leaseholders do not. As David Sawtell notes in his chapter, key questions as to associate liability are left unanswered in the BSA and will have to be determined by the courts. In deciding what orders are "just and equitable", will the courts draw on analogies to better-known areas, such as vicarious

[5] Ibid at [116].
[6] [1995] 1 SCR 85.
[7] [1989] AC 177.
[8] [1995] 1 SCR 85 at [37].
[9] At [300].

liability, or will they depart from traditional private law ideas to increase the redress available to leaseholders and others affected by the building safety crisis? Sawtell suggests that the just and equitable discretion should be exercised to ensure that remediation contribution orders are "only made against parties which have contributed materially to the existence of construction defects or which have had an involvement in the overall enterprise responsible for them". The Court of Appeal's decision in *Triathlon Homes LLP v Stratford Village Development Partnership* did not adopt this approach but preferred to frame liability with reference to the broad policy aims of the BSA to compensate victims and spread losses.[10]

Similarly, even when associate liability is not involved, remediation orders and remediation contribution orders depart from traditional private law in important ways, not least because there is no need for the party subject to the order to have breached a duty owed specifically to the claimant. Such orders can be sought by an "interested party", such as the Fire and Rescue Authority, who can be seen as a form of public enforcer. The orders thus seem to involve a mix of both private law and public law.

# Conclusion

To the eyes of Parliament, at least, private law may just be a means to an end. The policy behind radical moves such as the retrospective extension of limitation periods, and the introduction of associate liability, remediation orders and remediation contribution orders is to make buildings safe as quickly as possible and to spread the costs widely, whilst limiting the burdens on leaseholders. The radical nature of the reforms suggests the extent of private law's prior failings; early indications are that, following the BSA, wherever a court or tribunal has to decide on the rules applying where an individual claimant seeks recourse from a specific defendant, policy objectives are at the fore and traditional private law restraints fall into the background.

[10] [2025] EWCA Civ 846.

# Empire Square, 34 Long Lane, London, SE1 4NH

## LON/00BE/HYI/2023/0013
## LON/00BE/BSB/2024/0602

John McMillan

## Case summary

**The case related to three blocks in central London that were built in around 2004 to 2006 (the "Property"). Residential leaseholders sought a remediation order ("RO") against the freeholder under s 123 of the BSA, and the freeholder sought an RCO against the developer under s 124 of the BSA.**

The applications followed a history of delay in remediating fire safety defects at the Property. The existence of defects had been suspected as long ago as 2011. In 2020, the managing agent of the freeholder applied to the Building Safety Fund for funding to carry out remediation works. On 13 March 2023, the developer entered into the Self-Remediation Terms contract with the Secretary of State for Levelling Up, Housing and Communities (the "SRTs"), which required the developer to remedy fire safety defects but also prevented the managing agent from accessing the Building Safety Fund. The leaseholders made their RO application on 26 June 2023. In October 2023, Southwark Borough Council served notices of improvement in respect of various fire safety defects at the Property. By the date of the hearing (April 2025), the scope of the remedial works had not been agreed, and the developer maintained that its remediation obligations were limited by the SRTs to reducing risks in the Property to a "tolerable" level.

The FTT granted both applications and, in doing so, made a number of novel findings about the scope of ROs and RCOs.

The freeholder contended (relying on the earlier Chocolate Box decision) that ROs should only be granted where it would be 'fair and just' to do so. It submitted that an RO would not be fair and just in circumstances where the developer was responsible for the defects and required to remedy them under the SRTs, and where it would take longer for the freeholder to remedy the defects because it was not a tier 1 contractor or house builder.

The FTT disagreed with the tribunal in Chocolate Box that 'fair and just' is the applicable test for making an RO. The words do not appear in s 123 of the BSA; whereas the phrase "just and equitable" does appear in connection with RCOs in s 124 of the BSA. That suggests the two orders are to be approached in different ways. The discretion to order an RO is "unfettered". The FTT considered that it was necessary to take a "purposive approach" and to ask "what the best answer is in this application, to achieve remediation of the relevant defects in the building for the safety of leaseholders". The FTT issued an RO because, given the history of delay, "making an order is more likely to result in an increase in activity resulting in making the building safe, than not making an order."

The developer in turn suggested that it would not be "just and equitable" to issue an RCO, in circumstances where it was willing and bound to carry out the works in accordance with the SRTs. Given the delay to the remedial works, that

submission was unsurprisingly rejected. More interesting was the FTT's consideration of the differing standards required under the SRTs and the BSA. The SRTs required developers to remediate so that there remained no more than a "tolerable risk". The FTT described the SRTs as a "minimum" approach, whereas the BSA demands more.

The FTT also held that the freeholder was entitled to recover its legal costs as part of the RCO, meaning in this instance its costs of responding to the RO and the costs of applying for the RCO. Such costs fell within the scope of s 124(2) of the BSA permitting recovery of "costs incurred or to be incurred in remedying, or otherwise in connection with, relevant defects." Among other things, the FTT noted that landlords were not permitted to pass on legal costs to qualifying leaseholders under paragraph 9 of Schedule 8 of the BSA. If legal costs were not recoverable as part of an RCO, landlords would have to bear those costs, or they would have to be passed on to non-qualifying leaseholders. The irrecoverability of costs might also have the effect of discouraging Right to Manage companies from seeking RCOs. Those outcomes would not be consistent with the purposes of the BSA.

Finally, the FTT decided that it could and should issue suspended ROs and RCOs (save insofar as the RCO related to costs that had already been incurred). This would give the developer a last opportunity to carry out the works itself, in circumstances where it was likely to be able to do so more quickly and cheaply than the freeholder.

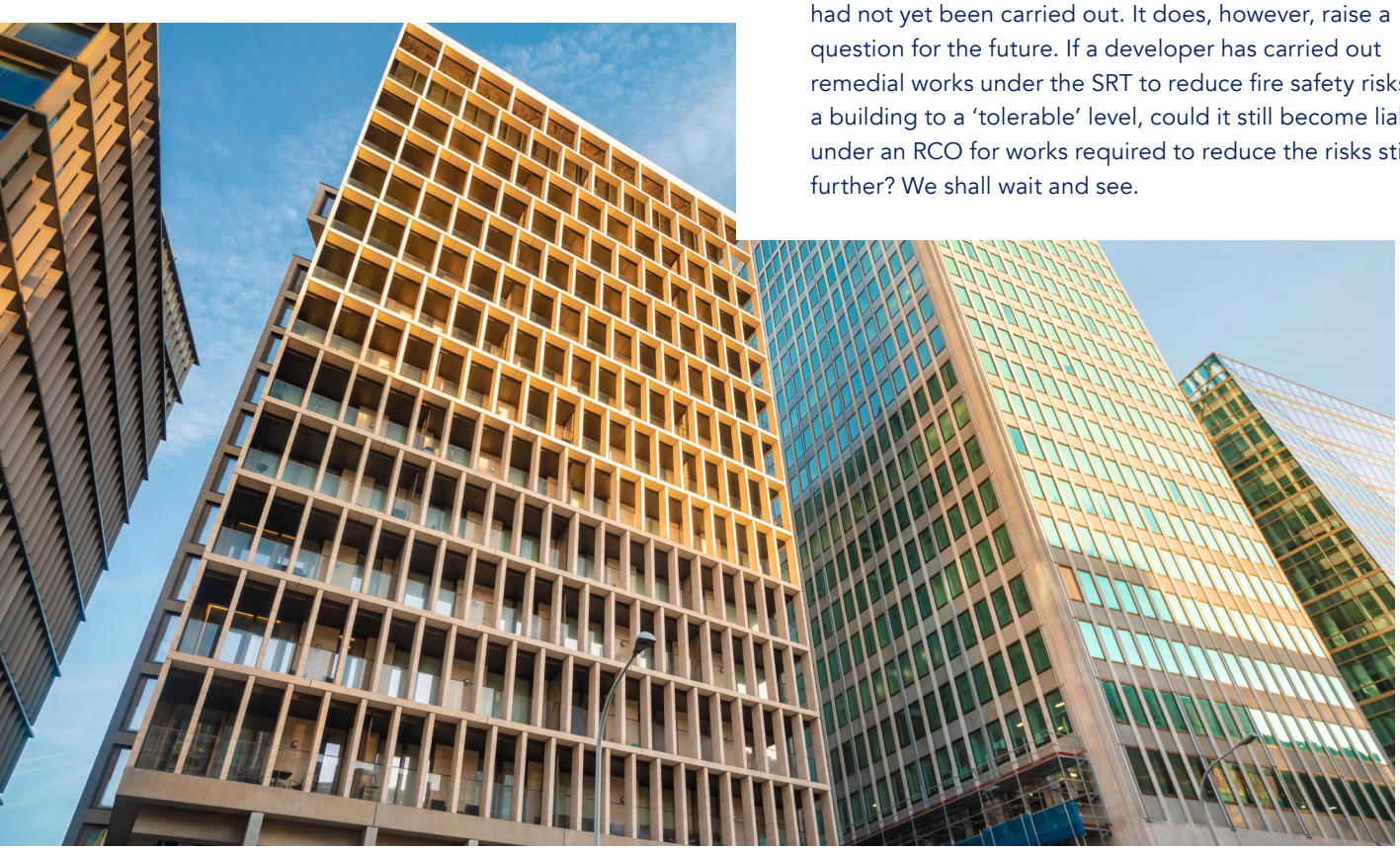
Permission to appeal was refused.

## Commentary

The Empire Square case follows the trend of other decisions of the FTT and the UT in interpreting the FTT's jurisdiction very broadly (i.e. awarding costs where no procedural power to do so existed under the FTT procedural rules; issuing a suspended order despite no language in the BSA contemplating suspension of an order), while at the same time refusing to set clear limits on how the FTT should exercise its discretion to issue orders.

In rejecting any fetters on its discretion to issue ROs, the FTT reflected that lawyers are such people as tend to "prefer a framework that can lead to an 'answer' that can be applied repeatedly". However, that preference does not just arise from the limited nature of lawyers' imaginations – it also reflects most people's idea of what 'law' should aspire to be. It is striking that the FTT did not accept that whether an RO would be 'fair and just' was even a relevant consideration. Instead, the relevant question is to ask what will achieve the remediation of the defects. The answer to that question is almost inevitably going to be making an order.

The FTT acknowledged the inconsistencies between the standard of defect remediation required under the SRTs and the threshold for building safety defects under the BSA. In the Empire Square case, this did not have serious practical consequences because the remedial works had not yet been carried out. It does, however, raise a question for the future. If a developer has carried out remedial works under the SRT to reduce fire safety risks in a building to a 'tolerable' level, could it still become liable under an RCO for works required to reduce the risks still further? We shall wait and see.



# Secretary of State for housing and communities and local government -v- Canary Riverside Estate (FTT, 6 January 2026)

## Case summary

James Frampton

In this Decision, the FTT determined a preliminary issue was to whether the external walls of a development constituted a Relevant Defect within the meaning of section 117 of the BSA. The FTT decided that a building safety risk included *any* risk, howsoever small, to the safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part of it.

### Issue for the FTT

On the preliminary issue hearing, the FTT was only assessing the existence of a relevant defect, i.e. whether there was a building safety risk. The FTT was not assessing the severity of the risk, which would be relevant for a decision on what remedial works were required.

### Approach to relevant defects from previous decisions

The FTT confirmed at §30 the approach from its previous decisions that:

(a) Whether something is a relevant defect is to be assessed at the date of the hearing before the FTT: *Waite v Kedai.*

(b) Whether or not the works or construction complied with the Building Regulations in force at the time of the works was not the relevant question. Instead, the correct question was whether there is a defect that causes a building safety risk in the light of today's knowledge: *Waite and Vista Tower (FTT).*

(c) The burden is on the Applicant to show a prima facie case that there are relevant defects.

## Issue before the FTT

The issue before the FTT was whether *any* risk arising from the spread of fire or building collapse could be a Relevant Defect. Or whether there was a threshold below which a risk could be considered tolerable so was not a Building Safety Risk.

The Respondent argued that all buildings carried some degree of risk of fire spread and so there must be some defects where the risk is so low that they cannot amount to a Relevant Defect. For example, the Respondent said that an external wall assessed to be "low risk" in a PAS 9980 assessment could not be a Relevant Defect.

The Applicant case was that a building safety risk, included any "risk", however small.

## FTT's decision

The FTT decided at §37 that:

(a) A building safety risk included *any* risk, howsoever small, to the safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part of it.

(b) There was no threshold below which a risk could be tolerable and so not constitute a Relevant Defect.

The FTT explained at §38 that in assessing whether there are Relevant Defects, it was no part of its role to assess the degree of the risk, or whether it exceeded that ordinarily present in a building of this nature.

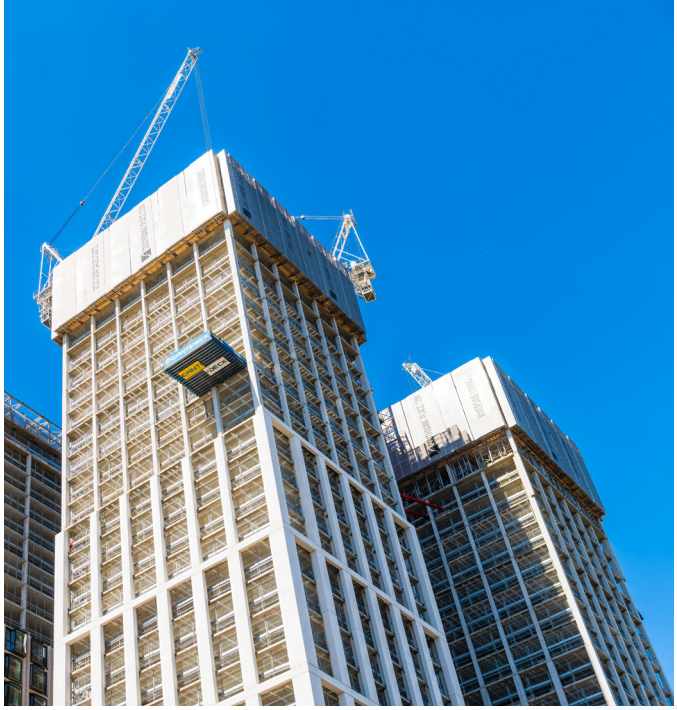
The FTT referred at §39 to 41 to its earlier decision in *Vista Tower* (which the UT has now upheld on appeal, reported elsewhere in this BSA update). In *Vista Tower,* the FTT had said that a medium or tolerable risk in a PAS 9980 assessment could still be a Relevant Defect. The FTT in this case said:

(a) The approach in *Vista Tower* did not mean that a low risk could not be a Relevant Defect.

(b) If in *Vista Tower* the FTT had found that a low risk could not be Relevant Defect, it was incorrect.

On the facts of this case, the experts had agreed that three of the seven external wall types contained building safety risks. The FTT held that three other external wall types contained building safety risks. Interestingly, despite their views on the law focusing on the question of whether there was any risk, the FTT's analysis largely focused on the Building Regulations.

For the final external wall type, the FTT held that there was insufficient evidence to conclude whether there was a building safety risk because both experts agreed that further investigations were necessary.



## Commentary

As a matter of interpretation, the FTT was correct to state that the definition of Relevant Defect in s 120 of the BSA did not refer to a tolerable, low, medium, unreasonable, or unavoidable risk.

However, the threshold it has set of *any* risk is a very low one, as the FTT recognised. Any building may have some risk from the spread of fire or structural collapse, without it being regarded in traditional terms as defective or contrary to the Building Regulations.

Lowering the threshold requirement of a Relevant Defect to such an extent, greatly increases the jurisdiction of the FTT to make ROs and RCOs.

The FTT suggested at §42 and §43 that the answer to this concern was that the finding of a building safety risk only established the jurisdiction to make an RO or RCO. The Tribunal then still had a discretion to make an RO and may decide that it is inappropriate to order remediation if the level of risk is too small.

For an RCO, the "just and equitable" test may provide such a safeguard.

However, there is no such wording in s 123 for an RO and the FTT has in *Empire Square* held that it has an unfettered discretion as to whether to make an RO.

Taken together the combination of an unfettered discretion to make an RO with a jurisdiction to do so where there is any risk, opens up the possibility of remediation being ordered to a building which already complies with the Building Regulations in respect of fire safety and is generally accepted to be satisfactory for occupation. It seems unlikely that this was Parliament's intent.

# Case update
## 1–9 Planetree Path

**Harriet Di Francesco**

### Case summary

The freeholder and leaseholders applied for an RCO under s 124 of the BSA in respect of 1–9 Planetree Path, London, E17 7FW ("the Building"). It was common ground that the threshold requirements for the making of an RCO were satisfied: the applicants were "interested persons"; the first respondent (the developer) was a "specified body corporate"; the second respondent (a property maintenance company) was "associated" with the developer; and there were "relevant defects" within a "relevant building" (although the scope and extent of the defects was in issue).

The respondents did not attend the hearing. They initially defended the claim in their statement of case on the basis that (among other things) it was not just and equitable to make an RCO.

## The battle lines

The respondents contended that it would not be just and equitable to make an RCO against the developer because:

- The developer had not generated any profit from the project and had no assets to speak of.
- It would be more appropriate to make an order against the freeholder because the freeholder had considerably greater assets than the developer and had purchased the freehold at arm's length after the Building was designed and constructed; the principle of caveat emptor should apply.

As against the property maintenance company, the respondents contended:

- The property maintenance company was not involved in or responsible for any defects in the Building.
- Whilst it was accepted that the respondents shared a common director during the relevant period rendering them "associates" for the purposes of the BSA, they were not otherwise linked in any way in terms of their businesses; the developer's sole business was constructing the Building whereas the property maintenance company was involved solely in property maintenance.
- This was not a case where the two companies were effectively conducting business as part of the same corporate group and with the developer operating with minimal assets for the purpose of evading liability; it "just so happens" that the director decided to incorporate the property maintenance company shortly before the Building was complete.

The respondents did not adduce any evidence in support of their assertions.

In response, the applicants submitted that it was just and equitable to make an RCO against both respondents because:

- The developer was responsible for any relevant defects in the Building. Its net asset position was irrelevant.
- The director of both companies during the relevant period was also a majority shareholder in both companies.
- Both respondents are in the property industry.
- The property maintenance company was incorporated following substantial cash receipts by the developer and, whilst the applicants could not go as far as to say that the proceeds from the development could be traced from the developer to the property maintenance company, the applicants submitted that this was *"more than coincidental: R2 is a phoenix company incorporated from the ashes of R1."*

[1] [2025] EWCA Civ 846 at [65].

## The decision

The tribunal made the RCO against both respondents jointly and severally. It was just and equitable to make the RCO against the developer because it was responsible for the relevant defects. The tribunal did not consider it necessary to make any further findings in relation to the developer.

The position was *"less straightforward"* in relation to the property maintenance company [63]. However, the tribunal was satisfied that the connection between the respondents' businesses was sufficient for it to be just and equitable to make the RCO against the property maintenance company also. It was particularly *"significant"* to the tribunal that the respondents' common director (who was the director of the developer at the time of construction) was also a majority shareholder in both companies [65]. There was insufficient evidence to trace the development's proceeds from the developer to the property maintenance company, but this did not affect the tribunal's decision.

## Comment

The decision is consistent with points made in *Triathlon Homes LLP v Stratford Village Development Partnership & Others* [2024] UKFTT 26 (PC) (as upheld by the Court of Appeal [2025] EWCA Civ 846) namely that: (a) primary responsibility for the costs of remediating historical building safety defects rests with the developer; and (b) the fact that the developer has shallower pockets than other parties (including the applicant) is unlikely to be a good or sufficient reason for not making an RCO against it. Indeed, the developer's means did not factor into the tribunal's decision in this case at all.

As for associated bodies corporate, if the identity of the person or persons who ultimately control both bodies is the same, and that person also controlled the original body at the time of construction, it seems likely that, all other things being equal, this will weigh heavily in favour of granting an RCO against the associated company.

Further, this decision shows that associated bodies do not have to carry on precisely the same business as the original body corporate for it to be just and equitable to make an RCO against them. It was enough in this case for both bodies to operate within the "property industry" albeit one as a developer and the other as a property maintenance company.

This was not, therefore, an example of a case contemplated by the Court of Appeal in *Triathlon* in which it would not be just and equitable to grant an RCO because the bodies were engaged in entirely different businesses, or one was a charitable company to which the director had given his time voluntarily.[1] It is therefore yet to be seen how *different* an associated body's business needs to be before it is no longer just and equitable to make an RCO.

# Legislative and other developments

## (1 October 2025 – 6 February 2026)

### 27 January 2026

The Building Safety Regulator became a standalone organisation, as an arm's length body under MHCLG. This was a step towards creating a single construction regulator, as recommended by the Grenfell Tower inquiry.

**www.gov.uk/government/news/bsr-becomes-standalone-body-in-landmark-step-towards-single-construction-regulator**

### 22 December 2025

BRE published a report for MHCLG on Fire Safety: Trigger Thresholds, to assess the current height and other thresholds for guidance in Approved Document B and the prohibition on combustible materials in regulation 7(4) of the Building Regulations 2010.

**www.gov.uk/government/publications/fire-safety-trigger-thresholds**

### Building Safety Remediation: Monthly data release – December 2025 *(published 29 January 2026)*

**5,126 residential buildings 11m or higher** identified with unsafe cladding (a decrease from previous months due to a change in data collection and categorisation of social sector buildings)

**2,168 (53%)**
have started or completed remediation works

**1,475 (36%)**
have completed remediation works

**www.gov.uk/government/publications/building-safety-remediation-monthly-data-release-december-2025/building-safety-remediation-monthly-data-release-december-2025**

# Building Safety Act A to 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 Towers) (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 (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 Towers) (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 unambiguous, 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].

### Corporate Veil

*Grey GR Limited Partnership v Edgewater (Stevenage) Limited & Ors (Vista Towers)* (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 Towers)* (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 Towers)* (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].

# 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 Towers) (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 Towers)* (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).

# J

### 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.

### Joint and several liability (RCO)

*Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Towers) (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].

### 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 Towers)* (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 Towers) (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

### 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 Towers)* (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].

### 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].

### 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) (CAN/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].

### Responsible Actors Scheme

*R (on the application of Rydon Group Holdings Limited) v Secretary of State for Levelling Up Housing and Communities* [2025] 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] UKTU 0135 (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].

## 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].

## 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 products (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 Towers) (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 Towers) (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].

# Contributors to this update


**Simon Hargreaves KC**
**E:** shargreaves@keatingchambers.com

**Vince Moran KC**
**E:** vmoran@keatingchambers.com

**Alice Sims**
**E:** asims@keatingchambers.com

**John McMillan**
**E:** jmcmillan@keatingchambers.com

**Jennie Wild**
**E:** jwild@keatingchambers.com

**James Frampton**
**E:** jframpton@keatingchambers.com

**Harriet Di Francesco**
**E:** hdifrancesco@keatingchambers.com



*With special thanks to guest contributors: Professor Susan Bright and Professor Ben McFarlane of Oxford University*


KEATING CHAMBERS