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EDITOR'S LETTER

I am delighted to write an introduction to the BSA Special Edition of Property Law UK. First of all, a massive thank you to all the contributors, sponsors and of course all the team at IQ Legal Training Limited and Helen Waite in particular for making this special edition possible.

The BSA continues to generate problems and clarity awaits with regard to some existing issues as well as new problems arising as more and more transactional property lawyers, property professionals and property litigators pour over the Act, the Regulations, and the Government guidance.

Special thanks to our main sponsors Stewart Title and Dye and Durham and to our friends at Tanfield Chambers, Kings Chambers and 39 Essex Chambers for their valuable contributions. All play a significant role in assisting the legal profession in property law matters as well as sponsoring or contributing to Property Law UK our electronic property update for busy transactional property lawyers and litigators. The wealth of knowledge brought by all to this monthly publication never ceases to amaze me.

In this special edition, Hugh Rowan, Barrister, and Sam Madge-Wyld, Barrister, Tanfield Chambers, explore the application of the BSA 2022 to mixed-use buildings, concentrating on defining Higher-Risk Buildings (HRBs) and excluded properties.

Ella Grodzinski, Barrister at 39 Essex Chambers, examines the recent legal proceedings in the case of Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point [2023] UKUT 271 (LC), highlighting its relevance to disputes involving high-risk properties, with a particular focus on residential service charges and the implications under the Building Safety Act 2022.

Andrew Butler KC, Tanfield Chambers, delves into the extension of time limits for building safety claims under Section 135 of the Building Safety Act 2022, covering issues such as defective premises and building regulations in his article entitled 'The Limitation Game.'

Robert Bowker, Barrister, Tanfield Chambers, examines whether the FTT's recent decision in the Vista Tower case (CAM/26UH/HYI/2022/004) demonstrates a discernible pattern of decision-making following its first remediation order.

Wilson Horne, Barrister, Kings Chambers, considers claims under the Defective Premises Act 1972

("DPA") in the light of the Building Safety Act 2024 ("BSA"), with particular reference to BDW Trading Ltd v URS Corp Ltd [2023] EWCA Civ 772.

Timothy Polli KC and Katie Gray, Barrister, Tanfield Chambers, delve into Remediation Contribution Orders (RCOs) established by the Building Safety Act 2022 and their article explores how the jurisdiction to make an RCO is likely to be exercised following the recent decision of the Upper Tribunal in Triathlon Homes LLP v Stratford Village Development Partnership [2024] UKFTT 26 (PC).

Also, for anyone who missed my talk with Andrew Butler KC on Property Law UK's 'Case Chasers' podcast where we explored The BSA ahead of the release of 'Building Safety Act 2022: A guide for property lawyers' from The Law Society, a publication for which we served as general editors, you can find a transcript towards the end of the edition.

I have taken a detailed look into the Building Safety Act 2022, addressing its challenges in reception due to drafting issues and conveying the Law Society's guidance on critical aspects like funding remediation, solicitor criteria, and safeguarding leaseholders, with an emphasis on the guidance's valuable role in aiding firms navigating Building Safety Act matters. In addition, I have considered the important case of Lehner v Lant Street Management Company Ltd [2024] UKUT 135 (LC) (17 May 2024), which provides some useful guidance on the application of Schedule 8 of the BSA 2022. Finally, and with kind permission from Barristers Richard Alford, Dan Dovar, and Ceri Edmonds of Tanfield Chambers, I have penned an article based on their recent enlightening presentation: 'The Accountables: Duties, Higher-Risk Buildings, and Principal Accountable Persons.'

I would like to take this opportunity to congratulate Andrew Butler KC who regularly contributes to Property Law UK on his new role as joint Head of Chambers at Tanfield. I have had the pleasure of working with Andrew on the BSA flowcharts which remain ever popular and the BSA guide published by the Law Society which has been extremely well received.

I hope that you will find this free edition of Property Law UK useful. We have also included the latest vacancies from The Clarke Edwards Partnership, a list of recent publications from the Law Society, and a calendar of upcoming events. Subscription details for our monthly publication can be found here. If you have content suggestions, or if you or someone you know would like to contribute, please contact me at ian@iqlegaltraining.com or connect with me on LinkedIn here.

Best wishes,

Managing Editor

The Building Safety Act

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BSA 2022: The Law Society Guidance

Ian Quayle
Managing Editor, Property Law UK and CEO. IQ Legal Training

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BUILDING SAFETY ACT

Ian Quayle delves into the Building Safety Act 2022, addressing its challenges in reception due to drafting issues and conveying the Law Society's guidance on critical aspects like funding remediation, solicitor criteria, and safeguarding leaseholders, with an emphasis on the guidance's valuable role in aiding firms navigating Building Safety Act matters.

The Building Safety Act 2022 became law on the 28th of June 2022 with the aim of preventing any repetition of the Grenfell disaster and or releasing leaseholders from the potential or actual burden of service charge for remediation work relating to fire risk or the risk of collapse.

The six parts of the Act, five sets of regulations and counting, and over 400 pages of Government Guidance have not been particularly well received for a number of reasons due to combinations of bad drafting, confusing terminology, and lack of clarity. The result has been unfortunate with over fifty percent of

conveyancers being unwilling to act in conveyancing transactions which could be affected by the Building Safety Act.

It is against this background that the Law Society Guidance on the Act has been long awaited. On the 15th of February, the Guidance was launched and although it will take a while to properly digest there are some important takeaway points that are worthy of examination.

The Guidance is conveniently divided into a number of sections and in this article, I would like to focus on those sections of the Guidance that deal with:

- **Who pays to remediate tall buildings affected by fire safety issues?**

The Guidance emphasises that the major developers have agreed to voluntarily rectify historic safety defects or have or will enter into developer remediation contracts and perhaps optimistically predicts that the number of properties within the scope of the BSA will decrease although there is an admission that historic safety defects may occur in the future.

The important takeaway from this is when acting for a seller or a buyer in connection with a property in a relevant building to establish the status of any remediation contract. This can be done by checking information in the LPE1 and the TA7 to see what has been volunteered or by raising additional enquiries.

The Guidance emphasises the need to draw a distinction between cladding and non-cladding remediation with the former benefiting from the Cladding Safety Scheme and Building Safety Fund and leaseholders with qualifying leases within relevant buildings being protected from cladding remediation costs.

On the other hand, leaseholders with qualifying leases in relevant buildings are afforded additional protection by Schedule 8 of the BSA 2022 in connection with non-cladding remediation costs.

Remember if a building is a relevant building

where remediation work is required for building safety work undertaken by the landlord/developer or an associate of the landlord/developer, then the remediation costs cannot be transmitted to leaseholders whether or not they hold qualifying leases.

- **The criteria for solicitors working on BSA 2022 matters**

Unfortunately, the Guidance does not provide a road map or a checklist to enable practitioners to navigate sales or purchases of BSA related leasehold properties in safety.

Instead, it confirms what practitioners have been encouraged to do including:

a, Develop policies and establishing criteria for accepting instructions in these matters if they are not already in place.
b, Revising the retainer, information to clients and reports on title.
c, Ensuring experienced staff have conduct of BSA related matters and that files are subject to additional risk assessment and supervision.
d, Referring clients to government consumer-facing material which the Guide highlights.
e, Reserving the right to cease to act in circumstances where you

cannot comply with lender requirements.

f, Limiting the scope of the retainer. It might be useful to explain to clients the risks or exposure they face as a result of the retainer being limited as the Guidance states explain clearly to your clients why you cannot advise and what this means for them.

- **Assessing whether buildings are in scope**

The Guidance highlights that leaseholders holding qualifying leases within relevant buildings are protected by Schedule 8.

It distinguishes higher risk buildings and recommends that practitioners search the register for higher risk buildings which is now accessible. The Guidance also touches on the role of accountable persons and principal accountable persons in providing building information.

- **Advising the parties to a residential conveyancing transaction**

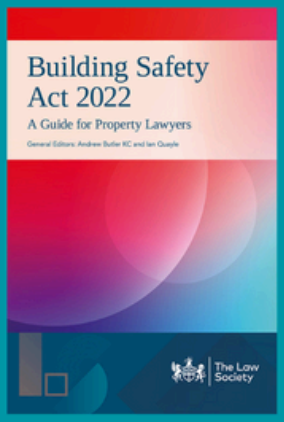
When acting for buyers qualifying leaseholders are described as benefiting from caps on leaseholder contributions for service charge costs relating to remediation costs for relevant defect. Non-qualifying leaseholders on the other hand have far less protection as we have seen.

The Guidance explains that buyers need to be aware that building works create the possibility of larger future service charges.

Leaseholders should be directed to government guidance.

Leaseholder qualification is explained as is the need for the seller to produce a leaseholder deed of certificate and the landlord is required to produce a landlord certificate.

A leaseholder deed of certificate must be produced where a landlord demands it, and a landlord certificate is required when a leaseholder notifies the landlord of their intention to sell or requests the production of a certificate. The Guidance highlights that it is important to



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identify when a seller has been asked to provide a leaseholder deed of certificate or whether the seller volunteered it.

A landlord certificate is described in the Guidance as being used to pass on historical safety remediation costs and confirms whether the landlord met the contribution condition as at the 14.02.22 and information about remediation costs the landlord has incurred.

A reminder is provided as to when a landlord certificate is required to be produced along with clarification that the landlord cannot recover historical remediation costs where a landlord certificate is required but has not been produced within four weeks.

A landlord can in the future produce a new certificate and serve it on leaseholders where there is a need for the recovery of remediation costs within service charge for remediation of relevant defects.

- **Leaseholder own blocks**

The Guidance provides some assistance in highlighting that some leaseholders may be excluded from protection from cladding remediation costs, for example:

- those in leaseholder-owned blocks
- those in affected buildings under 11 metres in height

Be aware that a building that is not currently a relevant building could be subject to airspace development and could become a relevant building and or a higher risk building, so a client buying a property in such a building should be warned of the fact the building could later fall within the scope of the Act. Any development of the building should mean that compliance with current building

regulations and the supervision of the Building Safety Regulator with regard to potential higher risk buildings should mean future remediation work is unlikely, but where a building becomes a higher risk building any existing lease may become subject to implied terms and additional service charge costs applicable to higher risk buildings.

Helpfully the Guidance does include building safety scenarios and answers to frequently asked questions.

In summary, the Guidance is useful and provides direction for those firms already undertaking this work and may encourage other firms to act when in the past they have been reluctant to do so. I would encourage everyone to read it as well as keeping an eye out for decisions of the FTT and UT on BSA related matters and being aware of the possibility of further Regulations.

The 1st edition of the Building Safety Act 2022 - A guide for property lawyers, which I co-edited with Andrew Butler KC of Tanfield Chambers, is available from The Law Society by clicking here.

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- BSA Report On Title Wording
- Information for Conveyancers on TA 7 Forms

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Resident (and Commercial) Evil(s): Mixed-Use Buildings and HRBs

Hugh Rowan, Barrister, and Sam Madge-Wyld, Barrister, Tanfield Chambers.

tanfieldchambers.co.uk

BSA SPECIAL FEATURE

Hugh Rowan, Barrister, and Sam Madge-Wyld explore the application of the BSA 2022 to mixed-use buildings, concentrating on defining Higher-Risk Buildings (HRBs) and excluded properties. They tackle the complexities of identifying HRBs, including height, occupancy, and exclusions. The discussion also addresses the differentiation between "buildings" and "independent sections" within mixed-use structures, using examples to illustrate. Their analysis highlights the challenges of interpreting and advising on regulations for mixed-use buildings under the Building Safety Act.

Introduction

As with many areas of Property Litigation, the Building Safety Act 2022 (the "Act") applies only in part to properties that are more properly considered "commercial". The protections of the Act were largely designed to benefit residential leaseholders, and so commercial leaseholders in many cases will lose out. However, there are some interesting borderline cases, some of which will be explored in this article.

Higher Risk Mixed-Use Buildings

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations SI 275/2023 (the "275 Regs") defines a 'Higher-Risk Building' ("HRB") as being: at least 18 metres in height or has at least 7 storeys; containing at least 2 residential units (or at least 1 in Wales); and is not an 'excluded' building. There are some other qualifications that also affect matters such as occupancy.

In principle therefore, any building with at least two residential units if it meets the height/exclusion requirements could be an HRB falling within the protections and regulation of the Act. Hence, in theory the Act can apply to mixed-use buildings.

Excluded Buildings

Regs. 6 & 7 of the 275 Regs exclude the application of the Act to certain defined properties. The 275 Regs as originally enacted provided somewhat vague descriptions which were confused and confusing in their application, however as of 16 January 2024[1], the list of excluded properties has now been refined and language tightened.

A building will be excluded from the definition of an HRB (and thereby largely excluded from the Act) if it consists entirely of: a secure residential institution (e.g. prison or young offenders institution); a hotel; military barracks; living accommodation provided by the Ministry of Defence; or, living accommodation for His Majesty's forces

or any visiting force etc. A building will also be 'excluded' if it is used for residential and non-residential purposes, and all the living accommodation is provided by the Ministry of Defence.[2]

Of particular note, the amended 275 Regs now require the building to consist "entirely" of the above, while it previously only required the building to "contain" e.g. accommodation provided by the Ministry of Defence.

However, this does raise some interesting points to be determined by the Courts or further regulations. In particular if there are individual units that fall outside the relevant definition. For example: a hotel may contain a night manager's flat; a military barracks may contain civilian accommodation for service providers; a young offender's institution may contain staff units for overnight accommodation. It is not, at present, clear what the Courts will make of such borderline cases, however given the draconian regime of the Act it may well have important consequences.

The guidance published alongside the Act[3] lists a number of examples of borderline cases that are not excluded, including: a Shopping centre with at least two residential units; University student accommodation; Boarding accommodation in schools; Supported and sheltered accommodation (e.g., domestic abuse refuges, children's homes); and supported or sheltered homes for older people and those with additional care needs.

Independent Sections

Another important feature that affects mixed-use buildings is the Act/275 Regs' construct of "buildings" vs "independent sections". Under Reg. 4, a "building" includes: a structure that is not attached to any other; two or more structures that are attached; or an independent section of a (set of) structures.[4]

An "independent section" can therefore be a "building" for the purposes of the Act. This begs the question of what constitutes an "independent section." These are a part of a structure that as its own access, other than emergency access, for

people to enter and exit the "wider building;" and, either has no access to any other section, or only has access to another section which does not contain a residential unit.[5]

Worked Examples

Two examples will serve to illustrate the complexities that these definitions throw up. First, take Fig. 1: a seven-storey building. On the First Floor there is a supermarket with no access to the rest of the building. The second and third floor comprise offices, while the fourth to seventh floors comprises a number of residential flats. There is a separate archway leading to the entrance for the offices and flats. Is this an HRB?

Fig 1 (Image courtesy of Tanfield Chambers)

The first question looking at the diagram is: does the basement make a difference? The simple answer is no, as stories below ground level are not included.[6] There are two "independent sections" here. Where two or more structures that are attached contains one or more independent sections, each independent section is a "building." The first floor is one "building" and the second to seventh floors constitute another "building." Note that sharing an "archway" is enough to make all the second to seventh floors one independent section.[7]

Nevertheless, our building containing the residential units is only 6 stories not 7, meaning it would not be an HRB. However, this position is

expressly envisaged by the 275 Regs, which provide that where an independent section is a "building" under the regulations, then any storey directly beneath the building which is not below ground level is to be counted in determining the number of storeys the building has.[8] Therefore, this is an HRB.

Fig. 2 shows a similar property but this time the office units are on the seventh floor. Assuming that these offices have their own access (other than emergency access), then dispute having more residential stories than Fig. 1, Fig. 2 is not an HRB. There are only six relevant stories, and the saving regulation discussed in the previous paragraph only applies to storeys beneath the section in question.

Fig 2 (Image courtesy of Tanfield Chambers)

These examples are intended to demonstrate the complexity in determining what are and what are not HRBs. There are a number of amorphous concepts still present in the current version of the 275 Regs, for example: what exactly is meant or intended by a shared "doorway, archway or similar opening".[9] Extreme caution will need to be taken when advising on these matters, not least as the 275 Regs are prone to regular amendments and updates.

References

1 The Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2024 (S.I. 2024/41).

2 Reg. 7(2) of the 275 Regs (as amended).

3 The Explanatory Notes: Building Safety Act 2022 (Ch. 30), 28 April 2022.

4 Reg 4(1)-(4) of the 275 Regs (as amended).

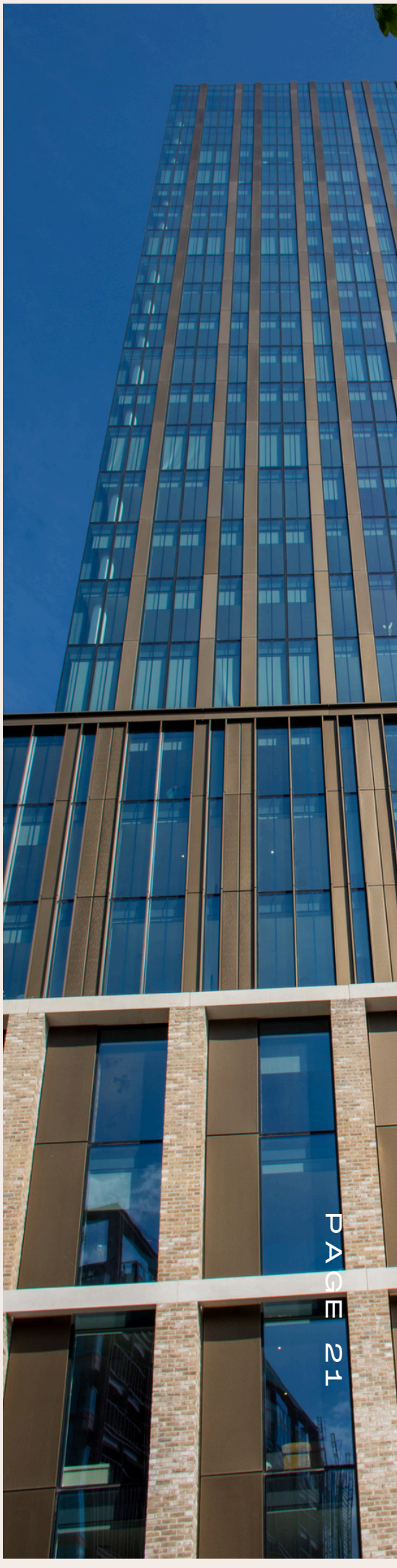
5 Reg 4(6) of the 275 Regs (as amended).

6 Reg. 6(1)(a) of the 275 Regs (as amended).

7 Reg. 4(7) of the 275 Regs (as amended).

8 Reg. 6(2) of the 275 Regs (as amended).

9 Reg. 4(7) of the 275 Regs (as amended).



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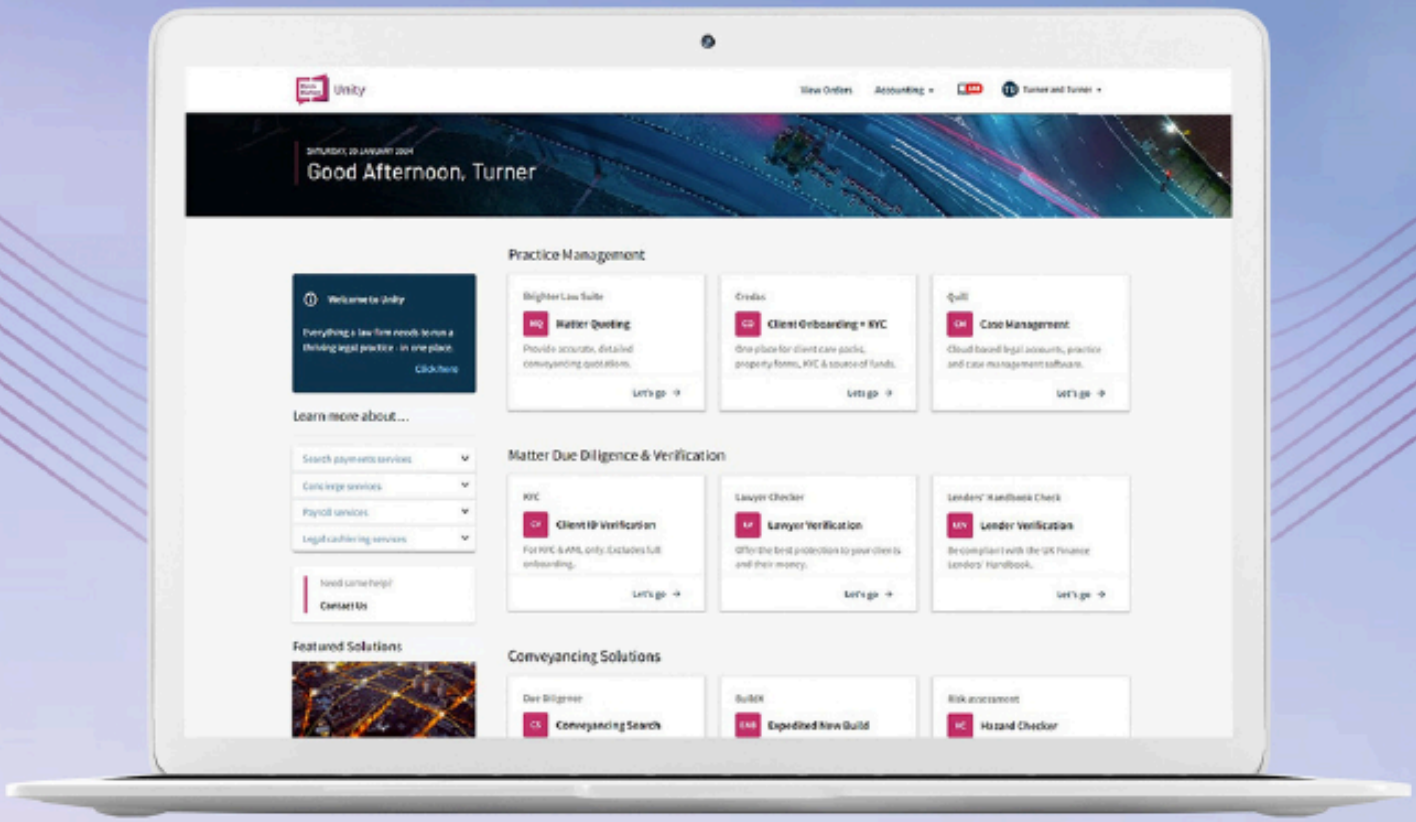

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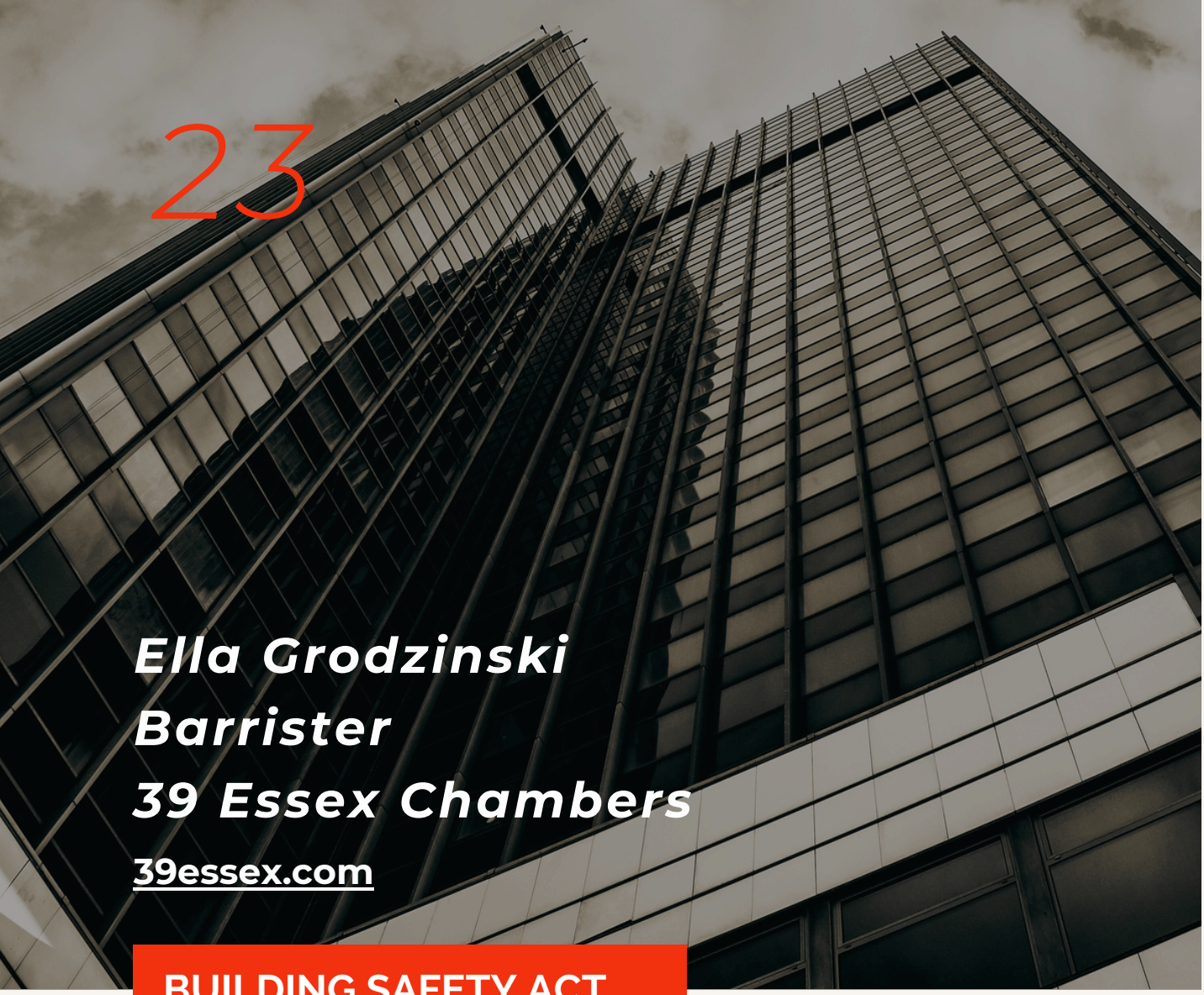

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BUILDING SAFETY ACT

BSA 2022 and the Recoverability of Legal Costs

Ella Grodzinski examines the recent legal proceedings in the case of Adriatic Land 5 Limited v Leaseholders at Hippersley Point, highlighting its relevance to disputes involving high-risk properties, with a particular focus on residential service charges and the implications under the Building Safety Act 2022.

Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point [2023] UKUT 271 (LC). BAILII link.

Facts and background

The Applicant was the registered freeholder of Hippersley Point. The 32 residential flats within the relevant building were let on long leases, which contained provisions for the payment of a service charge. The Respondents were the long leasehold owners of those flats.

In 2020, investigations revealed fire risks arising from the external construction of the building, requiring substantial remedial works ("the works"). The works were qualifying works to which s.20 of the Landlord and Tenant Act 1985 ("the 1985 Act") applied. Unless the consultation requirements referred to in s.20 were complied with or dispensed with by order of the FTT, the costs for the works that could be recovered through the Service Charge would be limited to £250 [22].

The Appellant applied for the consultation requirement to be dispensed with under s.20ZA(1) of the 1985 Act ("the Dispensation Application") [26]. The FTT's original decision granted dispensation from the consultation requirements, on an unconditional basis. However, the FTT also made an order under s.20C of the 1985 Act, preventing the Appellant from recovering the costs of making the dispensation application ("the Dispensation Costs") from the Respondents by the service charge [27-28].

Following the Appellant's application for review, the FTT revised the original decision ("the review decision"). The s.20C Order was revoked, but it was made a condition of the grant of dispensation that the Appellant would not be entitled to recover the Dispensation Costs from the Respondents ("the Costs Condition").

The UT Deputy President granted the Appellant permission to appeal the review decision [30-32].

Issues

There were two issues to be decided:

1. Whether the FTT had erred by imposing the Costs Condition as a condition of the grant of dispensation from the consultation

requirements. If so –

2. Whether the Dispensation Costs were covered by paragraph 9 of Schedule 8 to the Building Safety Act 2022 ("the 2022 Act"), so that no service charge was payable in respect of such costs by any leaseholder whose lease was a qualifying lease within the meaning of s.119 of the 2022 Act.

The paragraph 9 issue was identified by the Deputy President when granting permission to appeal, rather than by the parties. The Appellant argued that the Dispensation Costs were not within the scope of paragraph 9, and in any event were incurred prior to paragraph 9 coming into force, therefore they were not affected. [37].

Decision

The costs condition

The Chamber President, Mr Justice Edwin Johnson, held that the FTT's imposition of the Costs Condition could not be upheld.

Procedurally, the UT held that by replacing the s.20C order with a Costs

Condition "the FTT made the same procedural error... as they had made and had acknowledged that they had made in relation to their decision to make the Section 20C Order; ... making the decision of their own initiative, without hearing submissions from the parties" [44-46]. It had not been open to the FTT to do so.

Substantively, the UT held that while the FTT could impose a costs condition if it determined that a consultation dispensation would be unreasonable without one, this must be a determination made on the facts of the case. A costs condition may not be appropriate in every dispensation case. The focus must be on prejudice suffered by leaseholders due to the failure to consult. In the present case, the FTT failed to properly apply their findings that the Respondents had failed to establish any prejudice, and the Appellant had been acting responsibly by proceeding to make the building safe as quickly as possible [76-84]. Accordingly, the FTT had erred in law by imposing the Costs Condition.

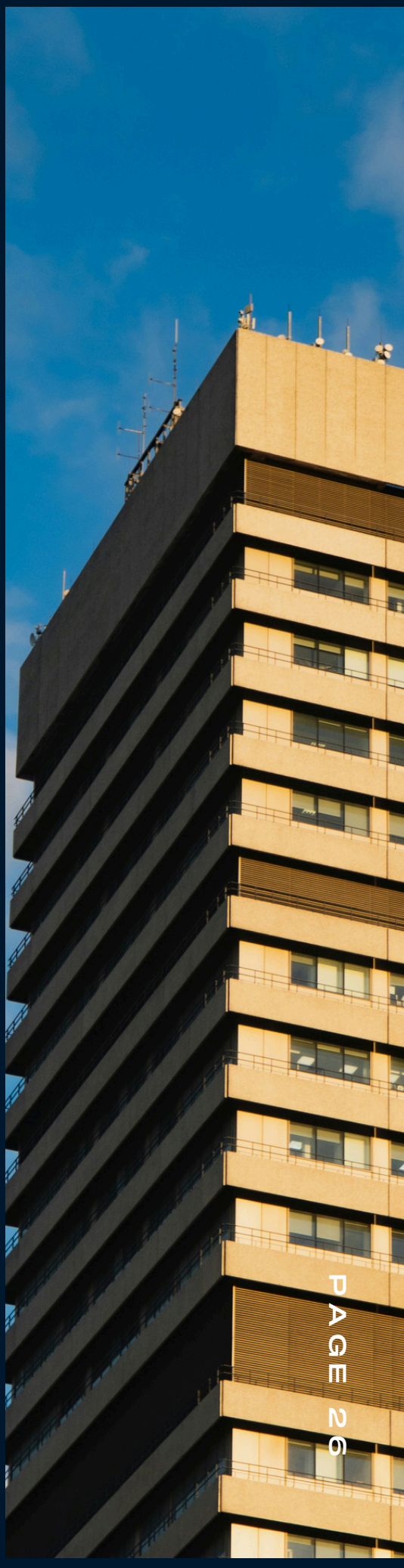
Paragraph 9 of Schedule 8 of the 2022 Act

Paragraph 9(1) provided that "No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect." [2]

On the construction of paragraph 9, the UT held that the words 'relating to' were "very wide. All that is required is a relationship between the services and the liability or potential liability of the relevant person incurred as a result of the relevant defect." Accordingly, Johnson J "[found] it difficult to see how such a relationship can be said not to exist between the costs of a dispensation application made by a landlord, in relation to works required to remedy a relevant defect, and the liability of that landlord to remedy the relevant defect" [112]. The UT concluded that the Dispensation Costs were capable of falling within the terms of paragraph 9 [118].

On applicability, the question was whether paragraph 9 could apply to the costs of services incurred prior to paragraph 9 coming into force on 28th June 2022, i.e. whether paragraph 9 has retrospective effect.

There is a general proposition that legislation is not intended to operate retrospectively, in the interests of fairness and legal certainty [123]. Paragraph 9 is not



expressly retrospective. However, it is not framed by reference to the incurring of the costs of the relevant services. Rather, as Johnson J noted, “Paragraph 9(1) is drafted on the basis that no service charge is payable under a qualifying lease in respect of Qualifying Services. ... If the relevant services qualify as services "relating to" to the relevant liability or potential liability of any person incurred as a result of a relevant defect, ... I find it difficult to see why it matters when the costs of the relevant services were incurred” [151]. Johnson J held that the legislative intention behind Schedule 8 was that certain categories of expenditure incurred in relation to relevant defects should no longer be recoverable by service charge. Accordingly, in the context of the surrounding provisions, the conclusion that paragraph 9 could be capable of applying to costs incurred before Schedule 8 came into force was unsurprising. In summary, “the words "No service charge is payable" mean what they say.... The new regime applies, regardless of when the costs of the Qualifying Service were actually incurred, and regardless of when the relevant service charge became payable” [165].

Accordingly, recovery of the Dispensation Costs was not available by service charge from those Respondents who held qualifying leases [171].

Since the FTT's reviewed decision was taken after paragraph 9 came into force, the failure to take the effect of paragraph 9 into account was an error of law [173].

Comment

Paragraph 9 should provide greater certainty than the availability of a discretionary costs condition was capable of doing. Its effect is sweeping, but this appears to be intentional and is "simply a reflection of life in the new world of the 2022 Act" [158].

References

[1] As set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987).
[2] The case proceeded on the assumption that at least some of the leases held by the Respondents were qualifying leases as defined by s.119 of the 2022 Act, such that if para 9 applied, it was capable of affecting the ability of the Appellant to recover the Dispensation Costs by the service charge [96].

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BUILDING SAFETY ACT 2022, 1ST EDITION

Building Safety Act 2022, A guide for property lawyers, 1st edition.

- **General editors: Andrew Butler KC and Ian Quayle**
- **Published by: The Law Society**
- **Publication: March 2024**

The book is available to order online here.

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BSA SPECIAL FEATURE

The Limitation Game

Andrew Butler delves into the extension of time limits for building safety claims under Section 135 of the Building Safety Act 2022, covering issues like defective premises and building regulations. He highlights the retrospective nature of the law, enabling previously barred claims.

Legal ramifications, including potential human rights challenges regarding fair trials, are explored. Andrew's piece also addresses how defendants might raise concerns about revived claims and examines wider impacts on legal proceedings and property rights.

1. One of the most eye-catching and publicised provisions in the Building Safety Act 2022 **("BSA 2022")** is s.135, which introduces new time limits for various kinds of claim concerned with building safety.

2. It does this by inserting a new s.4B into the Limitation Act 1980 **("LA 1980")**. The full text of s.135 (with the new s.4B appearing in ss.135(1)) is set out at the end of this paper.

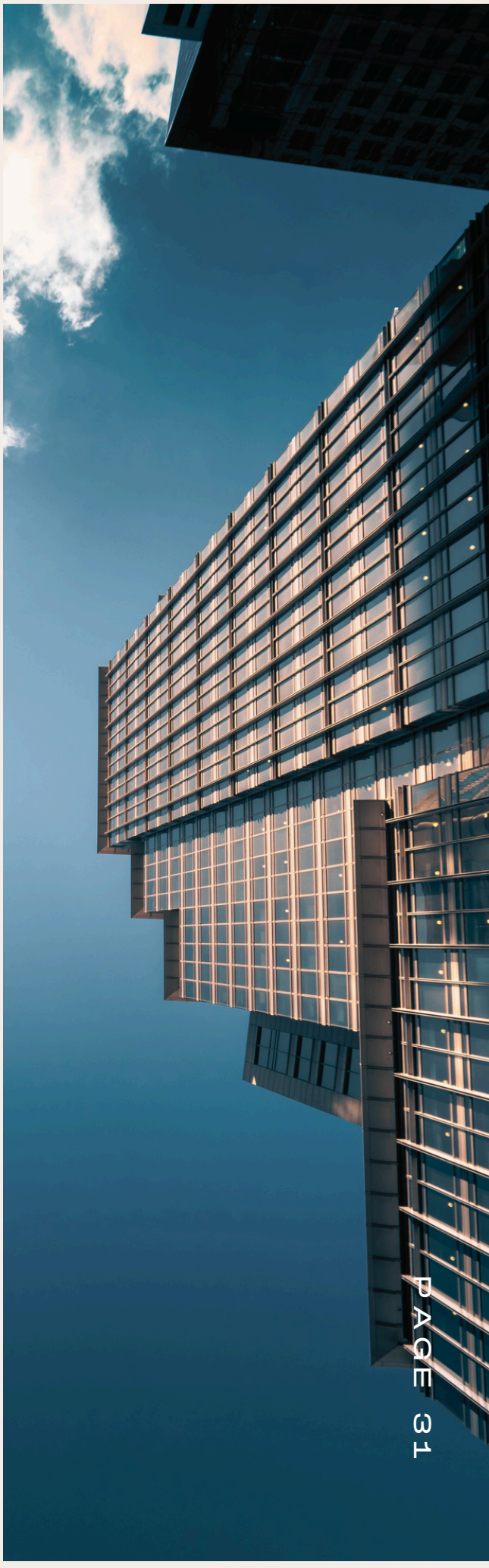
3. The new s.4B is concerned with actions under ss.1 or 2A of the Defective Premises Act 1972 **("DPA 1972")**, and s.38 Building Act 1984. These are, respectively (and in simplified terms), actions against people who build homes (or get others to build them), actions against those who undertake work on homes (or get others to undertake it), and actions for breach of building regulations in respect of buildings containing homes.

4. The effect of s.4B is to replace the 6-year limitation period provided for by s.2 LA 1980 in respect of such actions with a 15-year limitation period.

5. In respect of actions under s.1 DPA 1972, the new s.4B goes even further. It provides that if a person became entitled, before the coming into force of the BSA 2022, to bring an action under s.1 against any other person, the limitation period is to be 30 years. The BSA 2022 came into force on 22 June 2022.

6. s.135 also provides by s.135(3) that the new s.4B is to be treated "as having always been in force". In other words, it is retrospective.

7. s.135, and in particular s.135(3), was the focus of attention in URS Corp Ltd. -v- BDW Trading Ltd. [2023] PNLR 28, a decision of the Court of Appeal. URS was an appeal about, inter alia, limitation under the DPA 1972. A developer discovered that buildings it had developed and sold had been negligently constructed, and brought a claim against the structural engineer it alleged was responsible. The principal issue was whether the developer, having sold the buildings for full value without knowledge of the defects, had suffered any



loss. Having survived an application to strike-out, the developer obtained permission to amend its claim so as to include claims under the DPA, taking advantage of the extended limitation periods available under the BSA, which had not come into force at the date of issue. The engineer objected to the proposed amendments, arguing inter alia that s.135(3) it could not "change the rules of the game" in relation to litigation which had already been commenced. Rejecting that argument, Coulson LJ described s.135(3) as "a clear and widely drawn provision plainly designed to achieve retrospectivity" (para.166).

8. URS has been cited in at least two further cases:

8.1. in Adriatic Land 5 Ltd. -v- Leaseholders at Hippersley Point [2023] UKUT 271 (LC), the absence from para.9 of Schedule 8 of any provision corresponding to s.135(3) was cited in support of the submission that para.9 did not have retrospective effect. The Court accepted that in the absence of such words the provision was not intended to apply retrospectively. But it side-stepped this argument by holding that the focus in para.9 was on when the relevant costs were payable, not when the charges which gave rise to them were incurred. If service charges would have become payable after para.9 was enacted (even if pursuant to services performed before that time), then the leaseholder was relieved of the obligation to pay. See paras.119-170 of that decision;

8.2. in Triathlon Homes -v- Stratford

Village Development and others [2024] UKFTT 26 (PC) it was similarly argued that the contrast between s.135(3) and s.124(2) (in the context of Remediation Contribution Orders) justified the conclusion that the latter were not intended to be capable of being made retrospectively. Again, the argument failed (or was side-stepped), the Tribunal holding that the words of the sub-section were wide enough to encompass orders being made in relation to costs already incurred by the time the Act came into force. On the Tribunal's analysis, this did not make the provision "retrospective" – see paras.70-79 of that decision.

9. In some circumstances, the limitation period for claims under s.1 DPA 1972 may be even longer than 30 years. This is because, by virtue of s.135(4), if the extended limitation period expired in the first year of the life of the BSA (i.e. in the period between 28 June 2022 and 28 June 2023), a person could bring a claim at any time within that year. Thus, a claim which accrued on 29 June 1992 could be issued at any time on or before 28 June 2023.

10. There are, however, three restrictions on the scope of the extended limitation periods.

11. The first restriction – although this will not trouble anyone for a while – is that the 30-year limitation period for claims under s.1 DPA 1972 only applies to claims which had arisen by 28 June 2022. A claim which arises after that date will be subject to the 15-year limitation period. (NB a claim under s.1 arises – or, in the wording of the 1972 Act, "accrues" – when construction reaches practical completion, or if it relates to rectification work undertaken post-completion, when that rectification work is completed – see s.1(5) thereof.

12. The second restriction is that, by virtue of s.135(6) BSA 2022, nothing in s.135 applies in relation to a claim which had been settled by agreement or finally determined by a court or in arbitration before 28 June 2022. No doubt it was contemplated that, absent this provision, litigants might contend that they would not have compromised their case (or it would not have been decided as it was) under the law as it now stands. Whether or not such arguments would

have succeeded in the absence of s.135(6) – and it frankly seems improbable that they would – the presence of that sub-section puts it beyond question that they will fail.

13. The third restriction – and the one on which the rest of this paper will focus – is found in s.135(5), by which it is provided that:

> "(5) Where an action is brought that, but for subsection (3), would have been barred by the Limitation Act 1980, a court hearing the action must dismiss it in relation to any defendant if satisfied that it is necessary to do so to avoid a breach of that defendant's Convention rights."

14. In the following paragraphs, the phrase **"Convention Rights Defence"** is used as a convenient shorthand for the defence enacted by this sub-section.

15. Five features of the Convention Rights Defence merit particular mention.

15.1. first, the words "but for subsection (3)" make clear that it is not the extended limitation periods themselves which are the focus of the section, but their retrospectivity. In other words, the mere fact that an action is permissible now which would not have been permissible before s.135 came into force is not enough to engage the Convention Rights Defence. It only arises in circumstances where causes of action have lapsed, but been revived by the Act;

15.2. second, the only court which may exercise the power is "a court hearing the action." Read literally, this might be thought to mean that the power to dismiss can only be exercised at trial. It is however unlikely that Parliament intended to exclude the Convention Rights Defence from the Court's usual power to grant summary judgment. It is therefore suggested that "hearing" should be read as synonymous with "seised of;"

15.3. third, the Court can only dismiss the action if is satisfied that it is necessary to do so. This is a stringent test, and obviously more difficult to satisfy than it would be if the word used were

e.g. “desirable” or “expedient;”

15.4. fourth, however, if the Court considers that the test of necessity is satisfied, it “must” dismiss the action. So s.135(5) confers minimal flexibility; if the test of necessity is not satisfied, the Court cannot dismiss the action, and if it is, the Court can do nothing but dismiss it;

15.5. fifth, while s.135(5) is only engaged where, but for retrospectivity, a claim would be statute-barred, it does not say in terms that the breach of Convention rights must have been caused by that retrospectivity. Rather, the wording is such that if the sub-section applies (i.e. an action lapsed, but was then revived by the extended limitation periods), and the test of necessity is satisfied for any reason, the action must be dismissed.

16. Two somewhat surprising conclusions emanate from that analysis.

17. First – and following on from the point in para.15.1 above – the fact that it is retrospectivity, rather than the extended limitation periods themselves, which engages the Convention Rights Defence means that unless the claim is one which lapsed and then revived, a claimant can bring a claim at any time within the 30-year period, and the defendant will not be able to advance a defence based on the fairness of the trial. To put that in perspective, if a cause of action accrued on 27 June 2022, a claim based on it could be brought as of right any time before 27 June 2052.

18. The imposition of unfair (or non-existent) limitation periods can itself infringe human rights. For example, in Volkov -v- Ukraine (Application 20722/11), a Judge argued that his removal from office on the grounds of an alleged disciplinary incident in respect of which no limitation period applied contravened his Article 6 rights, and this argument was upheld. By contrast, in Stubbings & Others v United Kingdom (Reference 22083/93), it was argued, unsuccessfully, that it was the shortness of the relevant limitation periods (in respect of claims for childhood sexual abuse) which contravened the Applicant's human rights.

19. The principles which emerge from cases such as this are that fair limitation periods are important for the following (connected) reasons:

19.1. to provide legal certainty and finality;

19.2. to protect Defendants from stale claims which might be difficult to counter,

19.3. to prevent any injustice which might arise if courts were required to decide upon events that took place in the distant past, and

19.4. to prevent disputes from being determined on the basis of evidence which has become unreliable or incomplete because of the passage of time.

20. In that context, it is sobering to think

that the 30-year limitation period provided for by s.135 means that acts undertaken by an apprentice builder at the age of 20 would still be within the primary limitation period when he or she turns 50 – or, perhaps more prejudicially still, acts undertaken at the age of 50 would still be actionable when the person turns 80. Indeed, if one considers that the cause of action accrues not at the date of the negligent act, but at the date of practical completion (which could be some years later), and also builds in the time it takes for a case to get from issue to trial, it is not outlandish to imagine that it could be 35 or even 40 years between performance of the act in question and the hearing of a claim flowing from it – almost the full duration of a person's working life.

21. In the Stubbings case to which reference is made above, the ECHR raised an eyebrow at the thought of trying events which had happened 20 years prior to trial (and for that reason, considered the 6-year limitation period of which complaint was made to be proportionate and reasonable); what, one wonders, would it make of a scheme that allows for an intervening period of maybe twice that length? Is there scope for a human rights challenge to the new s.4B?

22. The second surprising consequence emerges from the point made in para.15.5 above, highlighting the absence of any overt connection between retrospectivity and the factor (whatever it might be) which is said to engage the Convention Rights Defence.

23. The way s.135(5) is drafted, as long as the claim is one which had lapsed and was then revived, any breach of

Convention Rights would be apt to exonerate a defendant, whether or not that breach is related to the cause of action having lapsed. Take the example of a situation where a key witness has passed away, rendering a fair trial impossible. If the cause of action accrued before 28 June 2016, then on the face of it a defendant could pray that in aid and seek the dismissal of the action, using the Convention Rights Defence. But if the cause of action accrued after 28 June 2016, it could not. Yet the effect of the witness's death is unconnected to the fact that the cause of action lapsed, and is the same in both cases. That seems anomalous.

24. Another example, and one that applies in a case in which the writer is instructed, is where repairs are undertaken prior to a claim being articulated, preventing the defendant from being able to inspect the alleged defects, or comment on the suitability of the chosen method of repair. An argument that that engages the Convention Rights Defence is only available if it so happens that the case is one in which the cause of action lapsed before 28 June 2022. Again, that seems anomalous.

25. In such a case, even where the cause of action never lapsed, and where the Convention Rights Defence is accordingly unavailable, it might be possible to advance an argument that the destruction of the evidence represents an abuse of process justifying the strike-out of the action. But that is (a) a discretionary (or, perhaps more accurately, evaluative) decision; and (b) a difficult test to satisfy – see e.g. McDonald v Excalibur & Keswick Groundworks Ltd. [2023] EWCA Civ 18, where Nicola Davis LJ formulated the question in such cases as being: is the litigant's conduct of such a

nature and degree as to corrupt the trial process so as to put the fairness of the trial in jeopardy? It will also be seen that this test focusses on the conduct of the respondent, rather than the impact on the applicant.

26. What Parliament seems likely to have had in mind in enacting s.135(5) was the situation where a potential defendant takes some step on the basis that time has elapsed, and is therefore prejudiced when the potential claim is revived. That certainly seems to have been the understanding of Coulson LJ in URS, where (at para.170) he postulated the example of a developer who destroys documents at the end of the 6-year period, on the understanding that the time for a claim against him had elapsed. Such a person, he said "may be able to deploy that fact at trial pursuant to s.135(5)."

27. This effect could perhaps have been achieved by adding, at the end of s.135(5), words such as "by virtue of that fact". As drafted, however, s.135(5) seems to go somewhat further than the example given by Coulson LJ.

28. The examples given so far focus on the Article 6(1) right to a fair trial. In truth, while s.135(5) extends beyond that, and contemplates a breach of all or any Convention Rights, it is difficult to see what Convention Rights other than the Article 6(1) right are ever likely to fall for consideration.

29. It might be argued that Article 1 of the First Protocol – which entitles

every natural and legal person the protection of their property from deprivation or interference – could also be engaged. What, for example, if a defendant had allowed the benefit of a policy of insurance to lapse, on the basis that the limitation period had passed, meaning that instead of meeting a successful claim out of a call on the policy, they had to meet it out of their own pocket? Such a policy would be a possession, at least as that concept was interpreted by the Supreme Court in Axa General Insurance Ltd v Lord Advocate [2011] UKSC 46 (see para 114). But I would argue that such a case would not fall within s.135(5), because it is not by trying the claim that the defendant is being deprived of its rights under the policy. That deprivation resulted from the defendant's prior act in surrendering it.

30. While there are relatively few decisions on the scope of s.135, it can be expected that actions reliant on the extended limitation period will be issued in considerable numbers. Decisions on the new s.4B, and the Convention Rights Defence, can be expected soon.

31. While I take sole ownership of the opinions expressed in this paper, I would like to record my thanks to Christy Burzio for her assistance with research, on the Human Rights Act in particular.

Meet the editor

Andrew Butler KC

Tanfield Chambers

Andrew Butler KC is Joint Head of Chambers, and took silk in 2018. He practises in the areas of Property and Business & Commercial, and is Head of Chambers' Business & Commercial Group. While he accepts instructions across the full spectrum of commercial and property work, he particularly specialises in development disputes and professional negligence matters, with company law issues also forming an increasing part of his caseload. Andrew is a qualified mediator and a member of both the Chartered Institute of Arbitrators and the London Court of International Arbitration. He is an adjudicator on the panel of the Professional Negligence Bar Association. He was appointed Queen's Counsel in 2018 and his silk practice has gone from strength to strength, involving an appearance in the Supreme Court, and regular appearances in the Court of Appeal, as well as the Commercial and Business and Property Courts.

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135 Limitation periods

(1) After section 4A of the Limitation Act 1980 insert—

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

(1) Where by virtue of a relevant provision a person becomes entitled to bring an action against any other person, no action may be brought after the expiration of 15 years from the date on which the right of action accrued.

(2) An action referred to in subsection (1) is one to which—

(a) sections 1, 28, 32, 35, 37 and 38 apply;
(b) the other provisions of this Act do not apply.

(3) In this section "relevant provision" means—

(a) section 1 or 2A of the Defective Premises Act 1972;
(b) section 38 of the Building Act 1984.

(4) Where by virtue of section 1 of the Defective Premises Act 1972 a person became entitled, before the commencement date, to bring an action against any other person, this section applies in relation to the action as if the reference in subsection (1) to 15 years were a reference to 30 years.

(5) "commencement date" means the day on which section 135 of the Building Safety Act 2022 came into force."

(2) In section 1(5) of the Defective Premises Act 1972, for "the Limitation Act 1939, the Law Reform (Limitation of Actions, &c.) Act 1954 and the Limitation Act 1963" substitute "the Limitation Act 1980".

(3) The amendment made by subsection (1) in relation to an action by virtue of section 1 of the Defective Premises Act 1972 is to be treated as always having been in force.

(4) In a case where—

(a) by virtue of section 1 of the Defective Premises Act 1972 a person became entitled, before the day on which this section came into force, to bring an action against any other person, and
(b) the period of 30 years from the date on which the right of action accrued expires in the initial period,

section 4B of the Limitation Act 1980 (inserted by subsection (1)) has effect as if it provided that the action may not be brought after the end of the initial period.

(5) Where an action is brought that, but for subsection (3), would have been barred by the Limitation Act 1980, a court hearing the action must dismiss it in relation to any defendant if satisfied that it is necessary to do so to avoid a breach of that defendant's Convention rights.

(6) Nothing in this section applies in relation to a claim which, before this section came into force, was settled by agreement between the parties or finally determined by a court or arbitration (whether on the basis of limitation or otherwise).

(7) In this section—

"Convention rights" has the same meaning as in the Human Rights Act 1998;

"the initial period" means the period of one year beginning with the day on which this section comes into force.

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Remediation Orders – Is the FTT Being Consistent?

Robert Bowker, Barrister, Tanfield Chambers

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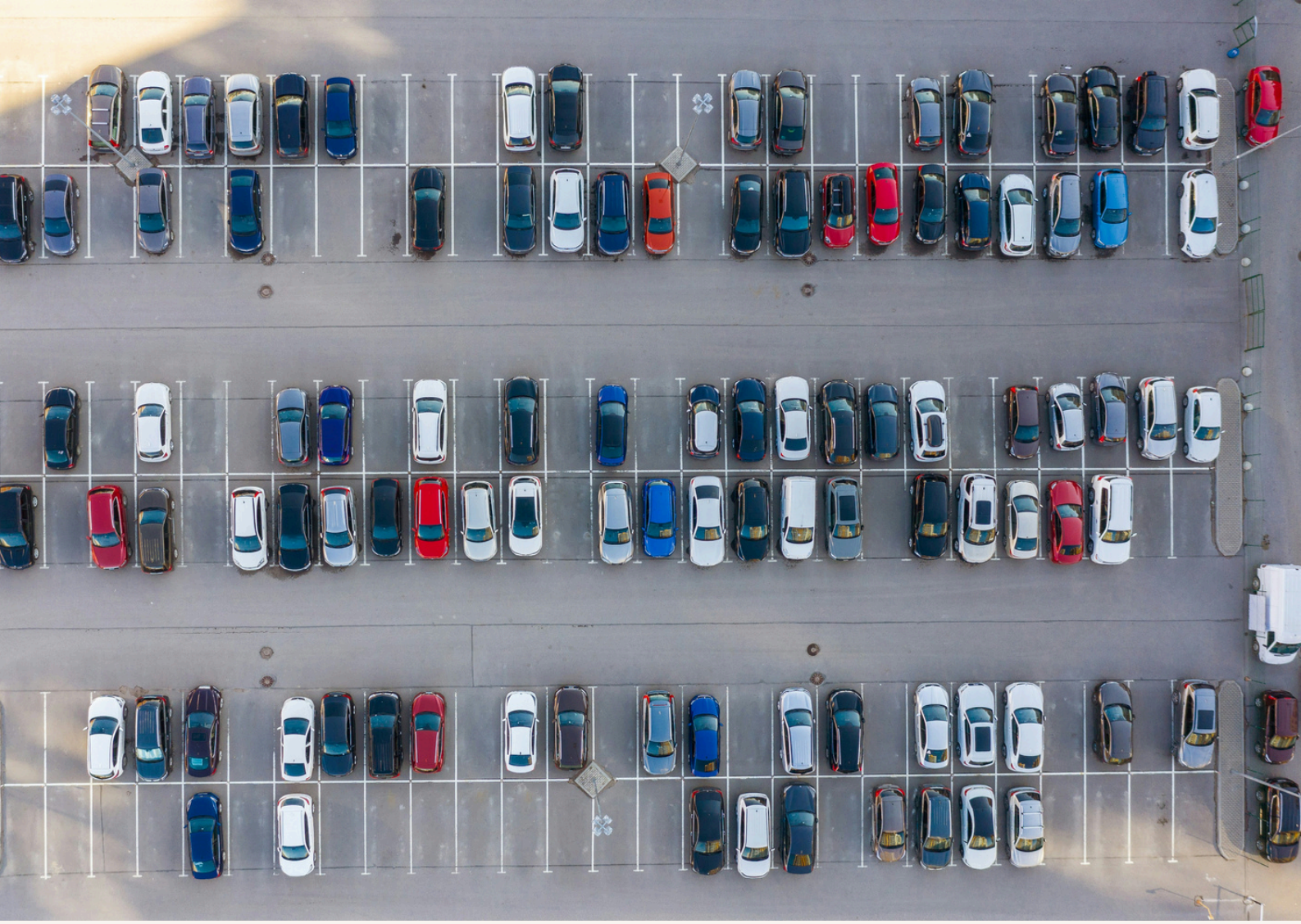
BUILDING SAFETY ACT

Robert Bowker takes a look at the take-away points from the recent decision by the FTT in Vista Tower (CAM/26UH/HYI/2022/004).

The full decision is available here.

Introduction

This article examines whether the FTT's recent decision in the Vista Tower case (CAM/26UH/HYI/2022/004, available on the FTT's website) demonstrates a discernible pattern of decision-making following its first remediation order. The article will not comment on the terms of the order made in Vista Tower: that will be the subject of a later article. Instead, it will focus on the FTT's approach to case management and whether its decision to make a remediation order was consistent with the reasoning in previous decisions. Obviously, consistency in approach, both in terms of case management and the final decision, will enable practitioners in this developing area of work to advise clients with greater certainty. In the absence of an appeal decision on remediation orders, consonance in first instance decisions will be welcome.



Previous decisions

There have been at least 5 previous remediation order decisions by the FTT: Leigham Court Road; Orchard House; Centrillion Point; Space Apartments; and Spur House. In each case, a remediation order was made. The Tribunal in Vista Tower comprised Judge Wayte and Judge David Wyatt. Significant guidance was, of course, given by the FTT in the Olympic Park decision on remediation contribution orders.

FTT's approach to case management

There is a discernible pattern to case management; the FTT actively manages. Its approach is hands-on, including where both parties are represented. The same judges tend to manage cases from the outset and will not shy away from multiple case management hearings.

In Vista Tower, the application for a remediation order was made on 2 November 2022 (see §41). The FTT held its first case management hearing on 14 December 2022 (see §§42 and 44): "The tribunal gave directions for notification of immediate potentially interested persons, mutual disclosure, provision by the Respondent of their FRAEW/PAS9980 report…statements of case and without prejudice meeting(s) between the parties to agree any further issues, to prepare for a further CMH."

A further case management hearing was held on 25 April 2023 (see §48): "The parties suggested that the second CMH…

be vacated. Instead, it was converted to a short CMH at which we gave directions requiring (amongst other things) the Applicant to confirm the scope of the relevant defects within the proceedings, a timetable to dispose of applications relating to third parties, and the Respondent to produce their specification of the remedial works (when this was expected from the new remedial works contractor) and proposed programme."

The FTT was willing to make disclosure orders against third parties (see §51): "On 4 September 2023, pursuant to an order made by Judge Wayte at the request of the Respondent, Edgewater and the successor to a firm involved with the conversion of the building (Gould Baxter) disclosed documents sought from them, including as-built drawings from the conversion."

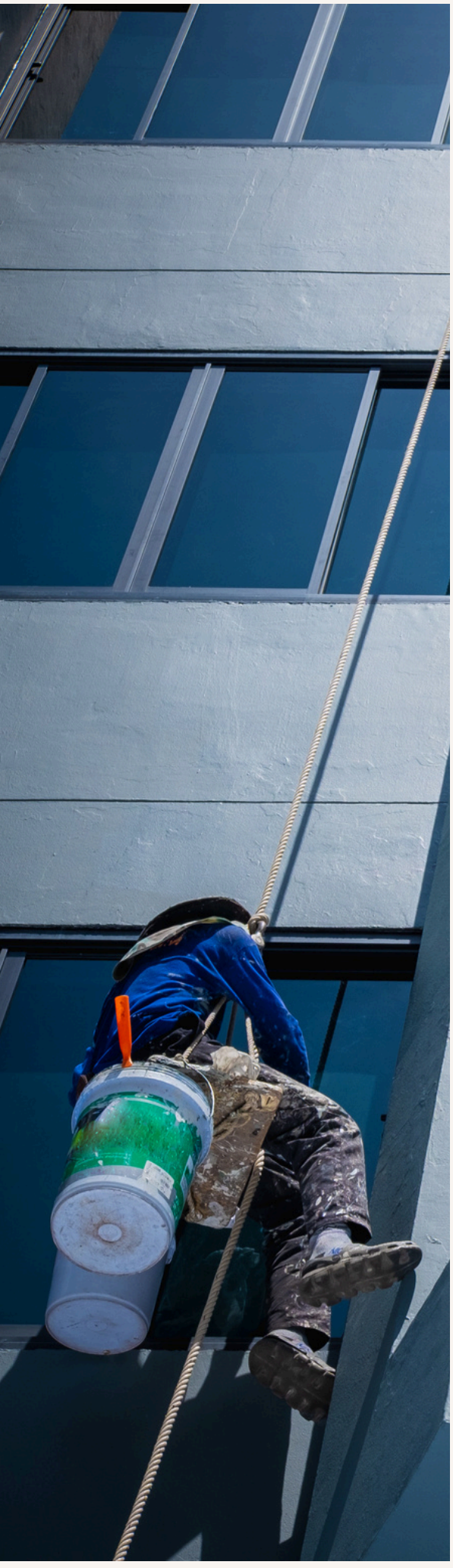
There was a third case management hearing (see §53): At the final CMH, on 21 September 2023, the Tribunal indicated (following requests from the Applicant for something to this effect, or stronger) that the focus of the parties in preparing their evidence and for the final hearing pursuant to these directions should be on the current position and properly-informed expert evidence (§53): "We said that, since the background had much less weight in this case, both parties needed to ensure that any evidence they wished to produce about the background was suitably limited. Directions were given to prepare for the substantive hearing."

Documentation for trial was controlled (see §59): "Prior to the hearing a bundle of some 11,500 pages in several lever arch files was delivered to the Tribunal. In the circumstances the Tribunal requested a core bundle limited to one lever arch file and made it clear that reference would only be made to the other documents if directed to do so either in the skeleton arguments or during the hearing."

The FTT's approach to previous cases

The Applicant drew on previous cases in support of both its primary and secondary arguments (see §§65 and 69).

As to its primary position: "[Leading Counsel for the Applicant] pointed out that, unlike contribution orders under section 124 or building liability orders under section 130 of the BSA, section 123 says nothing about the Tribunal needing to be satisfied that an order is just and equitable. This, he submitted, was a strong indicator that Parliament intended that if the Tribunal was



satisfied there were relevant defects, then it must make an order. Given the age of the BSA, authorities were limited to the FTT but [Leading Counsel] suggested that support for his argument could be found in Waite & Others v Kedai Limited LON/00AY/HYI/005 and 0016 [81]: "Once the Tribunal has determined that relevant defects exist, it is for the Tribunal to make an order to remedy those defects within a specified time. That is all that the Act requires."

And as to its alternative position: "If the Applicant was wrong and the Tribunal did have residual discretion, [Leading Counsel] reiterated the Applicant's view that the Respondent should have "forward funded" the works, rather than wait for BSF funding as public funding should be a claim of last resort – see Triathlon Homes LLP v Stratford Village Development Partnership [2024] UKFTT 26 (PC) at [278/854]: "We agree with a point made by [Leading Counsel for the Applicant] in opening, which is that public funding is a matter of last resort and should not be seen as a primary source of funding where other parties, within the scope of section 124, are available as sources of funding."

In deciding that the FTT has power and discretion to make a remediation order, the FTT drew on both the Leigham Court Road (Kedai) and Olympic Park (Triathlon) decisions (see §§119 and 121, with emphasis added in bold): "The BSA and the Regulations contain no similar wording. On the contrary, as noted in Kedai and Triathlon, the BSA is drafted in what appear to be "deliberately broad" terms to enable the Tribunal to respond appropriately to the "myriad circumstances that will inevitably present themselves" in applications of this type. As noted above, the definition in s.120 of the BSA of "relevant defect" is wide. It is not difficult to imagine circumstances in which experts and leaseholders agree that some relevant defects remaining in a building represent a tolerable risk relative to the difficulty of remedying them (or the impossibility of doing so without demolishing and reconstructing a building), so a RO should not be made even if a local authority or other interested person applies for one. That seemed rather to be the aim of the new approach, and new PAS9980 standard, since early 2022. … **[I]f the pre-qualification criteria set out in section 123 apply and there are relevant defects we consider that it is likely that**

the tribunal will make an order, subject to the facts of each case. Kedai is an example of a case where the tribunal had no hesitation: the respondent in that case was associated with the original developer and had taken no steps to remedy the defects at all."

Conclusions

These are the principal take-away points.

Consistently with its previous decisions including Leigham Court Road and Olympic Park, the FTT:

- will take a hands-on approach to case management using the same judge or judges throughout, holding a series of case management hearings and making interim orders including third party disclosure to ensure the case is prepared properly for trial and
- has the power and the discretion to make a remediation order and, subject to the particular facts of the case, will probably make an order if the pre-qualification criteria in s.123 apply and there are relevant defects.

You can find out more on Building Safety Act related issues on Tanfield Chamber's Building Safety Hub.

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BUILDING SAFETY ACT

The Application of Schedule 8, BSA 2022

Ian Quayle considers an important case providing some useful guidance on the application of Schedule 8 of the BSA 2022.

Lehner v Lant Street Management Company Ltd [2024] UKUT 135 (LC) (17 May 2024). BAILII link.

Summary

The case before the Upper Tribunal highlights the fact that Schedule 8 provides some protection to all leaseholders in a building that is a relevant building but that qualifying leaseholders are given more protection.

Facts

The case concerned Mr Lehner who owned a flat in a building at 4 Sanctuary Street, London. Mr Lehner was held liable by the First Tier Tribunal to pay £1244.85 as a service charge contribution towards the cost of the installation and fire stopping work intended to be undertaken to the walls of the building. He appealed the decision.

Issues

The issues before the Upper Tribunal were to what extent Part 5 of the Building Safety Act (BSA) and in particular Schedule 8 of the Building Safety Act afforded protection to Mr Lehner in connection with the transmission of remediation costs into service charge. To answer that question the Upper Tribunal had to consider to what extent Schedule 8 applied.

In performing that exercise the Upper Tribunal explored a number of deeming provisions within the BSA starting with Paragraph 13 of Schedule 8 which requires that provided a lease satisfies the conditions in Paragraph A/B and C of section 119(2) of the Building Safety Act it will be treated as a qualifying lease unless the landlord has taken all reasonable steps to obtain a qualifying lease certificate from a tenant under the lease and no certificate has been provided.

The Upper Tribunal also considered the extent to which Schedule 8 affords

protection to qualifying leaseholders in connection with charges in respect of any relevant measure as defined by Paragraph 1 (1) of Schedule 8 * relating to a relevant defect. Usefully the Upper Tribunal described a relevant measure as a measure taken to remedy a relevant defect or to diminish the harm which it might cause.

The Upper Tribunal then explored the protection Paragraph 2 provides to all leaseholders describing the protection as an exception to the general rule that leaseholder protection in Part 5 of the BSA is limited to qualifying leaseholders.

It usefully confirmed that a landlord or an associate of the landlord will be responsible for a relevant defect if they were the developer or undertook or commissioned the construction or conversion of the building or they were in a joint venture with the developer.

The Upper Tribunal clarified:

1. A relevant defect as being a risk arising out of the original construction or conversion of the building which creates a building safety risk.
2. The Paragraph 2 protection applies where a landlord attempts to recover service charge where the landlord or superior landlord on the 22nd of February 2022 was the original developer of the building [or an associate] and the service charges payable for work to remedy or mitigate a defect in the building which gives rise to a risk from fire.
3. Where a landlord fails to provide a landlord certificate is that the condition in Paragraph 2 (2) of Schedule 8 to the BSA is to be treated as met. The consequence of this is if the current landlord has not complied with the requirement to provide a landlord certificate it is responsible for the defect for the purposes of Paragraph 2 of Schedule 8 with the result that no service charges will be payable in respective relevant measures.

Importantly the Upper Tribunal has now provided a sequence of questions when advising a landlord or leaseholder as to whether service charges are payable in respective of work to which the leaseholder protections in Schedule 8 BSA apply.

A. Preliminary Conditions:

- Section 117 BSA are we dealing with a relevant building?
- Section 120 BSA is the service charge in dispute relating to a relevant defect?
- Para. 1(1) BSA is the service charge a charge relating to a relevant measure relating to a relevant defect?

B. Does Para. 2 Schedule 8 provide protection:

- Is the service charge in dispute payable after 20.7.22?
- Was the landlord required to produce a landlord certificate?
- Did the landlord produce a landlord certificate within time?

If the landlord did not provide a landlord certificate the contribution condition is taken to be satisfied meaning the service charge is not payable.

Where the landlord has provided a valid landlord certificate, or the service charge was payable before the 20.7.22 if the landlord or superior landlord on the 14.2.22 or an associate of either was responsible for the relevant defect the contribution condition is taken to be satisfied.

C. Is the lease a qualifying lease?

- Is Section 119(2) BSA (a) to (c) complied with?
- Has the landlord taken reasonable steps set out in Para. 13 Schedule 8 to obtain a leaseholder deed of certificate? If not, the lease is treated to be a qualifying lease.
- Has the landlord taken all reasonable and prescribed steps to obtain a leaseholder deed of certificate and a leaseholder has failed to provide it, the lease is assumed to be non-qualifying. If the leaseholder produces a leaseholder deed of certificate confirming all the conditions in S119(2) BSA apply to the lease, the lease is a qualifying lease.

D. Does the contribution condition (para.3) Schedule 8 BSA apply?

- Has the landlord provided a landlord certificate stating the landlord on the 14.2.22 did not meet the contribution condition? If this is the case the service

charge for the remediation of the relevant defect is payable. Where the landlord provides a landlord certificate stating the landlord met the contribution condition on the 14.2.22 no service charge is payable.

E. Para. 4 Schedule 8 BSA protection:

- Was the value of the lease as at 14.2.2 less than £325,000 (Greater London) or less than £175,000 (elsewhere)? If yes, no service charge for remediation costs for relevant defects is payable.

F. Para. 8 Schedule 8 BSA protection:

- Is the relevant measure or are the relevant measures comprising the removal or replacement of any part of the cladding system?
- If the answer to the above is yes, does is the cladding system for the outer wall of an external wall system and was the cladding unsafe?
- Then Para. 8 protection applies and no service charge is payable in respect of the removal or replacement works

G. Para. 5,6, and 7 Schedule 8 BSA protection:

- Where a service charge is still payable in respect of relevant measures is the sum claimed subject to a cap (Paras 5 and 6) and is the capped sum payable over a ten-year period (Para 7)?

Decision

The FTT recorded in its decision that both when giving procedural directions and at the hearing it had suggested to the parties that because of the

complexity of the BSA it may be preferable for them not to rely on its provisions but effectively to reserve their position until another occasion. It was said that adopting that approach would not prejudice their right to rely on the leaseholder protections at a later stage.

The Upper Tribunal challenged that position working on the principle that it could not be open to the leaseholders to rely on the protections of the BSA at a later date to defeat a claim for service charges which the FTT had already decided he was liable to pay.

Not surprisingly, the Upper Tribunal was correct in explaining to the leaseholders of the complexity of the BSA and wise to recommend to the leaseholders that legal advice should be sought, noting that advice is not always available at proportionate expense.

It was for the FTT to determine in every case whether the leaseholder protections apply, and the burden on it is particularly heavy where one or both parties is unrepresented.

The FTT considered one issue which concerned the impact of the BSA namely works referred to in an email from the managing agents involving:

> "(i) The removal of the cladding and insulation, replacing the insulation with material that meets current standards. It seems that there was no need to replace the cladding which was reinstated after the insulation had been upgraded.
>
> (ii) The inspection of the current cavity barrier to establish if any are in place and install a safety barrier (if required) between each dwelling. It seems that it was necessary to install these safety barriers."

In reaching its decision the FTT did not explain what it meant by a "cavity barrier" or a "safety barrier" but the Upper Tribunal understood this to mean an intumescent strip installed in the gap between the cladding system and the concrete face of the building which is either a 'closed state' cavity barrier, which forms a tight seal between cavities within the cladding system, or an 'open state' barrier which allows ventilation and drainage but is designed to expand on exposure to heat and thereby to seal that gap and prevent the passage of fire between

floors and apartments.

In deciding that the leaseholders were liable under the terms of their leases to contribute towards the cost of the work and that the landlord had complied with its obligation to consult before commencing the works the FTT decided the following:

a. The protections in Paragraphs 3, 4 and 8 of Schedule 8 apply only to "qualifying leases" and in their application the leaseholders were said to have adduced no evidence that their leases were qualifying leases.

b. The landlord was not the developer, nor were they associated with the developer (Wimpey) on the relevant date of 14 February 2022.

c. In examining the contribution condition, the FTT stated "A landlord meets a "contribution condition" when the landlord's net worth exceeds £2 million in respect of each of the buildings of which it is landlord. The ground rents for Sanctuary Street are £150 per annum. The Tribunal therefore accepts that it is highly unlikely that the Respondent [LSMC] meets the criteria of £2 million per year." It did not refer to Paragraph 14(2) of Schedule 8 or to the potential significance of the fact that no landlord's certificate complying with regulation 6 of the Leaseholders Protections Regulations had been served.

d. In considering the cladding works The FTT next quoted Paragraph 8 of Schedule 8 and noted that cladding remediation involved the removal or replacement of part of cladding system which forms the outer wall of an external wall system, and which is unsafe and determined that neither of these requirements was satisfied making two findings on the facts:

"(i) The fire remedial works did not involve the "removal or replacement" of any part of a cladding system. The works rather involved the replacement of the insulation and the addition of a cavity barrier. The cladding system itself was neither removed nor replaced.

(ii) The cladding system was not itself unsafe. It did not require any removal or replacement of part of the cladding system and was therefore not

cladding remediation" for the purposes of this paragraph.

e. The FTT said that that none of the Schedule 8 protections applied.

f. It also held that the leaseholders had not established that their leases are "qualifying leases" In reaching this conclusion, the FTT did not refer to Paragraph 13 of Schedule 8 or to the potential significance of the fact that no landlord's certificate had been served.

Appeal to the Upper Tribunal

Using the framework highlighted earlier, the UT worked its way through the step or questioning process.

Step 1 - preliminary conditions

Relevant building (Section 117)

4 Sanctuary Street is a relevant building. It is self-contained, contains at least two dwellings, and is both at least 11 metres high and has at least five storeys above ground level.

Relevant works and relevant defect (Section 120)

The disputed service charge is claimed in respect of the works found by the FTT to comprise the removal of the cladding and insulation, the replacement of the insulation with material meeting current standards, and the reinstatement of the cladding using the original panels. While the cladding was off the building, the exposed structure was inspected to establish if cavity safety barriers were in place between each dwelling and were installed where they were not originally provided.

The insulation which was replaced dated from the original construction of the Block, and the risks associated with its use therefore arose as a result of something used in connection with the original construction; the risks associated with the

absence of cavity barriers arose because of things not done at the same time. All those works were completed within the period of 30 years ending on 14 February 2022 and they were therefore relevant works within the meaning of section 120(3)(a).

The defects the disputed service charges relate to are therefore relevant defects for the purpose of Sections 122 to 125 and Schedule 8, as defined in section 120.

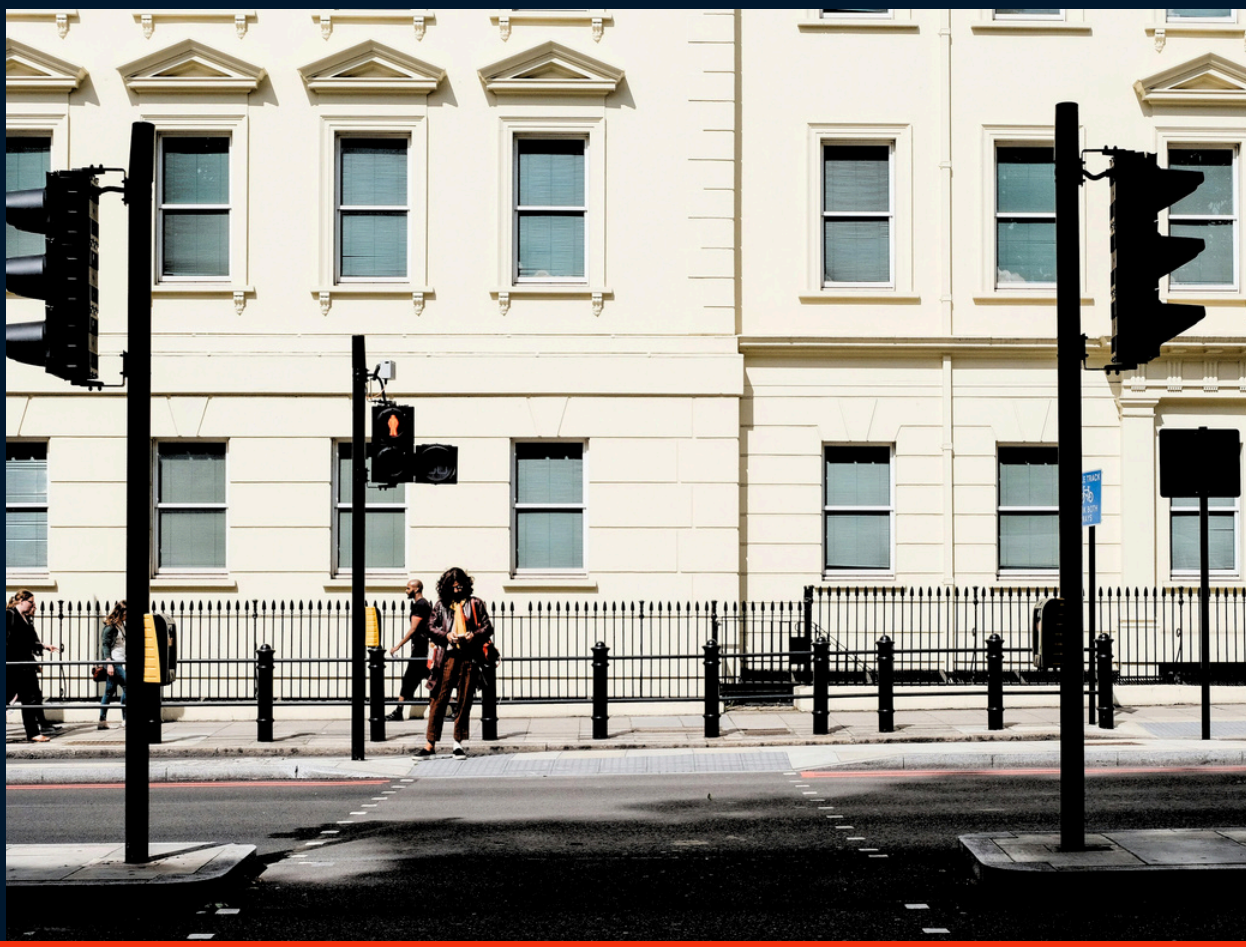
Relevant measure (Paragraph 1(1), Schedule 8)

The purpose of the works was to remedy the relevant defects, and the works were relevant measures for the purpose of Schedule 8.

Step 2 - Paragraph 2 protection

The Paragraph 2 protection applies if the relevant landlord (i.e., the landlord or any superior landlord on 14 February 2022) was responsible for the defects or was associated with a person responsible for the defects. The starting point in considering whether that condition is met is Paragraph 14(2) of Schedule 8, and regulation 6(7) of the Leaseholder Protections Regulations made pursuant to it, by which any person who was a relevant landlord on 14 February 2022 is to be treated as having been responsible for the relevant defect if they have not provided a landlord's certificate which complies with regulation 6.

The Leaseholder Protections



Regulations, and the obligation to provide a landlord's certificate, came into force on 20 July 2022. The obligation does not apply in all circumstances, but only in those identified in regulation 6(1)(a) to (e). Regulation 6(1)(a) creates the obligation "when the current landlord makes a demand to a leaseholder for the payment of a remediation service charge."

As the demand for service charge was dated 8 February 2021, before the Regulations came into force, there was no requirement on it to have given a landlord's certificate within four weeks of making that demand. It does not appear to us to be possible to treat the condition in Paragraph 2(2) of Schedule 8 as being satisfied on account of a failure to provide a landlord's certificate, unless the obligation to provide such a certificate was in force when the relevant demand was made.

The Upper Tribunal raised an interesting ancillary point namely whether after the Leaseholder Protections Regulations came into force, a relevant landlord then came under an obligation to serve a landlord's certificate in respect of any demand which had been made before that date. Regulation 6(1)(a) would not appear to have that effect, but it could be argued that regulation 6(1)(c) might.

The UT decided that, when the matter came before the FTT, regulation 6(7) was not engaged and the absence of a landlord's certificate did not affect the availability of the Paragraph 2 protection in relation to the demand made on 8 February 2021.

The absence of a landlord certificate stating whether the relevant landlord was responsible for the relevant defect or was associated with a person who was responsible, gives rise to a presumption of fact, but the certificate itself is not proof of the facts which it certifies. Where a compliant certificate has been provided the presumption that the contribution condition is met is dispensed with, but the facts remain to be determined if they are in dispute. If a leaseholder challenges statements made in an apparently compliant certificate, it is for them to demonstrate that the relevant landlord or an associate was responsible for the relevant defect.

Further, if there was no obligation to provide a certificate at the time a service charge became payable, the absence of a certificate will not give rise to any presumption that the Paragraph 2(2) condition is satisfied. But the absence of the presumption will not prevent a leaseholder from proving that the landlord or a superior landlord or their associate

was in fact responsible for the relevant defect.

Based on the material provided, the FTT was entitled to conclude that the respondent was neither the developer of the block nor associated with the developer, Wimpey. On that basis it was therefore correct to conclude that the Paragraph 2 protection was not available to the leaseholders.

Step 3 - qualifying lease

The lease considered by the FTT was granted before 14 February 2022 for a term of more than 21 years and includes a service charge and so satisfied the first three of the four conditions in section 119(2) and may be a qualifying lease and eligible for the remaining leaseholder protections.

The UT then had to consider section 119(2)(d), concerning the relationship between the leaseholder and the flat and the extent of the leaseholder's other property interests. This requires either that the dwelling must have been the leaseholder's only or principal home on 14 February 2022, or that on the same date the leaseholder did not own any other dwelling in the UK or owned no more than two dwellings in the UK apart from under the lease in question.

The FTT dealt with the issue of whether the lease was a qualifying lease by accepting that no evidence had been adduced to it to support a finding that it was. The UT held the FTT was wrong, it should have determined that the lease was a qualifying lease. The reason for this is looking at the lease provided to the FTT it was apparent that the conditions in section 119(2)((a), (b) and (c) were satisfied (i.e., the lease was a long lease of a single dwelling which included a service charge and had been granted before 14 February 2022).

Paragraph 13 of Schedule 8 then became relevant meaning the lease was to be treated as a qualifying lease unless the landlord "has taken all reasonable steps (and any prescribed steps) to obtain a qualifying lease certificate from a tenant under the lease, and ... no such certificate had been provided" (Paragraph 13(2)).

Step 4 - Paragraph 3 protection - the contribution condition

The effect of Paragraph 3 of Schedule 8 is that no service charge is payable under a qualifying lease in respect of a relevant measure where the landlord at the qualifying time met the contribution condition. The first step in determining

whether this protection is available is to consider whether the presumption that the condition is met in Paragraph 14(1) applies. The presumption applies unless the landlord provides a certificate to the tenant, complying with any prescribed requirements, that the person who was the landlord on 14 February 2022 (the relevant landlord) did not meet the contribution condition. If the presumption applies, it is not necessary to consider whether the qualifying condition was in fact met.

Not surprisingly the UT was not impressed with the approach of the FTT which contended that the contribution condition was not met as the ground rent of each individual flat was only £150 a year. It did not consider the effect of the Paragraph 14(1) presumption.

The UT considered that had the FTT found that the lease was a qualifying lease and that the Paragraph 14(1) assumption was engaged so that the contribution condition must be taken to have been satisfied, the proper conclusion would have been that the Paragraph 3 protection applied and that not the disputed service charge was not payable (because it was in respect of relevant measures relating to relevant defects). If the presumption did not apply the FTT would have been entitled to conclude that the contribution condition was not satisfied and that the Paragraph 3 protection did not apply.

Step 5 - Paragraph 4 protection - low value leases

The UT considered that the Paragraph 4 protection was not available in this case as the value of the flat was likely to exceed the low value figure.

Step 6 - Paragraph 8 protection - cladding remediation

Paragraph 8 of Schedule 8 provides no service charge is payable under a qualifying lease in respect of "cladding remediation" and so the FTT was required

to consider whether the service charge is claimed in respect of the removal or replacement of any part of a "cladding system" which formed "the outer wall of an external wall system", and which was unsafe? If so, the service charge is not payable in respect of the removal or replacement works.

The UT explored the FTT's conclusion that the removal of the external cladding panels, the stripping out of the original insulation, its replacement with new insulation, the installation of fire safety barriers where these were missing, and the reinstatement of the original cladding panels, was not "cladding remediation."

Helpfully the UT explained that it understood "cladding" to refer to material attached to the structure of a building to provide a protective or decorative outer skin but then emphasised that it was not concerned the definition of "cladding", but "cladding system."

It explained the BSA contains no definition of a "cladding system" and that the FTT's narrow interpretation of that expression was wrong due to the following:

a. the reference to a "cladding system" is clearly not intended to be limited simply to a single building component such as the final layer of cladding panels visible on the facade of a building. Any "system" has several components, and each is within the scope of Paragraph 8(2): cladding remediation comprises the removal or replacement of "any part of a cladding system."

b. where an expression is used in a statute dealing with a technical subject, such as fire safety, it is legitimate to consider how that expression is usually understood in that context.

The UT held that the expression "cladding system" is often used in technical literature concerned with fire safety in a way which includes the layers of insulation commonly found behind the outermost sheet of cladding material. For example, in the prospectus for the Building Safety Fund published by the Department for Levelling Up, Housing and Communities in May 2021, a footnote on page 11 explains that:

"A cladding system includes the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding system includes the weather-exposed outer layer or 'screen', fillers. Insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets, and sealants."

Further guidance is provided by the RICS guidance to surveyors engaged to certify that the safety of a building's external wall system has been assessed (see Cladding External Wall System (EWS) FAQs 23.5.24 which updates an earlier publication referred to by the UT and advises that "The external wall system (EWS) is made up of the outside wall of a residential building, including cladding, insulation, fire break systems, etc."

The RICS guidance also makes reference to the British Standards Institution code of practice BSI PAS9980:2022 - Assessing the external wall fire risk in multi-occupied residential buildings. This defines "cladding" at Paragraph 3.1.4, and includes an explanation of a cladding system:

> "cladding system of one or more components that are attached to, and might form part of the weatherproof covering of, the exterior of a building."

The UT also mentioned Annex M to BSI PAS9980:2022 which explained: "External cladding systems involve the combination of several different components, including cladding panels, ventilated cavities, thermal insulation, breather membranes, cavity/fire barriers and support systems."

In reaching this conclusion the UT looked at how the term "cladding system" is used elsewhere in the BSA. For example, Section 149 is concerned with liability for past defaults relating to "cladding products." A "cladding product" is defined as "a cladding system or any component of a cladding system" (section 149(12)).

One condition of liability for cladding products includes that "the cladding product is attached to, or included in, the external wall of a relevant building" (section 149(3)). The UT explained that Parliament had not attempted to distinguish between different building components which might be attached to or included in the external wall of a building inviting a wider, rather than a narrower, interpretation of "cladding product" and "cladding system."

It concluded that the ordinary meaning of that expression includes materials installed behind the external screen enabling the leaseholder to rely on Paragraph 8 protection on the basis that the insulation was not "part of a cladding system."

On the facts the work done to the building comprised the removal of the original two sheets of insulation and their replacement with a new single sheet of a different material with improved fire-resistant properties which involved the removal and replacement of part of the cladding system. Further the work included the installation of cavity barriers where these had previously been omitted and whereas the FTT said that the installation of these new components was not the removal or replacement of part of a cladding system the UT considered that in this respect also it took too narrow a view of the scope of Paragraph 8.

The UT said it did not consider that Paragraph 8 could be interpreted as covering only the removal of part of a cladding system and its replacement with an identical component, and we see no reason either as a matter of language, or having regard to the policy of the Act, why the replacement of part of a cladding system with something quite different, or additional, should not fall within the Paragraph 8 protection. "Replacement" need not mean replacement with something identical. The policy of the Act of providing leaseholders with protection against the cost of putting cladding systems into a safe condition would be frustrated if it were necessary to divide essential remedial work into those parts which involved the replacement of components which were there before and those which involved the introduction of something new. As a result, the UT regarded the whole of the work done to the building as comprising the removal or replacement of part of a cladding system. In our judgment the FTT was wrong to conclude that the works were not covered by the Paragraph 8 protection.

On the facts, the UT concluded that the leaseholder was not liable to pay the service charge and allowed the appeal.

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BSA SPECIAL FEATURE

The Evolution of Remediation Contribution Orders

In their article, Tim Polli and Katie Grey delve into Remediation Contribution Orders (RCOs) established by the Building Safety Act 2022, which empower leaseholders to recoup expenses for rectifying safety defects. They detail Tribunals' power to issue RCOs against different entities, stressing the coverage of repair and safety costs. Through the case of Triathlon Homes LLP v Stratford Village Development Partnership, they illustrate how RCOs aim to transfer costs from leaseholders to developers, underscoring their significance as a pivotal safety measure while ensuring developers bear financial responsibility.

This article is adapted from a talk given by Timothy Polli KC and Katie Gray on 7 February 2024.

Introduction

Remediation Contribution Orders ("RCOs") were introduced by the Building Safety Act 2022 ("the BSA"). This article explores how the jurisdiction to make an RCO is likely to be exercised following the recent decision of the Upper Tribunal in **Triathlon Homes LLP v Stratford Village Development Partnership** [2024] UKFTT 26 (PC).

Powers

An RCO is an order to pay money. It gives leaseholders a practical remedy which may allow them to recover costs that they have incurred or will incur in remediating safety defects in their building. The power to make an RCO is found in section 124 of the BSA and is a wide one - the Tribunal is empowered to make an order requiring a "specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building."

Who may apply?

Applications may be made by interested persons. There is a long list of such persons in section 124(5) of the BSA, which includes a person with a legal or equitable interest in the relevant building or any part of it (e.g. a leaseholder of the flat, or a head lessee of the whole) but also certain public authorities such as the Secretary of State, the Regulator, the Local Authority and the Fire and Rescue authority. The involvement of these bodies may assist in cases where the lessees do not have funds to make their own application, if they are willing to act.

Against whom is the RCO made?

Orders may be made against a specified body corporate or partnership. This includes landlords and developers, or "associated" persons. There are detailed provisions in section 121 of the 2022 Act about the entities that might be an "associated person", but broadly there is association between

beneficiaries and trustees, current and former partners and partnerships, directors, and companies, and between companies with common directors or controlling interests.

What costs can be recovered?

The BSA provides that an RCO may be made in respect of "… costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building…"

This includes the cost of the remedial works themselves, such as replacing external cladding, but we now know from the decision in **Triathlon Homes** that the costs of mitigating building safety risks, such as a waking watch, evacuation officers, or the installation of temporary fire and heat alarms are also included, because these measures have the effect of removing or reducing the safety risk, as are costs incurred before 28 June 2022, when the power to make a RCO came into force.

What test will the First-tier Tribunal apply?

An order may be made when it is "just and equitable" to do so. The power is therefore wide and discretionary. A broad, fact dependent approach is to be taken, having regard to the policy behind the BSA that lessees should not generally be held financially responsible for remediating defects that were not their fault.

Until the recent decision in **Triathlon Homes**, it was not entirely clear how the test is to be applied. For example:

- What if the beneficial owners of the developer had changed since the development of the property, such that they are not strictly speaking "responsible" for the defect?
- What if the beneficial ownership has changed such that there is no prospect of the Respondent even having any knowledge of the development and how it was constructed? Is that fair?
- What if works are already being funded or likely to be funded by the Building Safety Fund – should the Respondent still be liable to pay?

Triathlon Homes LLP v Stratford Village Development Partnership [2024] UKFTT 26 (PC)

The Tribunal grappled with these issues in **Triathlon Homes.**

This case concerned the former athletes' village at the Olympic Park, which was built by a limited partnership comprising three companies – one general partner and two "silent" companies. The general partner owned two property holding companies, who were the freeholders of the development. After the Olympic games, the site was sold. Triathlon Homes purchased long leases of the parts of the development to be used as social housing. The rest was sold to a joint venture. The investor ownership of the joint venture company changed several times over the years. Moreover, the parent company of the developer was not incorporated until 2018, after the site had been developed and sold off.

Fire safety defects were discovered, including cladding problems. A successful application was made to the Building Safety Fund for funding to discharge the costs of remediation. In the meantime, Triathlon Homes applied for RCOs, asking the Tribunal to order the developer and its parent company to pay Triathlon's share of the remediation costs because the developer, it was said, depended on the parent company for its funding and was also an associated company.

It was argued by the developer and the parent company that the policy of the BSA is to ensure that remedial works are done. In this case, the works were being done – the contract had been signed and most of the funding had been granted by the Building Safety Fund. Further, the parent company had had nothing to do with the development – it had not been incorporated until long after the cladding had been installed.

The Tribunal emphasised the broad

discretionary nature of the jurisdiction. It stated that the purpose of the BSA is the transmission of primary responsibility for remediation costs away from the leaseholder and on to the developer of the block. It was held that it was not usually likely to be relevant that the works are likely to be funded by the Building Safety Fund if the developer is able to pay. The fund is a funder of last resort. Further, though it was argued that Triathlon was making the application to advance its own commercial interests by making sure that it did not have to pay towards the remediation costs, the motivation of the applicant in making an RCO is not relevant; absent malice, it was open to Triathlon to seek a remedy to which it was entitled. Neither did it matter that the ownership of the companies had changed over time nor that the parent company was not incorporated until after the event.

Comment

The development of the law in this area shows that RCOs are likely to be a powerful, versatile, and readily available remedy in the lessee's armoury. The primary policy is that the developer and its associates should pay, not the leaseholder, and where a leaseholder is trapped in an unsaleable flat because of outstanding fire safety issues, this is likely to be an extremely powerful factor in favour of granting an RCO. But even if works are funded and the freeholder is poised to carry them out, that is unlikely to lean against the making of the order – the remedy should not generally be found in the public purse.

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BUILDING SAFETY ACT

Claims under the Defective Premises Act 1972 ("DPA") in the light of the Building Safety Act 2024 ("BSA")

Wilson Horne considers the case of BDW Trading Ltd v URS Corp Ltd [2023] in relation to the good prospects of recovery of losses for defects in the relevant buildings notwithstanding the distant expiry of the contractual limitation period.

BDW Trading Ltd v URS Corp Ltd [2023] EWCA Civ 772 & [2024] 2 W.L.R. 181. Case transcript.

Summary

The case concerned the extended limitation period applicable to claims

under the DPA brought into force by section 135 of the BSA. The claimant developer engaged the defendant to provide structural design services for two developments of residential apartment buildings. Having sold the buildings for full value, the developer discovered structural defects in the buildings, although no physical damage. The developer brought a claim of negligence against the defendant, seeking damages in respect of the costs it had incurred in investigating and remedying the defects. The developer was permitted to amend its claim to add a claim under section 1 of the DPA in respect of structural design defects against its former structural engineer, even though the developer had retained no interest in the relevant building.

Facts

The developer had instructed the designer to undertake the structural design of two tower block developments. Practical completion of both developments had taken place by 2012 and the apartments were sold to

individual purchasers. Following the Grenfell Tower disaster in 2017, the developer undertook investigations of its developments. In 2019, it discovered significant defects in the structural design of the two tower blocks, although no physical damage had occurred. The developer commenced negligence proceedings against the designer in 2020, being out of time to bring claims under the contracts between the parties. The designer argued that the developer had suffered no actionable damage because it had sold the buildings before the problems were identified; therefore, the developer had suffered no loss because the defects were unknown at the time it owed the developer a duty of care; and when the developer did incur the costs of remedial works, it no longer owned the building and was therefore not entitled to recover its expenditure.

Issues

- Were the losses claimed recoverable as being within the scope of the designer's duty of care?
- When did the cause of action in tort accrue?
- Was the Court right to grant permission to amend to permit the developer to bring an additional claim under the DPA?
- What was the effect of section 135 of the BSA?
- Was the developer owed a duty of care under 1 of the DPA by the designer?
- Was it a condition precedent to the making of a contribution claim under section 1(1) of the Civil Liability (Contribution) Act 1978 that a third party had brought a claim against the Developer?

First instance

The judge held that, apart from one head of loss for reputational damage, the losses claimed by the developer were within the scope of the defendant's duty of care in negligence. The claimed losses were in principle recoverable, since the developer's cause of action in negligence had accrued no later than the date of practical completion, when the developer still owned the buildings. Subsequently, section 135 of the Building Safety Act 2022 came into force, which inserted section 4B into the Limitation Act 1980, under which the limitation period for a claim under section 1 of the DPA was 30 years where the developer had become entitled to bring the claim before the commencement

of section 135 of the 2022 Act. The developer applied for permission to amend its particulars of claim so as to add a claim under section 1 of the DPA and a contribution claim against the designer under section 1 of the Civil Liability (Contribution) Act 1978, on the basis that both the developer and the designer were liable to those with an interest in the apartments for the damage suffered as a result of the defects. The designer applied for the amendments to be struck out, contending that (i) section 135 of the 2022 Act did not apply to litigation that had commenced before section 135 came into force; (ii) as a developer, it could not bring a claim under the DPA; and (iii) the developer could not bring a claim under the 1978 Act because no third party had brought a claim against it. The deputy judge dismissed the application, finding that the developer's claims were reasonably arguable without deciding the points of law raised by the designer.

Decision [on appeal]

On appeal, the Court of Appeal made the following findings on each issue.

Where a developer employed a structural designer to provide structural design services for a building, the standard duty of care in negligence imposed on the designer obliged it to protect the developer against the risk of economic loss caused by structural defects in the design of the building which would have to be remedied, and it was not necessary that the developer was under an obligation to remedy such defects or that the developer had had a proprietary interest in the building at the time when the defects were remedied. In the present case, the developer's claim was a conventional claim for damages in respect of economic losses comprising the costs of investigating and remedying the defects caused by the designer, rather than reputational losses; and accordingly, the losses claimed by the developer were within the scope of the designer's duty of care in negligence.

Where there was an inherent structural design defect in a building which did not cause physical damage, actionable damage occurred and a cause of action in negligence accrued as against

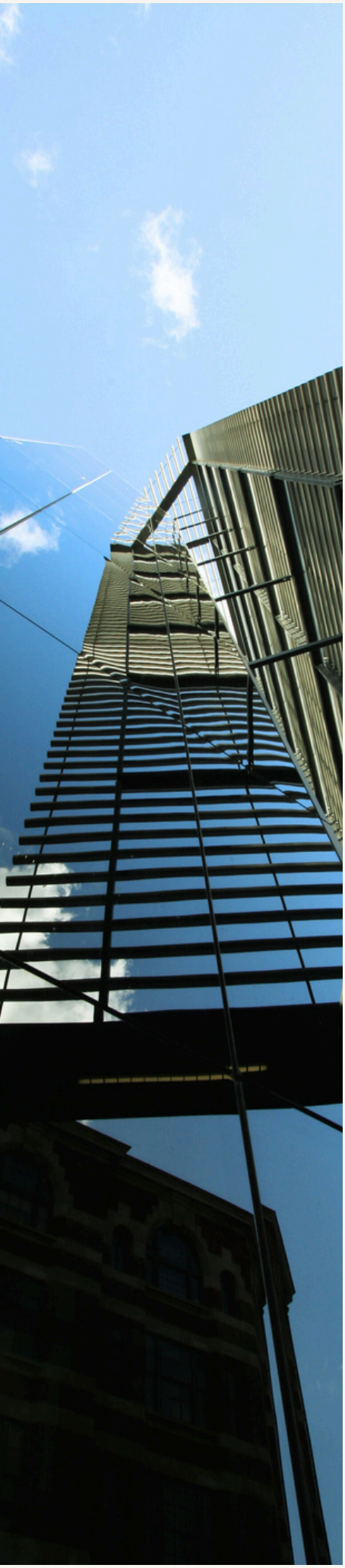
the designer on practical completion of the building, rather than when the builder discovered the fact or facts that might cause him to bring a claim. Therefore, the developer's cause of action had accrued, at the latest, on practical completion of the buildings, and since practical completion had occurred at a time when the buildings were owned by the developer, there was no reason in law not to conclude that the developer had a completed cause of action in negligence against the defendant at that stage.

The Judge had correctly applied the test of whether the new claims introduced by the amendments were reasonably arguable; that, in particular, the principles relevant to an application to make an amendment following the possible expiry of a limitation period (namely that the amendment would not be permitted if the party opposing it could show that it was reasonably arguable that the new claim introduced by the amendment was time-barred) did not apply, since it was not said that the claims which the developer sought to introduce by the amendments were time-barred.

The effect of section 135 of the BSA was that section 4B of the Limitation Act 1980 applied to a claim under section 1 of the DPA that had been ongoing at the time when section 135 had come into force; that, in particular, (i) the ordinary meaning of section 135(3) of the 2022 Act, which provided that the amendment made by section 135(1) was to be treated as always having been in force, could not have been any clearer, (ii), although section 135(6) contained an express carve-out from section 135(3) for claims which had been determined or settled before section 135 came into force, there was no such carve-out for ongoing claims, (iii) there was no principle that an entitlement to plead a time bar constituted an accrued right

which could not be removed by later legislation and (iv) a carve-out from section 135(3) for ongoing claims would have been difficult to justify on policy grounds; and that, accordingly, the limitation period for the developer's claim under section 1 of the DPA was 30 years from the date on which the right of action accrued.

The duty imposed by section 1(1) of the DPA on a person taking on work for or in connection with the provision of a dwelling was capable of being owed to persons who were not individual lay purchasers of the dwelling, such as commercial developers. Likewise, the duty imposed by section 1(1) was capable of being owed to a person who themselves, by virtue of section 1(4), owed the section 1(1) duty to another. Further, recoverability of damages on a claim under section 1 was not linked to or limited by ownership of the dwelling in question. lin the present case, it was clear that the designer, as a person taking on work for or in connection with the provision of a dwelling, owed a duty under section 1(1) to the developer, as a person to whose order the dwelling was provided; and that, accordingly, as



a matter of law, the developer had a valid claim against the designer under section 1 of the DPA that had been properly added by way of amendment.

It was not a condition precedent to the making of a contribution claim under section 1(1) of the Civil Liability (Contribution) Act 1978 that a third party had brought a claim against the contribution claimant, and the right to make a claim for contribution under section 1(1) of the 1978 Act was established when the three ingredients in section 1(1) could be properly asserted and pleaded, namely (i) the contribution claimant was liable, or could be found liable, to the third party, (ii) the contribution defendant was liable, or could be found liable, to the third party and (iii) their respective liabilities were in respect of the same damage suffered by the third party; and that, accordingly, the claimant's contribution claim under section 1 of the 1978 Act had been properly added by way of amendment.

Comment

The effect of section 135 of the BSA was to apply a 30-year limitation period in respect of a claim under the DPA when the cause of action had accrued prior to the commencement of section 135.

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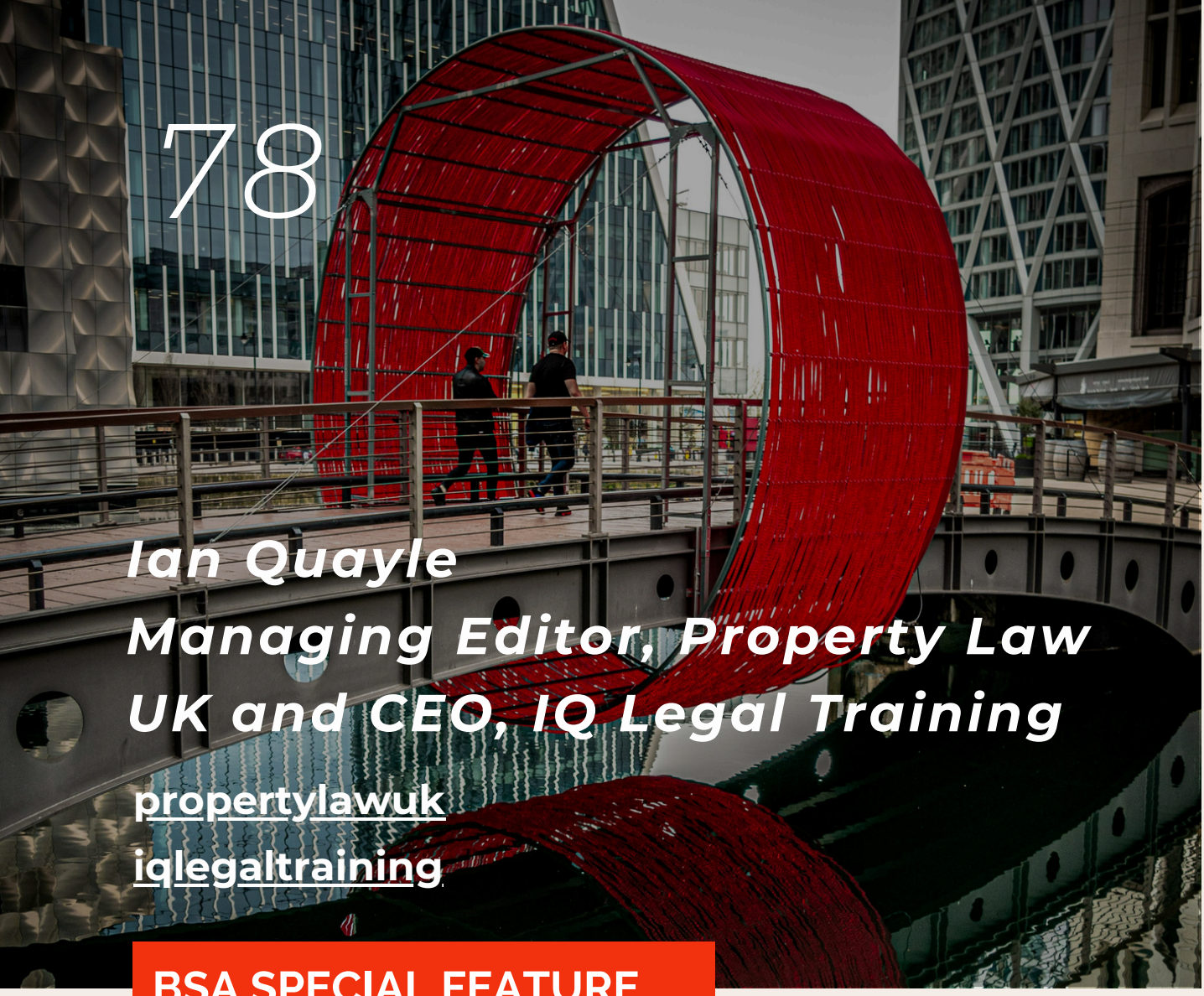

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Ian Quayle
Managing Editor, Property Law UK and CEO, IQ Legal Training

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BSA SPECIAL FEATURE

The Accountables: Duties, Higher-Risk Buildings, and Principal Accountable Persons

It is crucial for practitioners who advise landlords and commercial building owners to appreciate the status of accountable and principal accountable persons who dealing with BSA issues and higher risk buildings. To that end, I have drafted the following article based on a presentation by Richard Alford, Dan Dovar, and Ceri Edmonds of Tanfield Chambers which is particularly useful for audience as well as being of relevance to residential property lawyers acting in sales and purchases of flats and apartments in higher risk buildings (HRB).

This article examines the responsibilities of Accountable Persons (APs) and Principal Accountable Persons (PAPs) as defined under the Building Safety Act 2022 (BSA 2022) and subsequent regulations. These regulations establish the framework for managing building safety risks in higher-risk buildings, including the registration, assessment, and management of safety risks, the provision and maintenance of safety information, and engagement with residents.

Duties of the Accountables

The duties of Accountable Persons are comprehensively laid out in Part IV of the BSA 2022, spanning sections 76 to 94, and are further detailed in various regulations, including the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) Regulations 2023/315, the Higher-Risk Buildings (Management of Safety Risks etc.) Regulations 2023/907, and the Higher-Risk Buildings (Keeping and Provision of Information etc.) Regulations 2024/41.

1. Registration and Certification (ss. 76-82 & 315 regs)

Before a higher-risk building, or any part thereof, is occupied, it is mandatory to ensure the following:

- A valid completion certificate is in place (s. 76).
- The building is duly registered (ss. 77-78).
- If directed, the AP must apply for and obtain a Building Assessment Certificate (ss. 79-81).

2. Assessment and Management of Building Safety Risks (BSRs) (ss. 83-86 & 907 regs)

APs have a core duty to maintain the safety of the building and its occupants. This includes:

- Conducting BSR assessments upon occupation, when assuming the role of AP, at regular intervals, or when there is reason to believe a previous assessment is no longer valid (s. 83).
- Taking all reasonable steps to prevent the materialisation of BSRs and to mitigate the severity of any incidents arising from such risks (s. 84).
- Documenting these assessments and actions in a "Safety Case Report," which must be maintained, updated, and provided to the regulator upon request (s. 86).

3. Information and Documentation (ss. 87-89 & 041 regs)

APs are responsible for:

- Reporting safety occurrences promptly to the regulator, with an initial notice and a full report within ten days (s. 87).
- Maintaining and providing the "golden thread information," a comprehensive record of the building's safety information, to relevant parties including regulators, other APs, residents, and fire and rescue authorities (s. 88).
- Displaying prescribed safety information conspicuously within the building, including details about APs, safety certificates, and compliance notices (s. 89).

4. Resident Engagement (ss. 91-94)

PAPs must foster a culture of transparency and engagement with residents by:

- Establishing a residents' engagement strategy to promote information sharing and dialogue on building safety decisions (s. 91).
- Responding to residents' requests for information (s. 92).
- Implementing a complaints procedure for residents (s. 93).

Sanctions

Failure to comply with these duties can result in significant penalties. Contraventions that place occupants at significant risk of death or serious injury can lead to imprisonment and/or unlimited fines (s. 101).

Who Are the Accountables?

The term "Accountable Person" is defined under sections 72-75 of the BSA 2022 and the Higher-Risk Buildings (Key Building Information etc.) Regulations 2023. An AP is typically an entity with a legal estate in possession or a relevant repairing obligation for common parts of the building.

Principal Accountable Person (PAP)

In buildings with multiple APs, one is designated as the

PAP, responsible for coordinating the overall safety management. The PAP ensures compliance with the stringent requirements of the BSA 2022 and the associated regulations.

Higher-Risk Buildings

A higher-risk building in England is defined as one that:

- Is at least 18 metres in height or has at least seven storeys.
- Contains at least two residential units (s. 65(1)).

The regulations specify how to measure and classify such buildings, including considerations for independent sections that function as separate entities within a larger structure.

Conclusion

The duties of Accountable Persons and Principal Accountable Persons are critical to ensuring the safety and well-being of residents in higher-risk buildings. The BSA 2022 and accompanying regulations provide a robust framework for managing building safety risks, maintaining vital information, and engaging with residents effectively. Compliance with these duties is not only a legal obligation but also a moral imperative to protect lives and property.

Meet the editor

Ian Quayle
CEO, Managing Editor & Senior Trainer

IQ Legal Training & PLUK

Ian qualified as a solicitor and worked in private practice for 12 years specialising in property law matters including residential development work, commercial acquisitions and disposals.

Since becoming a fulltime trainer Ian has delivered over 1500 property related training courses for city and regional firms, local law societies and local authorities.

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SPEAKER

INFORMATION

The conference will take place at The Abbey Hotel, Birmingham and will be split into two main sessions; the morning will focus on residential transactions, and the afternoon will be dedicated to commercial transactions.

The event will provide professional development opportunities, allowing attendees to explore relevant topics and network with their peers.

Tickets for this event are free of charge, however, prior registration is required. Please note that tickets are limited and will be offered on a first-come, first-serve basis so early booking is advised.

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Building Safety Act - Case Chasers

Ian Quayle, CEO, IQ Legal Training, and Managing Editor, Property Law UK
iqlegaltraining.com
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Andrew Butler KC
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BUILDING SAFETY ACT

Ian Quayle recently engaged in a discussion with Andrew Butler KC from Tanfield Chambers. This captivating conversation was showcased on the Case Chasers podcast by Property Law UK. They explored The BSA ahead of the release of 'Building Safety Act 2022: A guide for property lawyers' from The Law Society, a publication for which Ian and Andrew served as general editors. Below is the transcript of their enlightening dialogue.

Ian Quayle (IQ): Hello everyone and welcome to this podcast, my name's Ian Quayle from IQ Legal Training and what we are going to be doing today is exploring some issues regarding the Building Safety Act and I have a great announcement in connection with the book published by the Law Society.

I have been working with Andrew Butler KC from Tanfield Chambers for over a year now. Hi Andrew, good to hear from you again, hope you are fit and well, and it is good to see you.

Andrew Butler (ABKC) Yes, I am, thank you.

(IQ) Andrew, I was just thinking there that we have been on quite a journey with regard to the Building Safety Act and talking of journeys, the first time, I think that you spent a lot of time looking at the Building Safety Act was on a journey. Do you remember where you were going and what you were doing?

(ABKC) Yes, I do indeed, Ian. I was just reflecting on this the other day because it's been quite a year and it was actually just under a year ago, about 11 months ago, I had a long-haul flight with a bit of time and I passed that time by actually starting to read into the Building Safety Act, which probably didn't make me wildly entertaining company, but it was a good opportunity just to start familiarising myself with the provisions and it's really amazing to think how much has happened since then. It is astonishing to think that was just eleven months ago and how far we have come during that time.

(IQ) Absolutely, and the interesting thing about it isn't it, that the more you delve into the act, the more complicated, the more interesting I think is trying to put a positive spin on things, it becomes, because I remember you and I discussing your first couple of readings and then thereafter it has become, I don't know whether it's a labour of love or not, but the more you delve into it, boy, does it get complex.

(ABKC) Yes, I think that is right. I mean my first focus at your encouragement was Part 5 and Schedule 8 and that was really quite unlike any piece of legislation I've come across before, just because of the intricacy. And you are right that it required, well, two or three readings to start to get my head around it, and every time I went through it, for the first few times, I picked up on different things. It is a very complex mosaic of legislation and of course, we are still at the stage where we do not really know how it is going to work through in practice. Decisions really are only starting to be published now and the rest is speculation.

(IQ) Yes and the other thing about that Andrew is of course it has huge implications for transactional property lawyers who want clarity and want to be able to say to clients it is safe to proceed with this leasehold property, or it is that there are issues.

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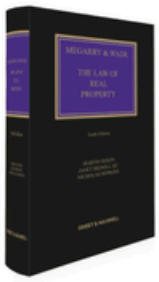

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When you've got that complexity in what is a relatively small part of the Act, it becomes a nightmare, and then I don't know what you think, but like you, I focused in on that to start with, but then when you start looking at other sections of the Act and you think about construction and you start thinking about the Building Act and the reform of the Building Act and the reform of the Landlord and Tenant Act 1985 and higher-risk buildings, there's probably a lifetime of research and work to be done on each one of those topics, never mind what we originally started looking at which is how does this impact on conveyances.

(ABKC) Yes, absolutely, and if only you and I were at the start of our careers… we will not have time to get to the bottom of it at all. I think that's right, and I certainly remember, when you brought my attention to this, you did so in the context of real problems that you were encountering with your clients and colleagues in the world of conveyancing. I think it is fair to say that a lot of people probably were not aware of what the Building Safety Act was doing, and a lot of people who were aware just did not understand the provisions and found them daunting and terrifying. A lot of what we started doing on this was about trying to provide some reassurance, trying to show conveyancers and others affected by it that it was workable and that a lot of it was about managing client's expectations as to what could and could not realistically be done. So, I hope there are a few people who feel less phased by it now than possibly they did then. But I think we both know that the work is not done, there is still a lot of ignorance, a lot of uncertainty, and that that does not reflect terribly well on the Act, it

must be said.

(IQ) No, it doesn't, and I remember all the time that we spent with regard to the Building Safety Act Flowcharts and you did all the heavy lifting on that with Annie Higgo, et cetera, but we tried to create a roadmap for conveyancers to say yes the Act is frightening, but here's a pathway that will enable you to deal with some of the basics to enable you to do your work as a conveyancer and they have been really successful and a really useful tool for people. But the time that was spent attempting to simplify the Act for that purpose was quite extensive, wasn't it? And again, I have to say you did the vast majority of the work and the heavy lifting on the Flowcharts and they have been really useful to try and show conveyancers well, look, subject to some caution, and subject to scoping the retainer and being careful, there is a route that can mean you can act on a sale or a purchase.

(ABKC) Absolutely, and it's very kind of you to give me that credit. I think what we both spotted was that the Act is full of these sorts of linear processes which are complicated, but much more straightforwardly depicted in visual form. And so, the aim of that was to try to break down those processes into simple manageable images that people could just have on their desktop and follow as they were trying to carry out these difficult exercises that the Act requires. I very much hope they have been successful. I think we have had some pretty good feedback, and it may be that as time goes by, we will start to think about producing some more. I mean, goodness knows enough things are being introduced even now, bits of the legislation coming into force, which may well call for a similar exercise to be done.

(IQ) Yes, five sets of regulation, 400 pages of government guidance notes and God knows what else. The other thing that is really useful for me is remembering the Tanfield Chambers conference in 2023 and that we had all your colleagues and you explaining in great detail bits of the Act, and it was then I recall thinking that this is such a huge piece of legislation. And although I have been focusing on it from a conveyancing perspective, you and your

colleagues were highlighting just how expansive it is from a litigation perspective too. So that was really interesting. And you had another event recently which I was kindly invited to, so thanks for that.

(ABKC) No, that is fine, we enjoyed seeing you there. Yes, we have always had a spring property event, I think it was in May last year and I was tasked with organising it. Originally, we were going to have a miscellaneous collection of topics, but it occurred to me that there was so much concern about The BSA at that time that in fact dedicating the day to that topic would possibly cause a lot of interest, and so it proved. We called it a day with the BSA, and even an entire day was not enough to do much more than scratch the surface. How people are expecting to learn about this Act with hour-long seminars at the end of the working day is beyond me.

So, as you rightly say, we had another conference on 07 February 2024, BSA Day 2 - the sequel, and we covered some of the same subjects we covered before in a little more depth, and some new subjects. We had a fantastic turnout, which again is indicative of the level of interest in and concern about the Act.

(IQ) Yes and for the first time I met a number of your colleagues who you were able to call upon in connection with the book that The Law Society is in the process of publishing, which I am really excited about to be honest because it is a practitioner's guide. It is again an attempt to decipher key Act features to make life easier for practitioners. So it was brilliant that at both of Tanfield's conferences I met and heard from a number of the contributors who have worked with you and The Law Society to publish the book, which again is exciting because I have never been involved in anything like it before. To have people take a deep dive into various sections of the Act for the purposes of the production of the book has been brilliant, and of course, your being able to cast a supervisory eye on what is being done has been a massive help. Once again Andrew, I have to concede you do the heavy lifting, I sort of dilly and dally on the periphery and every now and again try and, some would say cause mayhem, others would say perhaps assist.

(ABKC) I think you are doing yourself down Ian and it is certainly true to say that none of this would have happened without you. I mean as far as the book is

concerned, it is certainly true that the Building Safety Act fell neatly for the most part into Tanfield's bread and butter. We have already got a publication on service charges, and I think we are recognised as being one of the leading sets of chambers in that area, and the Building Safety Act, of course, affects service charges, but it affects the world of real estate much more widely than that. My own practice is more on the commercial spectrum of property work, construction, and so on, so there was a lot in the Building Safety Act that we as a chambers felt we could contribute to. It felt like it was a topic that was right for a book and thanks to you we got the way in with the Law Society who were kind enough to commission us to write it.

So the book which is due to come out shortly is a hybrid of the input of a lot of my colleagues who have, as you say, taken a deep dive into some of the more problematic subject areas of the Act, mainly in the world of real estate rather than the world of construction per se, and then your own invaluable contributions born of your training and your experience as a conveyancer, which dare I say may be a little more practical than those of learned council. But hopefully, the whole thing is going to address the day-to-day problems that practitioners are encountering, some of the problem areas. As I say in the foreword, it is quite a daunting thing, writing a book about an Act that is so new because there is so little learning on it, so few decisions that we are feeling our way to some extent, but I hope and expect that practitioners are going to find it useful to have a reference guide like this to follow.

(IQ) Yes and it's quite amazing given, I

mean I forget how many months we have actually had to do it, but to get from zero to where we are I think is pretty impressive, particularly given the fact that the government keeps throwing in regulations every now and again just to keep us on our toes. I got an e-mail this week from you saying, hey everyone remember about the new regs which came out just the other week. So they keep throwing little surprises at us to keep us on our toes, don't they?

(ABKC) Yes well, we are at the proofing stage as you know, and I am going through my chapters and I see that when I wrote them, I said these regulations are not yet in force and lo and behold, now they are in force. So yes, things are changing the whole time, and yes, that too is possibly a challenge for the book. I mean, I dare say it will be taken over by events in due course, but it is a good framework of the law as it is now, and it will be our job then to keep it up to date for the second edition.

(IQ) Yes, absolutely, and it is interesting, and people can pre-order the book via The Law Society website. So, Andrew, I'm really excited about where the book takes us, I am really excited also about the fact that there are further training opportunities and I would love to work with you again in connection with webinars et cetera, on feature development or feature changes or feature clarification on the law as and when we get First Tier Tribunal and Upper Tier Tribunal decisions.

I think in addition to that, given the

regulations, given the fact that practitioners are working more and more with transactions that involve the Act, that there is plenty of opportunity to spend more time looking at the Act, looking at how it changes and how its evolution means that practitioners need to be kept aware of what those changes are and what that evolution actually means.

(ABKC) I completely agree, I mean we are very much at the beginning of this journey. The Act is so radical, and the process of its introduction is so incremental that the landscape is going to change a great deal and I think people in the world of real estate are still getting their heads around the implications. I do not think it has been fully absorbed and understood even now. So, we are definitely at the start of a journey, but it is great to have gotten, I think I am right in saying, the first book out there that brings together these disparate and complicated elements and provides practitioners with a go-to work which hopefully will address quite a lot of the problems.

(IQ) Yes and certainly from the government's perspective, from what I hear, there are no plans or intentions on repealing the Act, it is what it is, we must live with it and work with it. The only thing I keep thinking Andrew is every time I see a new set of regulations, I am thinking to myself, I wonder if Andrew's got any long-haul flights so he can sit down and look at that while he's flying at 35,000 feet, and come back to me on the future of the Act.

(ABKC) Sadly, no exotic foreign holidays planned in, or at least none far afield, so it will be short haul at best for me in the future. So, I will probably just have to limit myself to a couple of sections or maybe the odd schedule.

(IQ) Yes, Andrew, it has been a delight talking to you again, a delight working with you, and I look forward to maintaining that relationship and with your colleagues at Tanfield Chambers. Again, as a plug for Tanfield Chambers, you and your colleagues have to be the go-to set for BSA-related issues, be it advice in connection with transactional work or, and I'm sure this is going to happen, the flow of litigation that goes before lower tribunal, upper tribunal, relating to aspects of the legislation. At least all your colleagues are

primed in connection with parts of the Act and able to assist practitioners be they property litigators, conveyancers, or transactional property lawyers.

(ABKC) Yes, thank you, Ian, that is where we hope to position ourselves, and I think we have done okay so far, and the Tanfield conferences further bolster our credentials. If I can just add to that a plug for the hub on our website, there is a dedicated section given over to The Building Safety Act where we are putting decisions, articles, and thought pieces. I know a lot of practitioners who have come across it and have found that very useful. So, if I can use this as an opportunity to plug that, and it would be wrong not to say thank you for encouraging us to focus our attention on this piece of legislation. I mean it came from your awareness of the difficulties that it was causing, and if we have helped to clarify the Act for some of those people that have been really troubled by it, then I am very pleased.

(IQ) No doubt about that at all. Thanks again, Andrew, lovely to talk to you, we will speak soon.

Listen to the Case Chasers podcast on Spotify here, or find your preferred platform here.

Building Safety Act 2022, A guide for property lawyers, 1st edition, is available from The Law Society here.

Meet the editor

Andrew Butler KC

Tanfield Chambers

Andrew Butler KC is Joint Head of Chambers, and took silk in 2018. He practises in the areas of Property and Business & Commercial, and is Head of Chambers' Business & Commercial Group. While he accepts instructions across the full spectrum of commercial and property work, he particularly specialises in development disputes and professional negligence matters, with company law issues also forming an increasing part of his caseload. Andrew is a qualified mediator and a member of both the Chartered Institute of Arbitrators and the London Court of International Arbitration. He is an adjudicator on the panel of the Professional Negligence Bar Association. He was appointed Queen's Counsel in 2018 and his silk practice has gone from strength to strength, involving an appearance in the Supreme Court, and regular appearances in the Court of Appeal, as well as the Commercial and Business and Property Courts.

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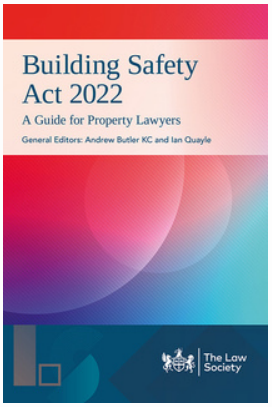

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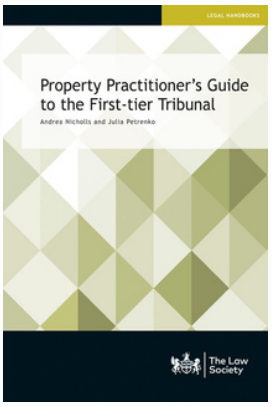

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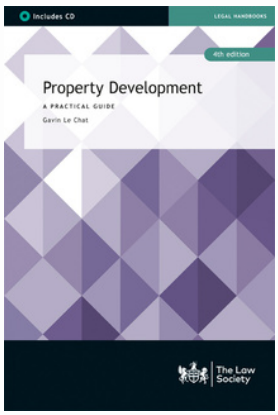

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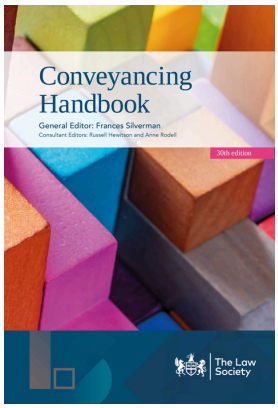

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This is a fantastic opportunity for a Real Estate Lawyer to work alongside and learn further from an impressive and highly ranked Legal500 team. This national firm are known for looking after their clients and staff and have a reputation for enjoying a real work/life balance. £Excellent salary, benefits package, supportive team, and a clear pathway to progressing through the firm. Location: Milton Keynes

Ref: PLUK044 – Real Estate Disputes, Associate/Senior Associate

This thriving and highly ranked team are continuing with planned growth and one or more opportunities exist for Junior Real Estate Dispute lawyers to join this Chambers recognised team and to grow their own careers. Continued development is truly encouraged by this firm who are known for promoting within. The firm offer and run a very organised working environment and the culture of this firm is recognised and attractive to many. Location: Manchester

Ref: PLUK045 – Property Litigation Lawyer

Applications are invited from Property Litigators of all levels looking for something a little different. This ambitious firm are extremely proud of their culture and working environment and the team continues to grow from strength to strength. This opportunity offers the success applicant with a high quality and varied caseload, highly attractive salary, and an impressive benefits package. Location: Leeds

Ref: PLUK046 – Commercial Property Lawyer

This national firm with a growing and impressive commercial property team and are seeking a further lawyer Leeds based to work on a variety of matters including real estate and development work. This leading firm have an excellent reputation, boast an impressive client base, and offer generous renumeration packages as well as being known for their enjoyable working environment and promoting career development for those seeking to climb the ladder. All levels considered and retail experience is highly desirable. Location: Leeds

Ref: PLUK047 – Property Litigation Lawyer

This highly regarded Norfolk firm are seeking a property litigator to join their already impressive and incredibly knowledgeable team. Applications are open to all those with fee earning experience of property litigation matters and this role would suit an individual looking to support and learn from a team working environment. Client interaction, business networking and an enjoyable and social culture will be found here too. Location: Norfolk

Ref: PLUK048 – Commercial Property Lawyer

This highly ranked firm with an excellent reputation across the UK is looking for a commercial property law specialist (individual or team) to join their forward thinking and rapidly growing team. This firm are very well known for looking after their staff and offering a flexible and supportive working environment, including relaxed dress codes and a long list of benefits and initiatives. The successful candidate will work on a varied caseload of commercial property transactions from city retail clients to rural land and development. Location: South West

Ref: PLUK049 – Agricultural Property Lawyer Associate / Senior Associate

This is a fantastic opportunity to join a leading department with an excellent reputation and enviable client base of farmers, landowners, estates, and agri-business owners, both locally and nationally. Ideally this role is suited to someone either already specialising in agricultural matters or someone who handles a mixed commercial property caseload with proven experience of working on agricultural property and estates looking to make a move exclusively into this field. Location: South West

Ref: PLUK050 – Planning Lawyer

Applications are invited from planning specialists with experience of working for a wide range of clients and advising on issues with green belt land, affordable housing projects, regeneration, and development, listed buildings, change of use and transport and infrastructure projects. This forward-thinking firm are growing from strength to strength, offer flexible working patterns, an attractive salary and long list of benefits. Choice of office locations across the UK

Ref: PLUK051 – Agricultural Property Lawyer

This is a fantastic opportunity for an Agricultural Law specialist looking to take their career to the next level. This firm boast an incredibly impressive and long-standing client base and pride themselves on real work/life balance. As the firm makes succession plans, an opportunity is available to work alongside a partner with a view to inheriting their caseload, clients and to joining the firm's partnership. Location: East Anglia

Ref: PLUK052 – Residential Conveyancer

This is an opportunity for an experienced residential conveyancing Solicitor to step away from fee earning and targets and take a unique firm to the next level. This long-established firm are growing their property offering and have launched an onsite estate agency generating an ever-increasing flow of conveyancing work, as well as other impressive revenues that feed more work into the firm. The firm is working towards CQS accreditation and is seeking a Head of Department who can lead and achieve this as well as support, mentor and grow a small team. Location: Norfolk

Ref: PLUK053 Agricultural Lawyer, focus on agricultural property matters, East Midlands

Ref: PLUK054 Commercial Property Lawyer, junior to mid-level to assisting a leading team, East Midlands

Ref: PLUK055 New Build Conveyancer, all levels considered, HNW clients, East Midlands

Ref: PLUK056 Conveyancing Fee Earner/Paralegal, to assist a busy and organised team, East Midlands

Ref: PLUK057 Residential Property Lawyer, opportunity to head up a small team, London

Ref: PLUK058 Residential Property Paralegal, new build/development experience, London

Ref: PLUK059 Commercial Property Lawyer, 2-4 PQE, including corporate transactions, London

Ref: PLUK060 Construction Lawyer, non-contentious transactional caseload, London

Ref: PLUK061 Planning Lawyer, junior/mid-level, forward thinking and growing team, Northwest

Ref: PLUK062 Construction Lawyers, contentious & non-contentious, leading regional firm, Northwest

Ref: PLUK063 Real Estate Finance Lawyer, junior level, excellent firm, city centre location, Northwest

Ref: PLUK064 Agricultural Property Lawyer, any level, hybrid working, Norfolk

Ref: PLUK065 Commercial Property Paralegal/NQ, leading firm, Norfolk

Ref: PLUK066 Residential & Commercial Property Lawyer mixed caseload, Coastal Location

Ref: PLUK067 Residential Conveyancers, various roles and various firms, Norfolk

Ref: PLUK068 Commercial Property Lawyer, Senior/Director, long standing support in place, Norfolk

Ref: PLUK069 Commercial Property Lawyers, Senior Level, various working patterns, Cambridgeshire

Ref: PLUK070 Construction Lawyer, non-contentions workload, Cambridgeshire

Ref: PLUK071 Residential & Commercial Property Lawyer, Senior/Director level role, Cambridgeshire

Ref: PLUK072 Commercial Property Lawyer, junior-mid level fee earner sought for a busy team, Essex

If you cannot see the role you are looking for here, you can reach out to the team at The Clarke Edwards Partnership to arrange a confidential discussion on all the roles that could potentially meet your requirements.

Alternatively, you can register your interest in hearing about future opportunities as they come to market via the website - www.theCEpartnership.co.uk.

LEGAL RECRUITMENT EXPERTS

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Event Calendar

Industry Event Calendar

Date	Provider	Details	Booking
23 July 11:00 PM - 12:00 PM	Today's Training and IQ Legal Training with Zoe Upson, IQ Legal Training	Raising and Responding to Enquiries	£55 (incl VAT) per person Link
23 July 12:30 PM - 1:30 PM	IQ Legal Training with Ian Quayle	Local Authority Lawyer Forum 2024 – July	Free, prior booking required Link
25 July 12:30 PM - 1:30 PM	IQ Legal Training with Ian Quayle, sponsored by Stewart Title Ltd.	Commercial Property Forum 2024 – July	Free, prior booking required Link
09 / 16 / 23 September 11 AM - 12 PM	IQ Legal Training with Ian Quayle and Maria Hardy of PCC	Post Completion Training for Support Staff – Residential Conveyancing. A series of 3 webinars on the importance of post-completion practices and how to avoid requisitions.	£100 + VAT per person Link
11 Sept' 11 AM - 11.30 AM	Redbrick Solutions with Tom Lyes, Head of Legal and Property at Armalytix	Armalytix Webinar | Delivering Source of Funds Transformation	Free, prior booking required Link
17 Sept' 11 AM - 11.45 AM	Redbrick Solutions with CLS Property Insight	CLS Webinar | Forfeiture of Lease (Housing Act) & Rent charges indemnity insurance	Free, prior booking required Link

Industry Event Calendar

Date	Provider	Details	Booking
17 Sept' 11:00 AM - 12:00 PM	Today's Training and IQ Legal Training with Zoe Upson, IQ Legal Training	Webinar: Buying and Selling with Companies Involved	£55 (incl VAT) per person Link
08 October 11:00 AM - 12:00 PM	Today's Training and IQ Legal Training with Zoe Upson, IQ Legal Training	Webinar: Get to Grips with Unregistered Land	£55 (incl VAT) per person Link
10 October 9:00 AM - 5:00 PM	Hosted by IQ Legal Training with Sponsors Stewart Title and TM Group	Residential Conveyancing and Commercial Property Conference – Birmingham Where: The Abbey Hotel, Hither Green Lane, Worcestershire, B98 9BE For more info email: info@iqlegaltraining.com, call 0737 913 4942 or visit iqlegaltraining.com.	Full day: £100 + VAT per delegate Full day: £50 + VAT per delegate Book AM (Residential) Book PM (Commercial) Book Full Day Event
16 October 08.45/09:00 AM - 12:00 PM	Hosted by Maitland Chambers	Bristol Conference: A series of talks/seminars, with a coffee and networking break Where: The MShed, Bristol	For more info & to join mailing list email: seminar@maitlandchambers.com
20 November 9:00 AM - 5:00 PM	Hosted by IQ Legal Training with sponsors Stewart Title and Geodesys and supported by HM Land Registry,	Residential Conveyancing and Commercial Property Conference – Grantham Where: Belton Woods Hotel, Grantham, NG32 2LN For more info email: info@iqlegaltraining.com, call 0737 913 4942 or visit iqlegaltraining.com.	Full day: £100 + VAT per delegate Full day: £50 + VAT per delegate Book AM (Residential) Book PM (Commercial) Book Full Day Event

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