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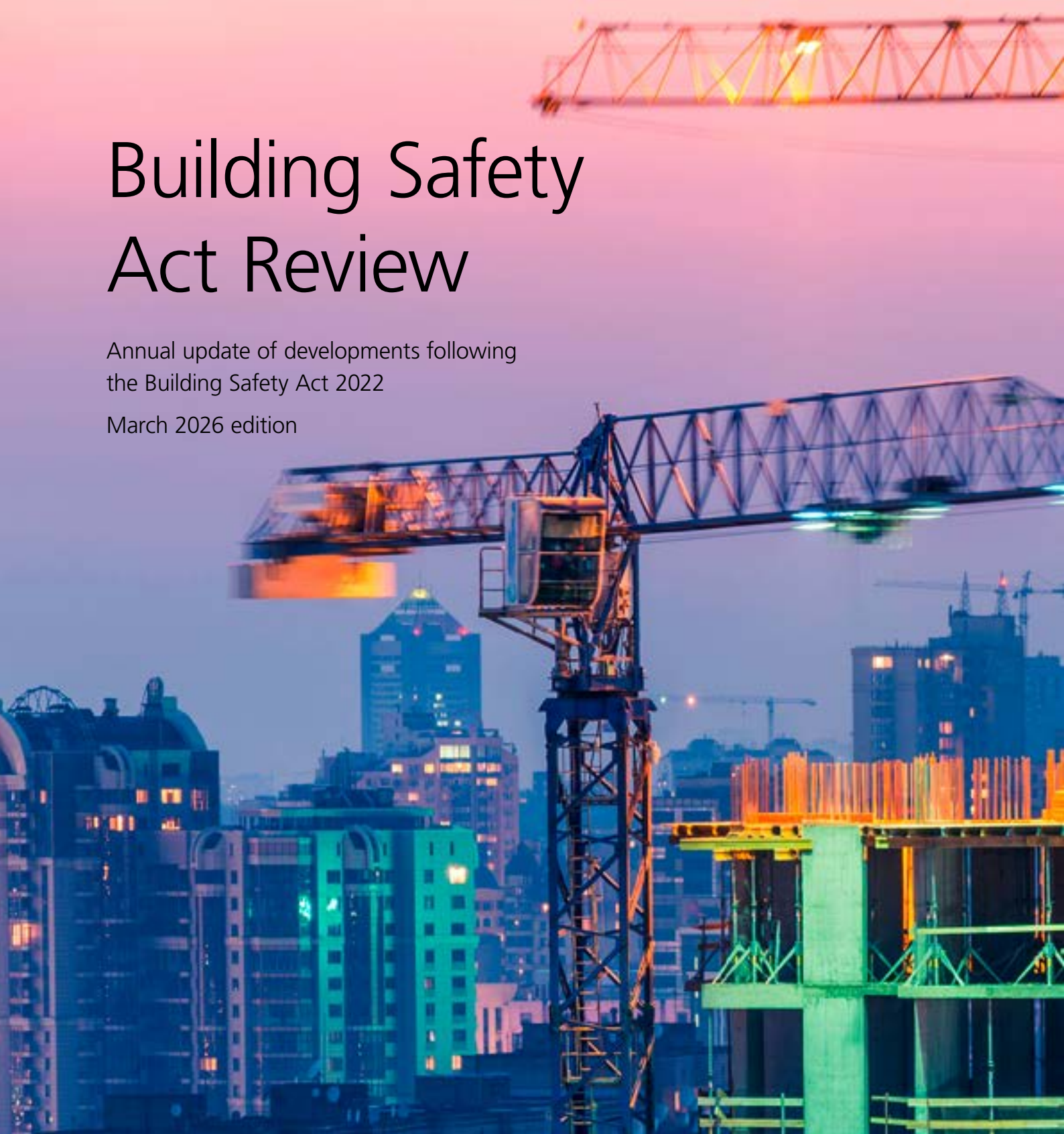
Building Safety Act Review

Annual update of developments following the Building Safety Act 2022

March 2026 edition



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Introduction

CMS is delighted to present this, the second edition of the Building Safety Act Review. While the first edition examined the initial impact of the Building Safety Act 2022 ('**BSA**') following its enactment in April 2022, one year on, this edition examines key developments over the past twelve months and reflects on whether the BSA's original aims – to '*strengthen safety standards throughout the lifecycle of a project*' and to '*seek to expedite the resolution of liability issues*'– are being achieved in practice.

We draw on CMS's cross-firm expertise, including multiple tier 1-ranked practice areas and insights developed from handling thousands of BSA-related matters, to provide our clients with clear analysis of the ongoing challenges facing all sectors affected by the BSA.

Four years after enactment, most of our clients have developed a good understanding of the fundamental changes brought about by the BSA. However, the impact of the BSA continues to grow. Therefore, while this edition develops upon last year's themes, it also reflects the expanding reach across sectors and includes two new sections: (1) construction products and (2) corporate transactions.

The courts have considered many of the key provisions, making decisions which reshape the risk landscape for developers, investors and landlords. We unpack the key decisions, including the Supreme Court's decision in *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21, which provides welcome clarity on how developers can use the BSA and the Defective Premises Act 1972 ('**DPA**') to pursue their supply chain, years after disposing of their interests in the property. We look at the courts' willingness to exercise their powers to grant Building Liability Orders and Remediation Contribution Orders.

On the regulatory front, the Building Safety Regulator ('**BSR**'), established under the BSA, has faced significant scrutiny over the past year, with widespread reports of substantial delays in the gateway approval process. Between October 2023 and March 2025, the average time to obtain Gateway 2 approval was nine months – three times the planned 12-week statutory timeframe. In December 2025, a government inquiry into the operation and effectiveness of the building safety regulatory framework concluded that delays caused by the BSR were unacceptable and risked causing the government to miss its target of building 1.5 million homes by 2029. Following subsequent reforms, by February 2026 the waiting time for Gateway 2 approval for new schemes had reduced to approximately 13 weeks. Time will tell whether it can perform the same turnaround on Gateway 2 approvals for remedial schemes and Gateway 3 approvals.

The new construction products section of the BSA Review examines the Government's ambitious proposals for system-wide reform of the construction products regulatory regime. Key developments include the publication of the Construction Products Reform White Paper in February 2026, which proposes extending regulatory coverage to all construction products. Despite heavy criticism of cladding and construction product manufacturers during the Grenfell inquiry, corresponding court action has been limited to date, though this looks set to change.

In corporate transactions, we examine why it is essential for those involved with real estate assets to grapple with the implications of the BSA when considering the risk profile of the transaction. Aside from the usual due diligence, parties must now consider how Building Liability Orders and Remediation Contribution Orders may extend liability beyond the original developer to wider corporate groups, with the concept of 'association' capturing parent companies, subsidiaries, former group companies, and acquirers.

Disputes / Liability

Introduction

When enacted in 2022, the BSA brought about profound changes to the liability landscape, but it has taken a few years for the provisions to be considered by the courts. However, during 2025 and early 2026, the courts have made a number of significant decisions which provide clearer judicial guidance on how the BSA's mechanism changes the liability landscape for developers, investors, landlords and those involved in construction. The approach taken so far appears to be that liability for defective or unsafe works is wide-reaching and not easily avoided. The courts show a great appetite to enable claimants to pursue those with involvement in development and construction or those connected with them.

In December 2024, the TCC made the first Building Liability Order pursuant to section 135 of the BSA 2022 in *381 Southwark Park Road RTM Company Ltd and others v Click St Andrews Ltd and another* [2024] EWHC 3569 (TCC).

In *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21, the Supreme Court addressed how the BSA and the DPA operate in historic building safety claims. The decision matters because it confirms that the BSA's extended limitation periods can apply to proceedings that were already underway when the Act came into force, it confirms that voluntary action does not preclude recovery, it clarifies who can bring DPA claims (including commercial developers, not only individual purchasers) and whether an ongoing ownership interest is required (it is not). The court also left open the question of when certain negligence claims for defects (absent physical damage) accrue for limitation purposes, which is likely to remain a contested issue in future claims. It is yet to be seen how the underlying claims will be decided.

In *Wilson & Anor v HB (SWA) Ltd* [2025] EWCA Civ 1360 (29 October 2025) the Court of Appeal gave us a recap of damages for breach of contract in building claims and considered how these might be similar to damages for breach of the DPA.

What's next for 2026?

The TCC working group has made recommendations on case management of building safety claims in the TCC. We understand that these recommendations will be reflected in a new version of the TCC guide, which is eagerly awaited. The TCC has many building safety claims in the pipeline, including claims against manufacturers, and this is an area we can expect to hear more about in the coming months and years.

Disputes / Liability

The Supreme Court rules on Building Safety Act issues

In May 2025, the Supreme Court issued its eagerly awaited decision on various issues arising under the BSA and the DPA. The decision will be of direct relevance to many other building safety claims currently before the courts and those yet to be commenced. Whilst generally consistent with the Court of Appeal's decision, the Supreme Court has left one important issue for further consideration in future cases.

URS Corporation Ltd v BDW Trading Ltd [2025] UKSC 21: a recap

BDW engaged URS to provide engineering services in relation to two separate developments comprising more than 500 apartments across a number of separate blocks (the '**Two Developments**'). The various parts of the Two Developments reached practical completion between 2005 and 2012, and individual apartments were sold to members of the public.

Prompted by the Grenfell Tower disaster in June 2017, BDW undertook a general review of its previous developments. This review led BDW to believe that the structural design for the Two Developments was deficient and that the structures forming part of the Two Developments were dangerous, although no physical damage to the structures had yet occurred.

Despite having sold the apartments and having retained no other proprietary interest in the Two Developments, BDW incurred significant costs in carrying out investigations, temporary works, evacuation of residents and permanent remedial works. BDW commenced TCC proceedings against URS seeking to recover these costs, claiming that URS's structural design had been negligently performed.

The absence of a proprietary interest in the Two Developments, and the fact that any liability BDW may have had to individual owners was time-barred at the point it decided to carry out remedial works, raised a number of difficult legal issues. Further complicating matters, a retrospective extension of the limitation period applicable under the DPA had been enacted under the BSA after the completion of BDW's remedial works. Various legal issues arising from these circumstances were determined by the Court of Appeal in 2023, based on assumed facts and leaving liability issues to be determined at a later date if necessary. For our Law-Now on that decision, please click here.

The Supreme Court has now upheld the Court of Appeal's decision for the reasons summarised below.

Liability in Tort

BDW's claim included reliance on tortious duties. URS objected that the specific circumstances in which BDW had decided to incur the cost of remedial works were too remote and did not fall within the scope of the tortious duties relied upon by BDW. The focus of this argument in the Supreme Court was on the voluntariness of BDW's decision to remediate, a decision taken without any proprietary interest in the Two Developments and without having any enforceable legal obligation to carry out remedial works.

The Supreme Court rejected any firm rule of law that voluntary decisions of this nature fell outside the tortious duties owed by a designer such as URS. Previous cases where voluntary decisions had been considered to be too remote depended on their own circumstances. Not all voluntary decisions would be too remote. Whether or not the costs incurred by BDW were too remote in the circumstances of this case would therefore need to be determined at the trial of the claim.

The Supreme Court also noted that questions of voluntariness more naturally fell for consideration under the headings of causation and mitigation i.e. whether the chain of causation had been broken and/or whether BDW's voluntary acts were recoverable as reasonable steps in mitigation. These questions would also need to be determined at the trial of the claim.

Given the Supreme Court's decision, it was not necessary for it to rule on the point at which any cause of action in tort would accrue for limitation purposes. URS had invited the Court to overrule the House of Lords decision in *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1 where it was held that tortious claims for defective buildings arise at the point at which relevant damage occurs (held to be physical damage in that case). The Supreme Court noted that the date of discoverability had been taken as the relevant date in other jurisdictions in so far as claims not involving physical damage were concerned but left the issue for further consideration in a future case.

The Defective Premises Act 1972

As noted above, the BSA introduced a 30-year retrospective limitation period for claims under the original form of the DPA prior to its amendment by the BSA. The Supreme Court generally agreed with the Court of Appeal's findings as to the impact of this retrospective extension:

— The extended limitation period was applicable to proceedings, such as those commenced by BDW, which had already been commenced at the time the BSA was enacted.

— There was no need to restrict the rights of action provided by the DPA to individual purchasers of a dwelling. Commercial developers such as BDW were also able to rely upon the DPA where they fell within its terms.

— Nor were the rights provided for by the DPA conditioned on the continuation of an ownership interest in the property concerned.

Disputes / Liability

The Civil Liability (Contribution) Act 1978

The Contribution Act allows two persons who are both liable to a third person for the same damage to recover contribution between themselves if one of them has made a payment to the third party in respect of their liability. In the present case, BDW alleged that both itself and URS were liable to the owners of the apartments and that it was entitled to claim contribution from URS in respect of the costs it had incurred in effecting repairs to the Two Developments.

URS argued that the right to contribution required a claim to be made by the third party, in this case the owners. It argued that BDW had incurred the repair costs voluntarily in the absence of a claim by the owners and could not, therefore, seek contribution under the Contribution Act.

The Supreme Court agreed with the Court of Appeal's finding that a formal claim was not required before the right to claim contribution arose but disagreed that the right arose as soon as two persons became liable to a third party in respect of the same damage. It was sufficient in the Supreme Court's judgment that a payment had been made to the third party, which could be a '*payment in kind*' such as the carrying out of remedial works.

Conclusions and implications

The Supreme Court's decision provides welcome clarity on a number of difficult issues raised by the BSA and DPA of relevance to historic building safety claims. The decision will be of direct relevance to many other building safety claims currently before the English courts.

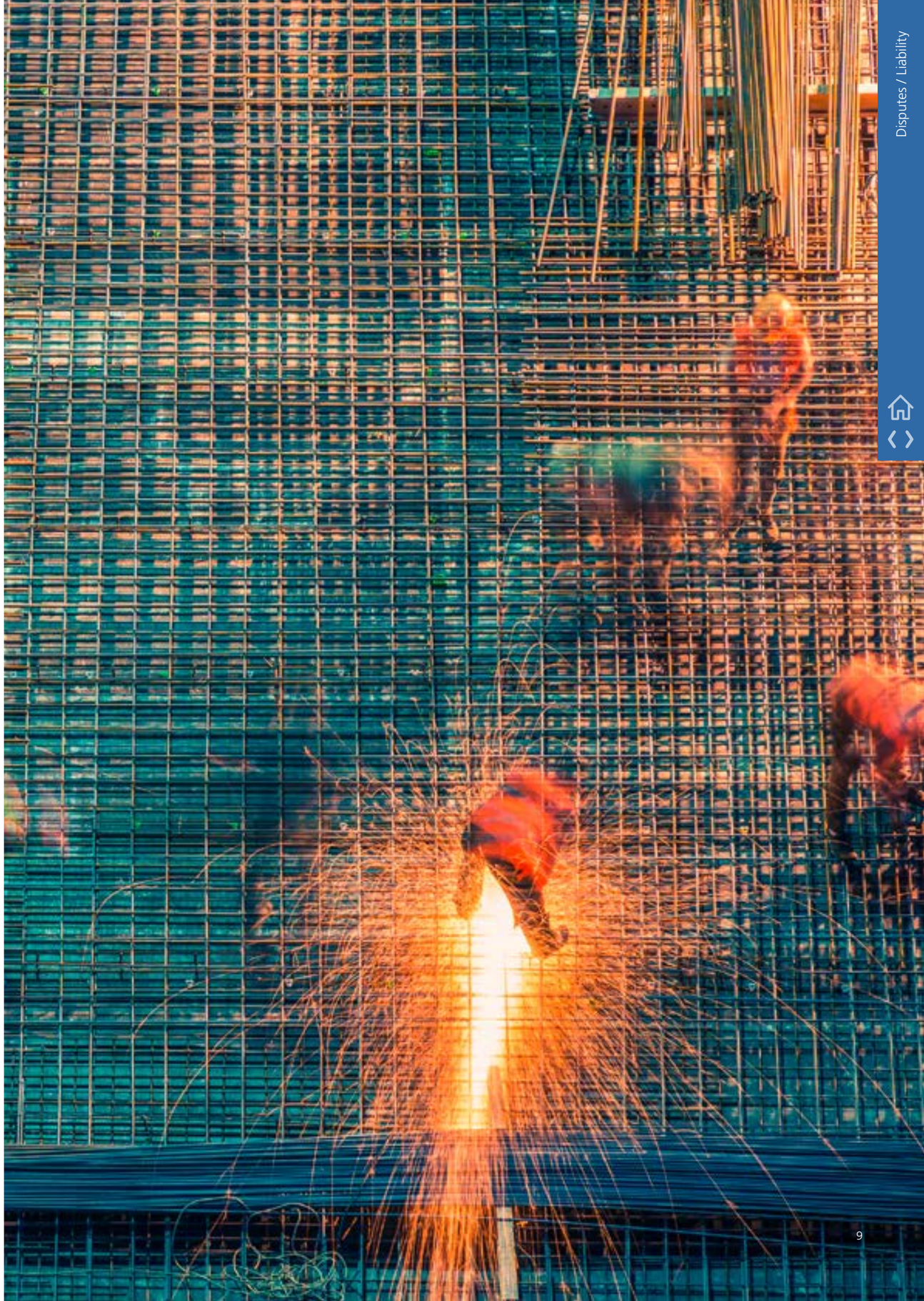
However, the Supreme Court's decision not to provide clarity on the date on which tortious claims for defects not involving physical damage are taken to accrue for limitation purposes is disappointing. In specifically reserving this question for further consideration, the door has been left open for claimants in future cases to argue for a more lenient approach than currently exists under the *Pirelli* decision.

Although this case represents the first appellate decision in relation to the BSA, it is certainly not the last. See below for our consideration of the Court of Appeal's decision in *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846 dealing with RCOs (for our Law-Now on the FTT's decision in that case, please click here).

* CMS acted for URS in these proceedings.

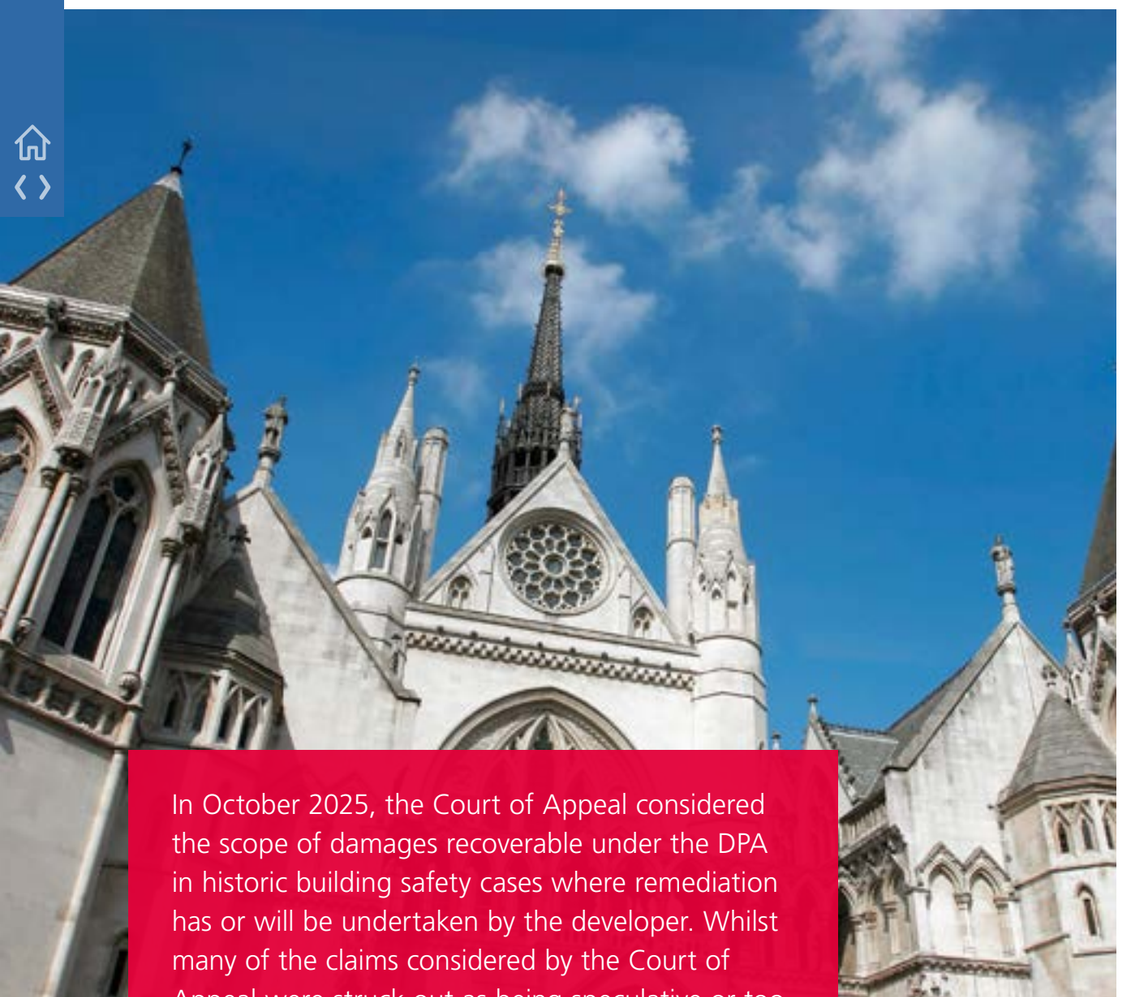
References:

- *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1
- *URS Corporation Ltd v BDW Trading* Ltd [2023] EWCA Civ 772
- *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21
- *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846



Disputes / Liability

Recoverable damages under the Defective Premises Act: Court of Appeal guidance



In October 2025, the Court of Appeal considered the scope of damages recoverable under the DPA in historic building safety cases where remediation has or will be undertaken by the developer. Whilst many of the claims considered by the Court of Appeal were struck out as being speculative or too remote, this decision provides some useful guidance on the equivalence of damages under the DPA with damages in contract and on issues of double recovery where properties have been gifted or sold prior to remediation.

Wilson v HB (SWA) Ltd [2025] EWCA Civ 1360

Mr and Mrs Wilson were leaseholders of two flats in a development in Cardiff. The building was found to suffer from fire safety and other defects. The Wilsons were two of 41 individual leaseholders suing the developer for damages. The claims were for breach of contract and/or for breach of section 1 of the DPA.

The developer had agreed with the management company to carry out a comprehensive programme of remedial works. As a result, no claim could be made for the cost of remedial works. Instead, the Particulars of Claim ('**PoC**') submitted on behalf of all 41 claimants set out five heads of loss as follows:

1. diminution in the value of the flats notwithstanding the remedy of defective works;
2. loss of rental income;
3. damage to health due to the presence of mould and damp;
4. inconvenience and distress; and
5. potential decanting costs.

Each claimant subsequent submitted a Schedule of Loss which contained their quantum of the above heads of losses. All of the Schedules of Loss claimed the heads of loss noted above, except for the Wilsons'. Their Schedule of Loss listed nine different heads of loss, seven of which were struck out by the TCC as too remote, unclear or speculative. The Wilsons appealed.

Damages under the DPA

As a preliminary question, the Court of Appeal considered whether the quantum of damages recoverable under the DPA was different to that recoverable for breach of contract. The Court of Appeal noted that neither party had challenged the TCC's finding that '*in the circumstances of this case there is unlikely to be any or any significant difference between the two*'. The Court of Appeal also noted that previous case authorities had not drawn a distinction between the damages recoverable in contract and under the DPA.

The Court of Appeal did not, however, say that no such distinction could ever be made. Therefore, theoretically, there may be some scope for arguments to be made in the future as to such a distinction in cases dealing with different circumstances.

Diminution in value where defects have or will be repaired

The first head of loss noted above is a claim for diminution in value, notwithstanding the planned remedial works. As the Court of Appeal noted, the claim was principally a claim for 'blight':

'It is common to find that, for example, flats in a block which has been the subject of extensive remedial work are worth less on the open market than flats in a block which has not been the subject of such work. This is commonly known as 'blight'. Residual diminution in value is a proper head of loss in such circumstances …'

However, the Wilsons had sought to claim for diminution in value of a different nature, based on the fact that they had gifted the flats to their daughters in November 2024 at a time when remediation, although likely, had not yet been confirmed. They claimed to have suffered an immediate diminution in value because the gifted assets were worth less than if they had been defect free.

The Wilsons relied on a previous Court of Appeal authority to the effect that the subsequent sale or destruction of property does not deprive the owner of a claim for diminution in value. In *The London Corporation* [1935] P 70,[1] a steamship was damaged by another vessel. The Court of Appeal in that case held that diminution in value, represented by the cost of repairs, was recoverable by the steamship owner, despite the fact that the steamship was in fact sold for scrap.

Although the Court of Appeal in the present case found that the Wilsons' claim in this respect had not been properly pleaded, it noted that '*it was a novel claim in law*' and would not be straightforward to formulate. Among the questions it raised was how to quantify loss where the properties were gifted for nothing and whether the claim would result in 'double jeopardy' for the developer:

'How could the defendant be liable to the Wilsons and/or their daughters under the DPA for the necessary remedial work to put the flats right, and also be liable to the Wilsons for the diminution in value calculated on the basis that the flats were defective when they gifted them? How is that the same as if the Wilsons had sold the flats at a loss in November 2024, when any purchasers at a lower figure may be regarded as having already been compensated for the defects (because they had paid less than they would otherwise have done for the flats), so would not necessarily be entitled to have the works to their flats done free of charge?'

1 This judgment is only available through paid subscription and therefore no hyperlink is available.

Disputes / Liability

Causation and remoteness

In respect of Wilsons' other heads of losses, the Court of Appeal took a robust approach in weeding out speculative and remote claims. It accepted, in principle, that residual diminution and loss of rental income can be recoverable. However, in this case, loss of rent had been claimed on a hypothetical basis by reference to what rent could have been sought had the defects not been present, but it did not address the rents actually charged and whether higher rents had been sought or advised against.

Similarly, a claim that the Wilsons had lost the opportunity to borrow against the value of the flats was too speculative and did not address any actual opportunities that the Wilsons had wanted to pursue but were unable to as a result of financial difficulties. Such losses were also too remote, not being ordinary losses and there being no allegation that the Wilsons made the developer aware of their reinvestment plans.

Conclusions and implications

Given the increasing prevalence of DPA claims since the enactment of the BSA, this decision provides helpful guidance as to what heads of loss leaseholders can claim from developers under the DPA. Claims which are remote, unparticularised or speculative will be struck out. From a procedural standpoint, the decision is a good reminder that Schedules of Losses should closely follow the agreed pleading framework and should not introduce new heads of claim.

The questions posed by the Court of Appeal in relation to 'double jeopardy' are also of note. Although not cited by the Court of Appeal, the prospect of double recovery under the DPA has previously been considered by the Court of Appeal in *Chartres v Taylor* [1998] EWCA Civ 102.[2] In that case, reductions to the purchase price were found not to be on account of the defects claimed for under the DPA and therefore in that instances, double recovery was not established.

More difficult issues of double recovery may arise where remediation by a developer is carried out pursuant to obligations owed to the government under Developer Remediation Contracts and the Self-Remediation Terms contained within them agreed as part of the government's Responsible Actors Scheme. Such contracts provide for independent remediation obligations separately from the DPA or any contractual remedies held by an owner. Developers who have remediated in accordance with these obligations could potentially face claims from prior owners, relying on *The London Corporation* case noted above, who have gifted property (like the Wilsons) or sold at a reduced price. Whilst the potential for double recovery may have prevented the new owners from being entitled to remediation in such circumstances, the developer will have remediated, or be required to remediate, in accordance with its separate obligations owed to the government.

References:

- *Wilson v HB (SWA) Ltd* [2025] EWCA Civ 1360
- *Chartres v Taylor* [1998] EWCA Civ 102
- *The London Corporation* [1935] P 70

2 This judgment is only available through paid subscription and therefore no hyperlink is available.

Disputes / Liability

The ‘just and equitable’ test for Building Liability Orders

On 19 December 2024, the Technology and Construction Court handed down the first decision to consider the ‘just and equitable’ test for BLOs under the BSA. The TCC’s judgment provides guidance as to the application of this test and some potential limitations on the power to make BLOs.

381 Southwark Park Road RTM Company Ltd v Click St Andrews Ltd [2024] UKFTT 26 (PC)

Click St Andrews contracted with a right to manage company (the ‘**RTM Company**’) to erect an additional storey to an existing building by installing three prefabricated modular units onto its roof. Its works were guaranteed by its parent company (‘**Click Holdings**’). Following water damage to the existing property and the discovery of fire safety and structural defects, the RTM Company along with multiple leaseholders brought a claim against Click St Andrews and Click Holdings.

The TCC found in favour of the leaseholders and RTM Company, however, Click St Andrews had entered liquidation, and the leaseholders did not have direct rights of action against Click Holdings. The leaseholders therefore sought a BLO against Click Holdings. BLOs can be ordered under section 130 of the BSA and have the effect of making a Relevant Liability of one company also a liability of an Associate. A Relevant Liability includes liability under the DPA and any liability as a result of a ‘*building safety risk*’.

Click St Andrews was found to have a Relevant Liability and, as Click Holdings was an Associate, the only remaining question for the TCC under section 130 was whether it was ‘*just and equitable*’ to make a BLO against Click Holdings.

‘Just and equitable’

Although there were no previous cases on the meaning of the ‘*just and equitable*’ test under section 130, the TCC relied on a decision of the FTT in *Triathlon Homes LLP v Stratford Village Development Partnership* [2024] UKFTT 26 (PC) dealing with a similar ‘just and equitable’ requirement for the granting of Remediation Contribution Orders under section 124 of the BSA.

The TCC considered the following specific issues as relevant to the ‘*just and equitable*’ test:

- Agreeing with the FTT in *Triathlon v Stratford*, the TCC considered that Click Holdings’ lack of assets was of little relevance when determining whether it was just and equitable to make a BLO.
- The TCC accepted that questions of fairness could arise if the Associate was not a party to the proceedings against the original defendant. In such scenarios, the Associate might wish to raise other arguments on liability that were not raised in the initial trial. However, this concern was inapplicable in this case, as Click Holdings had participated in the trial and had a sufficient opportunity to make submissions.
- There was no necessity to plead the identity of the Associate ahead of time. While it might be sensible to join the Associate to the original proceedings, it was not a prerequisite for seeking a BLO.
- The TCC also appeared to accept that existing contractual arrangements were relevant. In this case, the TCC found that the contractual arrangements were in favour of granting a BLO, as the leaseholders did not have any contractual recourse against Click Holdings.

The TCC also rejected an argument that once the conditions for a BLO were satisfied, a BLO could be granted in relation to any liability of the original defendant, not only the Relevant Liability established in the original proceedings. This was referred to as the ‘*gateway*’ argument.

Conclusions and implications

This is the first case to consider the granting of a BLO and provides guidance as to the application of the ‘*just and equitable*’ test. Although mostly consistent with the FTT’s decision in *Triathlon v Stratford*, the suggestion that existing contractual relationships may be relevant to the test appears to be at tension with the approach taken in *Triathlon v Stratford*. In that case, the FTT considered that, ‘*Parliament did not intend that the availability of other claims or potential claims should either disqualify an applicant from making a claim for a remediation contribution order or delay the making of that claim*’. The *Triathlon v Stratford* decision has since been appealed, providing further guidance on the ‘*just and equitable*’ test, as discussed below.

The TCC’s acknowledgement of the fairness issues which can arise where an Associate is not involved in proceedings against the principal defendant has the potential to cause difficulties in future cases.

Judge:
Mrs Justice Jefford

References:

- *Triathlon Homes LLP v Stratford Village Development Partnership* [2024] UKFTT 26 (PC)
- *381 Southwark Park Road RTM Company Ltd v Click St Andrews Ltd* [2024] EWHC 3569 (TCC)

Disputes / Liability

Building Safety Act disputes: Proposed reforms to streamline TCC and FTT proceedings

The Building Safety Act Working Group was set up with the stated aim of providing some consistency of approach in relation to claims under the BSA, whether these are in the Technology and Construction Court or the First-tier Tribunal (Property Chamber).

On 20 June 2025, the BSA working group proposed amendments to the TCC Guide to deliver clearer procedure, stronger case management, and a streamlined pathway for disputes where remedies are sought in both the FTT and the TCC.

The proposed amendments aim to simplify procedure where parties seek different orders under the BSA. These orders include ROs under section 123, RCOs under section 124, and BLOs under section 130.

Applications for ROs and RCOs are dealt with by the FTT, while claims for BLOs fall within the jurisdiction of the TCC. In some situations, both sets of proceedings may relate to the same defects, meaning a claimant could pursue an RO or RCO in the FTT alongside a BLO in the TCC. The proposed amendments aim to reduce the likelihood of inconsistent decisions relating to the same fact pattern.

The Working Group has proposed amendments to the TCC Guide to:

- Include reference to BSA related claims within the definition of '*TCC Claims*';
- Clarify the application of the Pre-Action Protocol for Construction and Engineering Disputes to BSA-related claims prior to commencement of proceedings in the TCC;
- Set out the TCC's expectations regarding the use of alternative dispute resolution before and during BSA related proceedings;
- Provide guidance on procedural issues that may arise where proceedings involve the BSA; and
- Establish a streamlined resolution process for disputes in which parties may be seeking orders under the BSA that fall across both the FTT and the TCC.

A key difference between the TCC and FTT is that there is no Pre-Action Protocol for FTT claims, whereas the Pre-Action Protocol for Construction and Engineering Disputes applies to claims started in the TCC. It is likely that claimants will be expected to send some pre-action correspondence before issuing an application for an RO or RCO in the FTT, except where the parties have reached an agreement not to do so. This will be accompanied by a clear expectation that alternative dispute resolution is attempted at an early stage.

This process is intended to reduce duplication, cost, and the risk of inconsistent factual findings by enabling coordinated case management and, where appropriate, combined listings with separate judgments issued by each forum. The detailed procedure for this process is yet to be confirmed, but is expected to include TCC judges sitting in the FTT while preserving the separate jurisdictions and appellate routes of the FTT and the High Court/TCC. The proposed revisions will be incorporated into the next revision of the TCC Guide, which is expected imminently.

Disputes / Liability

Construction

Introduction

The Building Safety Act 2022 ('**BSA**') continues to have a significant impact on the construction of higher-risk buildings with the gateway regime embedding hard stops at critical stages. The publication of statistics on Gateway 2 building control applications evidenced long delays for approval coupled with high rejection rates. This caused significant delays in both new builds and remediation of high-risk building projects.

To deal with this, the government introduced a package of reforms for the Building Safety Regulator ('**BSR**') in an attempt to speed up the application process. This included the establishment of the Innovation Unit, whose focus is to reduce the number of live cases relating to remediating unsafe buildings, and the publication of new Gateway 2 guidance by the BSR and the Construction Leadership Council.

In addition, as of 27 January 2026, the BSR is now a standalone body in a landmark step towards the creation of a Single Construction Regulator, which was a key recommendation of the Grenfell Tower Inquiry. The new Single Construction Regulator is expected to combine the functions of both the BSR and the National Construction Products Regulator ('**NCPR**'). The government has published The Single Construction Regulator Prospectus: Consultation Document which sets out its plans for the new regulator to have oversight of all construction products and take on regulation of building control.

These changes appear to be effective, with times for Gateway 2 approval reducing. Attention is now turning to delays at Gateway 3.

What's next for 2026?

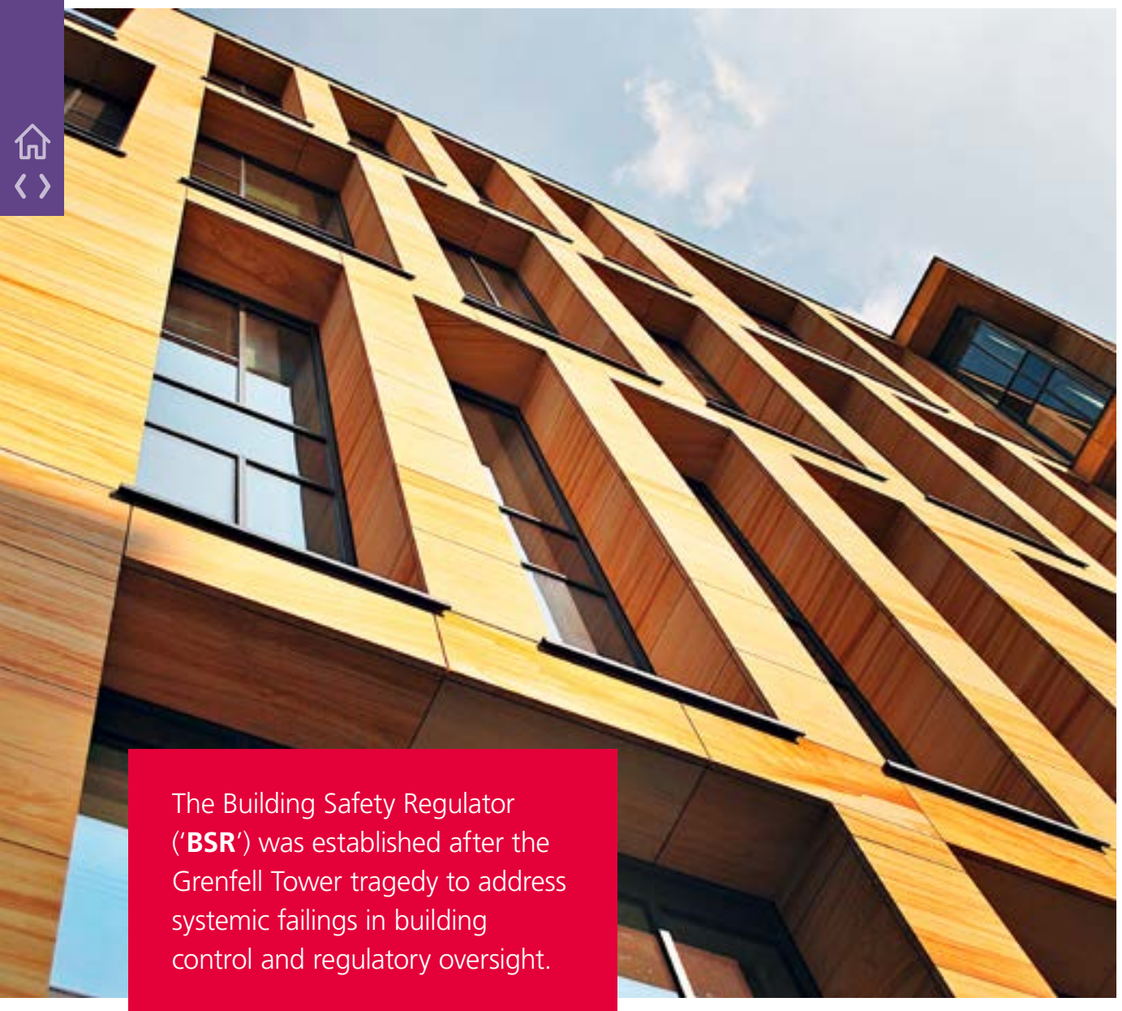
Looking ahead, substantial regulatory reform is underway, much of which will have material impact on the construction industry. The government published its first annual Parliamentary Report on progress following the Grenfell Tower inquiry on 25 February 2026. This sets out the progress that has been made so far and reveals its legislative priorities going forward.

The industry continues to grapple with the new roles and responsibilities introduced by Part 2A of the Building Regulations, with questions persisting around how competency is established and who should discharge particular statutory functions.

The proposed Building Safety Levy is scheduled to come into effect in October 2026. It is questionable whether this will negatively impact on the delivery of housing supply, particularly when the gateway issues are already adversely affecting delivery in major cities like London.

Construction

The Building Safety Regulator – evolution, challenges, and recent reforms



The Building Safety Regulator ('**BSR**') was established after the Grenfell Tower tragedy to address systemic failings in building control and regulatory oversight.

Nearly four years since its formation, we take a look at the BSR's origins and progress, and the latest reforms to its structure and processes.

The Building Safety Regulator

The BSR is a regulatory body which was originally established within the Health and Safety Executive ('**HSE**') under the Building Safety Act 2022. Its main functions are to regulate higher-risk buildings ('**HRBs**') and improve safety standards for all buildings.

A short summary timeline in relation to the creation of the HSE is provided below:

— **June 2017** – Grenfell Tower fire.

— **May 2018** – Hackitt Review published: it examined building and fire safety regulations and related compliance.

— **October 2019** – Grenfell Tower Inquiry-Phase 1 Report: it examined the events of the night of the fire, its cause, spread, and the emergency response.

— **28 April 2022** – Building Safety Act receives Royal Assent.

— **1 October 2023** – BSR formally established within the HSE.

— **September 2024** – Grenfell Tower Inquiry-Phase 2 Report: it investigated the root causes of the disaster (including issues with cladding, product testing and regulations).

— **2025** – Major reforms announced (see section 4 below)

— **27 January 2026** – BSR moves to Ministry of Housing, Communities and Local Government ('**MHCLG**').

Delays

A key function of the BSR is to oversee the 'gateway' approval process for HRBs. The gateway process consists of three key stages:

1. **Gateway 1** – Planning stage: fire safety is considered.
2. **Gateway 2** – Pre-construction: full design and safety information must be submitted and approved before construction begins.
3. **Gateway 3** – Post-construction: final safety checks before occupation.

Statutory Timelines

— Gateway 2 – 8 weeks (for work to an existing HRB) or 12 weeks (for HRB work)

— Gateway 3 – 8 weeks

Following the introduction of the Gateway regime there were widespread reports across of the industry of long delays, with some applications taking many months to progress. These delays appear to be due in part to the BSR's limited resources and the difficulty in setting up multidisciplinary teams. As a result, housebuilding has slowed down, affecting the delivery of new buildings and homes.

BSR figures showed that between 1 October 2023 (when the gateway approvals process went live) and March 2025:

— the average amount of time to get gateway 2 safety sign-off was 9 months – three times the planned 12-week timeframe; and

— the average amount of time to get safety sign-off was 36 weeks.

A Freedom of Information request from cost consultant and project manager Cast, revealed that 20 applications out of 187 submitted had been given approval – meaning the percentage of those getting the go ahead was 10.7%.

The House of Lords Inquiry

Following widespread dissatisfaction across the industry and apparent functionality/timescale issues, in June 2025, the House of Lords Industry and Regulators Committee launched an inquiry '*to hear from all stakeholders to find out if the BSR has the skills and resources required to ensure the safety of all buildings and its residents in the process of approving applications for HRBs*'.

The committee published its report, 'The Building Safety Regulator: Building a better regulator' on 11 December 2025, saying that delays caused by the BSR were unacceptable, and risked causing the government to miss its target of building 1.5 million homes by 2029.

BSR moves to MHCLG

Also in June 2025, the MHCLG announced a significant overhaul of the BSR's structure and operations. The key changes included:

Structural Reforms

— The BSR moving from its position as a division of the HSE to become an executive agency under the control of the MHCLG, with effect on 27 January 2026.

— Philip White, the outgoing director, was succeeded by a new board chaired by Andy Roe KFSM (former Commissioner of London Fire Brigade), with Charlie Pugsley as Chief Executive Officer.

Construction

Operational Improvements

— Introducing a new 'fast track' process for gateway 2 approvals, specifically for HRBs, to address historic delays.

— Over 100 new staff members have been recruited.

The efforts to increase the rate of gateway 2 approvals are also reflected in the publication of a suite of Construction Leadership Council guidance on Building Control Approval Applications for new HRBs on 21 July 2025. This guidance was initially created by industry stakeholders and the BSR and was updated in December 2025 to include guidance on seeking staged applications for single tower HRBs – see '*New CLC Guidance on Staged Applications and the Gateway 2-3 pathway for HRBs*'.

Recent updates

On 27 January 2026, the same day the BSR became a standalone body, the BSR released data demonstrating that the waiting time for getting gateway 2 approval was significantly reduced to approximately 13 weeks, not too far removed from the statutory time frame of 12 weeks.

On the same date, MHCLG announced a consultation seeking views on streamlining building control requirements for certain telecommunications work, including fibre optic cabling and mobile masts. The consultation includes proposals to dispense with some procedural requirements of building regulations, in order to ensure proportionality. The consultation closes on 24 March 2026.

Conclusion

The BSR was set up to make buildings safer, but delays and resource challenges caused concern among industry stakeholders. The MHCLG's recent structural and operational reforms aim to improve efficiency and restore confidence. These reforms appear to be successful in reducing bottlenecks, but continued scrutiny and collaboration will be key to ensuring the BSR meets its mandate.

Construction

New CLC Guidance on Staged Applications and the Gateway 2–3 Pathway for HRBs

On 18 December 2025, the Construction Leadership Council ('**CLC**') issued two guidance notes to address persistent bottlenecks and quality issues in Gateway 2 submissions and to clarify key steps through Gateway 3 for higher-risk buildings HRBs. These materials aim to improve submission quality, reduce rejection rates, and accelerate approvals under the Building Safety Regulator BSR regime.

Following the introduction of the new gateways, Gateway 2 approvals were significantly delayed. The BSR reported rejecting roughly 40% of Gateway 2 applications for failure to meet requirements, with a further 35% rejected for missing or inadequate information, including failure to demonstrate compliance with the Building Regulations. The CLC, working with the BSR and industry stakeholders, responded by publishing a summary process map in March 2025 and, on 18 December 2025, two guidance notes focused on staged applications and the Gateway 2–3 pathway for new HRBs, building on guidance issued in July 2025.

Guidance Note 08 – Staged Applications

Regulation 4 (and in particular regulation 4(3)) of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 sets out the legal framework for staged applications. The CLC guidance explains the structure and content of a compliant staged submission to the BSR, enabling applicants to subdivide an application by building or block. Properly used, staged applications allow early approval and commencement of discrete work packages – such as initial groundworks and basement works – while detailed design for the remainder of the building or block proceeds.

Guidance Note 09 – Gateway 2 to Gateway 3

Under the HRB regime, applicants must demonstrate that robust arrangements are in place to manage and evidence ongoing compliance with the Building Regulations 2010 throughout the project, forming part of the Golden Thread of information. The guidance is aimed at clients and principal contractors to ensure that, following Gateway 2 approval, they plan and evidence compliance in a way that positions the project for a timely and complete Gateway 3 submission. The note includes a flowchart showing what information is required and when it must be produced, addressing previous BSR criticisms and aims to promote faster, compliant approvals.

The government has also recently updated its guidance on building control approval for HRBs.

In its January 2026 update, the BSR reported a continued rise in Gateway 2 determinations, with a record number in the last quarter of 2025, equating to approximately a 250% increase in decisions. The latest statistics indicate that guidance from the BSR and the CLC is contributing to improved submission quality and higher decision volumes. If the trend persists, these developments should hopefully support more predictable programming of construction start dates, which would certainly be a welcome development for 2026.

Construction

The Building Safety Levy: new guidance and draft regulations

On 10 July 2025, the government published detailed guidance and draft regulations for the Building Safety Levy, a new charge on certain residential developments in England that is designed to contribute to the remediation of building safety defects.

Purpose and policy context

The Building Safety Levy is intended to raise approximately GBP 3.4b over ten years to fund the remediation of life critical building safety defects, shifting the cost burden away from leaseholders and onto developers of new residential buildings. The levy operates as a charge per square metre of chargeable residential floorspace and is administered locally. An equivalent scheme is anticipated in Scotland, though final details may vary from the English scheme.

Scope and commencement

The levy will apply to building control applications and initial notices submitted on or after 1 October 2026. The implementation date was deferred from October 2025 to allow local authorities time to prepare, and to enable developers to plan for the cost. Applications submitted before 1 October 2026 remain outside of its scope, even if later varied, subject to limited exceptions.

A levy liability arises only where all of the following conditions are met:

— The works form part of a 'major residential development', defined as either the creation of 10 or more dwellings or 30 or more purpose built student accommodation bedspaces;

— The works create new chargeable residential floorspace. This includes new dwellings and purpose built student accommodation, together with communal areas serving them. For reconfigurations and change of use schemes, the levy is assessed on the net additional residential floorspace; and

— The client identified on the building control application is not an exempt person.

The levy applies across all building control pathways, including local authority full plans, Registered Building Control Approver ('**RBCA**') initial notices, and the BSR route for higher risk buildings. In scope schemes include new build housing and purpose built student accommodation meeting the thresholds, office to residential conversions, and vertical extensions that add new dwellings.

Exemptions and reliefs

Developments that have commenced through the building control process before 1 October 2026 – by submitting a full plans application, an initial notice, or a Gateway 2 application – do not attract the levy.

Exemptions can also apply based on use and the status of the client: non profit registered providers of social housing and their wholly owned subsidiaries are exempt persons. However, joint ventures benefit only if every JV member is exempt.

Certain uses are outside scope, including social and supported housing and a defined list of specialist or non residential accommodation such as hospitals, student accommodation for schools (rather than universities), care homes and hospices, hotels, prisons, and temporary homelessness accommodation. In addition, developments on previously developed (i.e., brownfield) land benefit from a 50% reduction, reflecting viability considerations.

Calculation of the levy

The levy is calculated by reference to the gross internal area of chargeable residential floorspace. Communal areas are included where they serve chargeable units. The regulations include published rates for developed and non-developed land for each local authority in England. The range can be substantial, for example, non developed land rates vary from approximately GBP 100 per square metre in high value authorities such as Kensington and Chelsea to around GBP 13 per square metre in lower value areas. These published rates permit early cost modelling and should be integrated into project level viability assessments and business plans.

Administration, process, and timing

Local authorities act as the collecting authorities for the levy, regardless of the building control route selected. The process has two key stages.

At the application stage, applicants must provide high level levy information alongside full plans, initial notices or BSR applications. Incomplete levy information can result in rejection of the building control submission. At the first commencement notice stage, applicants must provide detailed levy information and supporting evidence, which triggers assessment and calculation by the authority.

Authorities have approximately five to eight weeks to issue either a levy liability notice or a notice of no charge. Payment may be made any time after the liability notice is issued, but it must be paid in full before any completion or final certificate is issued. Authorities may withhold completion or final certificates if the levy remains unpaid. If a scheme changes materially, the authority may recalculate the levy and issue revised notices. Spot checks are expected, and authorities can request further evidence, which may affect programmes as completion certificates will be dependent on payment.

Practical implications for developers and funders

The levy introduces an additional upfront cost that will need to be carefully managed through feasibility, structuring and delivery. Schemes with substantial communal areas – particularly build to rent and purpose built student accommodation – are likely to experience proportionally greater impacts given their scale and internal layouts. There is no sector specific exemption for these uses.

Operationally, cashflow management is critical: the levy must be settled before completion or final certificates are issued, creating potential pinch points at practical completion and handover. Programme risk arises from the information requirements at both application and commencement stages, the potential for spot checks, and the possibility of recalculation following design development post commencement. Robust, accurate and timely levy submissions should be integrated into

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project controls and any mid-project design changes handled with care.

Further, project structuring should be aligned with the exemption rules. If the client entity identified on the building control application is ineligible, an exemption may be lost. Joint ventures require particular care: unless each JV member is an exempt person, the exemption will not apply.

Developers should note that attempts to 'package' schemes into multiple building control submissions will not avoid the levy where the planning permission demonstrates that the overall development is a major residential development, as authorities will look to the number of new dwellings permitted by the planning permission rather than under each building control submission.

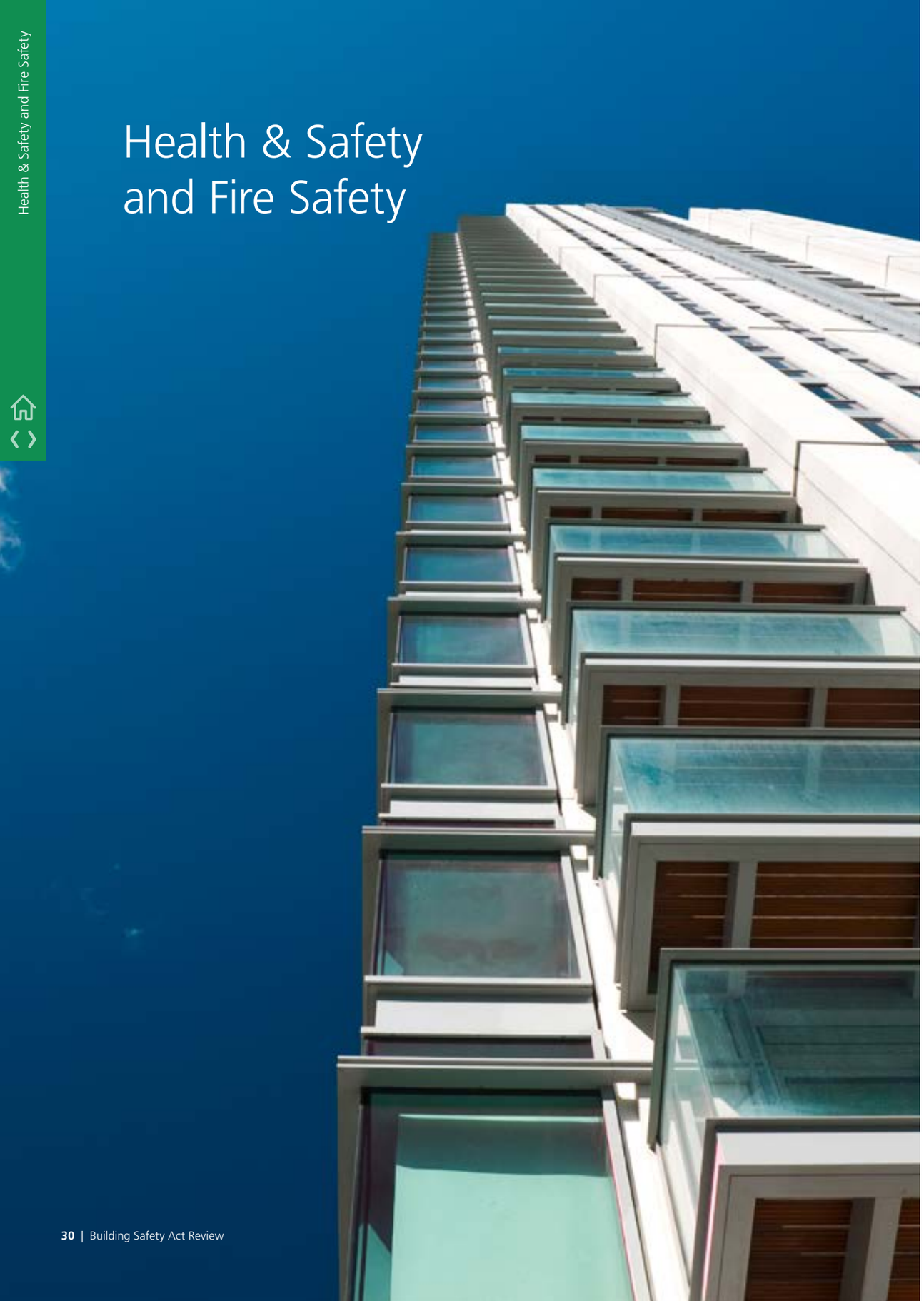
Takeaways

For projects expected to submit building control applications on or after 1 October 2026, the levy should be priced into land bids, viability appraisals, heads of terms, and funding models now, using the published authority level rates. Transaction documents – including development agreements, forward funding and forward purchase arrangements – may need express allocation of levy risk and mechanics for updates if the levy is recalculated due to design change.

We anticipate that the levy may influence site selection, market shares of types of developments and design efficiency, particularly for large schemes and those with substantial communal or amenity space. The brownfield reduction offers a meaningful counterweight, but the benefit should be assessed against other recognised risks to those schemes. As the regime beds in, market practice on risk allocation is likely to standardise. Until then, early planning and disciplined compliance will be the best mitigants to programme delay and certification risk.

Construction

Health & Safety and Fire Safety



Introduction

Key developments over the past year

2025 has seen continued scrutiny over the current definition of HRBs, after the 2024 Grenfell Inquiry Phase 2 Report criticised the definition for being based on height alone and recommended an urgent review. The Government accepted this recommendation in full, but, in December 2025, concluded that amending the definition of HRBs *'at this time would not be right'*. Nonetheless, it was agreed that '*the Regulator will operate an ongoing review of the definition of a higher-risk building*'.

The Government is also currently consulting with the Building Safety Regulator and others on amending legislation to make clear that unenclosed roof gardens or terraces are not to be considered a 'storey' for the purposes of determining whether a building is a HRB. This follows a First Tier Tribunal's decision and a subsequent successful appeal in May 2025 of *Monier Road Limited v Blomfield* UKUT 157 (LC) (the Smoke House and Curing House Decision) (click here to read our Law-Now considering this case).

What's next for 2026?

The Fire Safety (Residential Evacuation Plans) (England) Regulations 2025 are to come into force on 6 April 2026. The regulations will require all 'responsible persons' in 'specified residential buildings' (buildings which contain two or more sets of domestic premises and which either: are at least 18 metres in height above ground level; have at least seven storeys; or are more than 11 metres in height above ground level and have a simultaneous evacuation strategy) to use reasonable endeavours to identify 'relevant residents' (those with cognitive or physical conditions compromising their ability to evacuate) and offer them a 'person-centred fire risk assessment'. Following such an assessment, the responsible person must put into place mitigation measures, and (taking into account the risks identified in the assessment and any mitigating measures to be implemented) use reasonable endeavours to agree a personal emergency evacuation plan with the relevant resident.

Another upcoming fire safety development – under amendments to Approved Document B which are to come into force from 30 September 2026 – is that new residential buildings over 18 metres in England will be required to have two staircases.

Health & Safety and Fire Safety

House of Lords Industry and Regulators Committee inquiry into Building Safety Regulation

On 18 June 2025, the House of Lords Industry and Regulators Committee (the '**Committee**') commenced an inquiry into the operation and effectiveness of the building safety regulatory framework in England, with particular emphasis on the role and performance of the BSR. The inquiry formed part of the Committee's scrutiny of statutory regulators and their impact on industry, public safety, and economic activity.

The Committee invited evidence from stakeholders across the construction, housing, regulatory and professional services sectors, as well as from resident groups and public authorities.

Regulatory context

The BSR was established under the BSA and is operational within the Health and Safety Executive ('**HSE**'). The BSR is responsible for overseeing the safety and performance of HRBs, generally defined as residential buildings of at least 18 metres in height or comprising seven or more storeys. Its functions include:

- Implementing the new 'gateway' approval regime for higher-risk buildings;
- Regulating building control professionals; and
- Overseeing compliance with the building safety regime throughout the lifecycle of HRBs.

The inquiry forms part of the wider post-Grenfell reforms intended to strengthen accountability, improve building standards and restore confidence in the construction and residential property sectors.

Scope of the Inquiry

The Committee indicated that it would examine, among other matters:

- Whether the BSR is meeting its statutory objectives and operating in an effective, proportionate and transparent manner;
- The impact of the BSR's regulatory processes on development timelines, remediation works and housing delivery;
- The adequacy of resourcing, technical expertise and skills within the regulator;
- The clarity, consistency and accessibility of guidance issued by the BSR to duty holders;
- The interaction between the BSR, local authority building control and fire and rescue authorities; and
- Whether the current regulatory framework appropriately balances public safety considerations with economic and delivery objectives.

Evidence and stakeholder engagement

The Committee sought evidence from a broad range of stakeholders, including developers, contractors, building owners, housing providers, professional advisers and resident representatives.

Initial stakeholder commentary highlighted concerns regarding approval times at key regulatory gateways, the availability of suitably qualified personnel within the regulator, and the complexity of compliance requirements for certain categories of works.

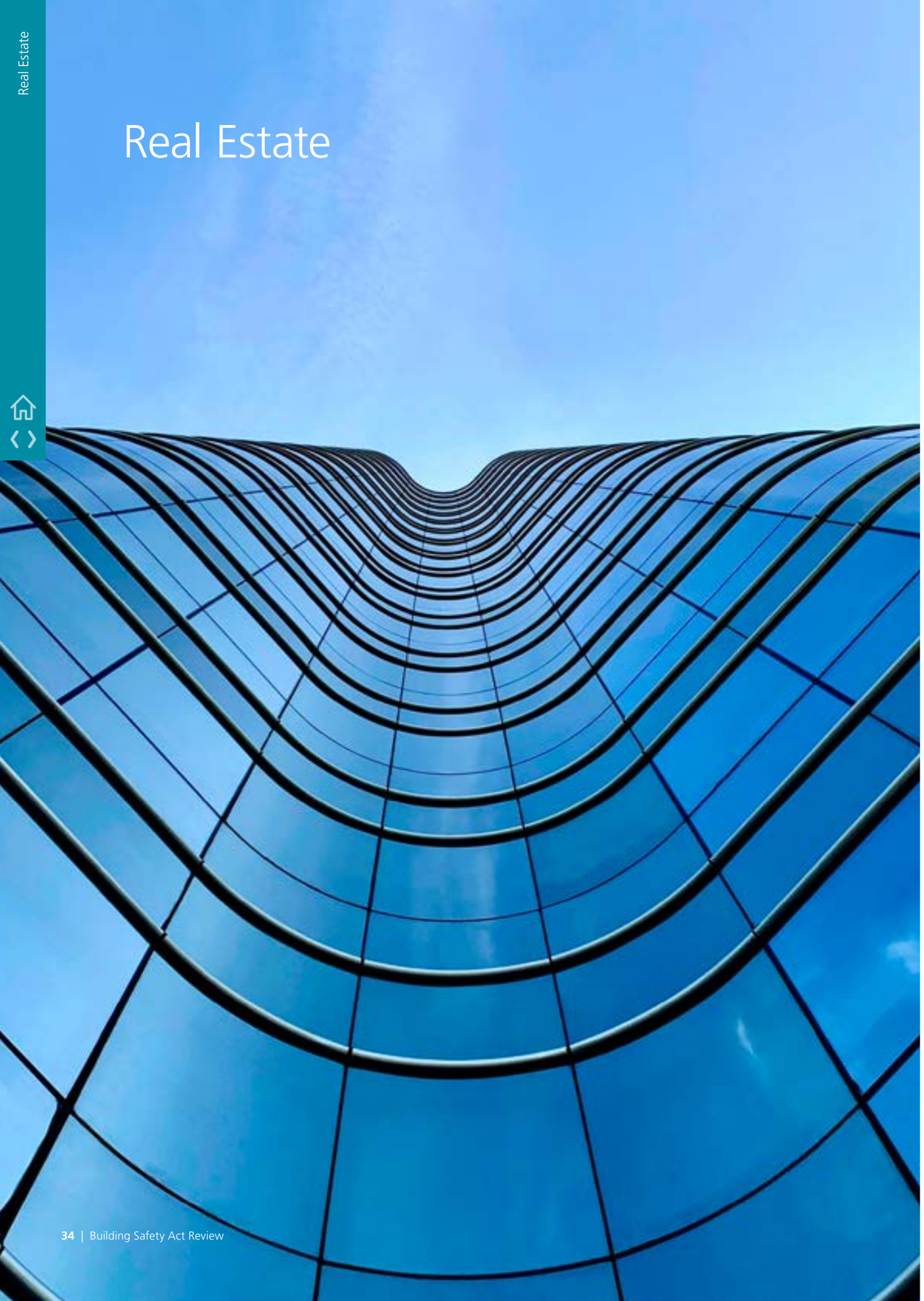
Committee Report

The Committee published its report on the Building Safety Regulator, titled '*The Building Safety Regulator: Building a better regulator*', on 11 December 2025. This report sets out the Committee's findings and recommendations and highlights issues such as significant delays in the regulator's approval processes, lack of clear guidance, and risks to housing delivery targets.

- **Lack of clear guidance:** The Committee found that the BSR has not provided sufficiently clear guidance on how applicants should demonstrate compliance with the BR, contributing to inconsistent decision-making and delays. A significant number of applications are being rejected or delayed due to basic errors and inadequate safety evidence, which the Committee considered indicative of wider capability issues within the construction sector.
- The Committee concluded that the current regulatory approach does not sufficiently distinguish between high-risk safety-critical works and minor or low-risk alterations. Smaller works in HRBs, such as internal refurbishments, are subject to the same approval processes as major structural projects.
- **Resource shortage:** The Committee identified severe shortages in key professional roles, including registered building inspectors, fire engineers, structural engineers and fire safety inspectors. Capacity issues within both the BSR and local authority building control bodies were considered to be a principal cause of approval delays.
- **Impact on construction activity:** The Committee heard evidence that delays in BSR decision-making are significantly exceeding statutory targets, with approvals frequently taking many months. These delays are said to have slowed remediation works to existing higher-risk buildings, including cladding replacement, leaving residents exposed to prolonged safety risks. The delays have also affected the construction of new high-rise residential buildings, with consequential impacts on housing supply and viability.
- **Regulatory authorities:** The Committee found that regulatory responsibilities for building safety and construction products are fragmented, with construction products regulated separately by the OPSS. Many construction products lack relevant or enforceable standards, limiting the effectiveness of the current safety regime.

The BSR is set to consider the recommendations from the House of Lords committee report and implement measures to address delays and improve processes. On 27 January 2026, BSR transitioned from the HSE into a standalone body. This reform aims to improve accountability and streamline Gateway 2 and 3 processes for HRBs. For stakeholders in the industry, this signals potential improvements in project timelines and reduced uncertainty for developers over the coming year.

Health & Safety and Fire Safety



Real Estate

Real Estate

Introduction

The Building Safety Act 2022 ('**BSA**') continues to reshape the risk landscape for residential and mixed-use real estate in England, combining a retrospective framework for addressing historical defects with a forward-looking compliance regime for higher-risk buildings under the stewardship of accountable persons.

The BSA's dual architecture: (1) remediation orders to fix defective buildings, and (2) contribution mechanisms (including remediation contribution orders and service charge restrictions) for legacy issues, operating alongside enhanced duties for the ongoing management of building safety, has entrenched a decisive policy shift that places the burden of remediation away from leaseholders and onto landlords, developers, and associated entities. These changes require careful attention to portfolio due diligence, service charge strategies, governance structures, and long-term capital planning in 2026.

What were the key developments in 2025?

Both the appellate courts and the First-tier Tribunal (Property Chamber) ('**FTT**') have delivered material clarifications in 2025 that directly impact cost recovery, along with procedural guidance, including:

- *Adriatic Land 5 v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856 – the Court of Appeal confirmed that Schedule 8, paragraph 9 has retrospective effect, preventing recovery of service charges for legal and professional costs tied to safety defect liabilities under qualifying leases even where those liabilities were incurred prior to 28 June 2022.
- *Triathlon Homes v Stratford Village Development Partnership* [2025] EWCA Civ 846 – the Court of Appeal affirmed the retrospective scope of remediation contribution orders under section 124, enabling recovery of qualifying costs incurred before the BSA commenced, and underscored that reliance on public funds as a primary solution would misalign with the BSA's policy objectives.
- *Almacantar Centre Point Nominee No.1 Ltd v De Valk* [2025] UKUT 298 (LC) – the Upper Tribunal decision further consolidates leaseholder protections by holding that the 'no service charge payable' protection for unsafe cladding under Schedule 8, paragraph 8 is distinct and does not require a 'relevant defect', rejecting attempts to read in additional limitations and confirming a broad application of cladding protections.
- *Clarion Housing Group v Globe View House RTM Company Ltd* [2025] LON/00BE/BSG/2025/0600 – the FTT identified a 'quirk' in the BSA: A person incorrectly registered as an accountable person for a higher-risk building does not necessarily have the right under the BSA to challenge that registration.
- *Zampetti & Ors v Fairhold Athena Limited v Berkeley Group Holdings plc* [2025] LON 00BE/HYI/2023/0013, LON/00BE/BSB/2024/0602 – the FTT found that legal costs incurred in remediation order proceedings could be recovered by a remediation contribution order. Permission to appeal was refused by the Upper Tribunal.

What's up next for 2026?

The Remediation Bill, expected to be published in 2026, will introduce for the first time deadlines for remediation:

1. Existing high-rise (18m+) buildings must be remediated by the end of 2029 to avoid criminal prosecution; and
2. Lower-rise (11m+) buildings are to be remediated by 2031, but with investigation and enforcement to commence where remediation is not complete or there is no date for completion of remediation by 2029.

Although the Government has committed to introducing a Remediation Bill, progress is currently delayed pending available parliamentary time, with no clear timetable for its introduction. Nevertheless, once the Bill does eventually come into force, we anticipate an eventual slowdown of Remediation Order applications, since prospective applicants may wait for the Bill to do the work in forcing remediation. Until then however, the BSA remains an active area for new real estate cases, with the appellate courts providing much needed clarity.

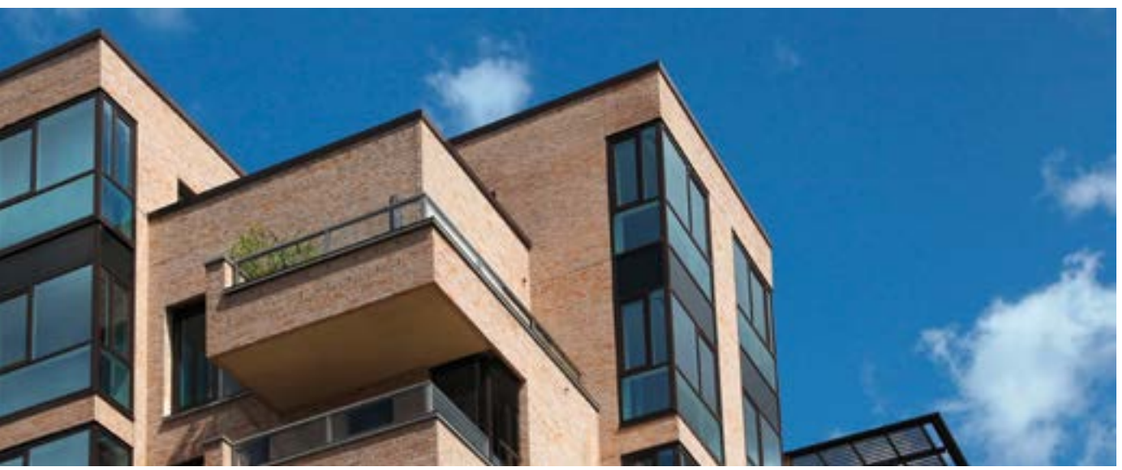
This year, the Supreme Court will hear the appeals in *Adriatic Land 5 Limited v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856 and *Triathlon Homes LLP v Stratford Village Partnership v (1) Get Living Plc and (2) East Village Management Limited* [2025] EWCA Civ 846, both concerning the retrospective effect of the BSA, as set out above.

The Court of Appeal will also hear an appeal in *Almacantar v Centre Point Nominee No. 1 Ltd and Another v De Valk and Others* [2025] UKUT 298 (LC).

Looking into 2026, the direction of travel remains clear: owners, developers and associated entities must plan for enduring constraints on service-charge recovery, active enforcement of remediation timelines, and intensified focus on association and control within corporate groups when funding remediation.

References:

- *Adriatic Land 5 v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856
- *Triathlon Homes v Stratford Village Development Partnership* [2025] EWCA Civ 846
- *Almacantar Centre Point Nominee No.1 Ltd v De Valk* [2025] UKUT 298 (LC)
- *Clarion Housing Group v Globe View House RTM Company Ltd* [2025] LON/00BE/BSG/2025/0600
- *Zampetti & Ors v Fairhold Athena Limited v Berkeley Group Holdings plc* [2025] LON 00BE/HYI/2023/0013, LON/00BE/BSB/2024/0602



Vista Tower appeal: Upper Tribunal upholds RCO decision

In Edgewater (Stevenage) Limited and Others v Grey GR Limited Partnership [2026] UKUT 18 (LC), the Upper Tribunal ('**UT**') has handed down its decision in the *Vista Tower* appeal against one of the first contested RCO made under section 124 of the BSA.

Mr Justice Edwin Johnson upheld the decision of the FTT, dismissing all four grounds of appeal.

Joint and Several Liability Confirmed

The UT confirmed that:

- The FTT has the power to make a RCO against multiple respondents on a joint and several basis.
- Although the discretion conferred on the FTT by section 124(1) is very wide and each decision will turn on its own particular facts, had Parliament intended to prevent joint and several liability, the RCO mechanism could not work as intended, effectively frustrating the statutory purpose of protecting leaseholders from remediation costs.

No Error in application of Just and Reasonable Test

The UT also rejected the appellants' arguments that the FTT had wrongly conflated sections 121 and 124 of the BSA by making the RCO against various respondents, and that participation in a development or receipt of remuneration should be a minimum requirement before an RCO can be made.

Mr Justice Johnson confirmed that:

— The question of what is '*just and equitable*' is left at large under section 124(1).

— There is no requirement for direct participation or receipt of profits, and decisions will be very fact-sensitive.

— Therefore, where respondents form part of a wider corporate structure through which business is conducted, it will be just and equitable to impose responsibility on all such respondents if the evidence supports it.

Burden of Proof Clarified

The UT also clarified the burden of proof:

— The gateway considerations of section 121 and the initial burden of establishing whether it is just and equitable to make an RCO fall to the applicant or interested person.

— Once the applicant has stated its case, it is for the respondent to prove why it is not just and equitable for the order to be made against them.

What Constitutes a '*Building Safety Risk*'?

The UT also provided important guidance on the meaning of '*building safety risk*' for the purposes of section 120(5) of the BSA.

Significantly, Mr Justice Johnson disagreed with the FTT's ruling that '*a risk*' meant any risk above a '*low*' risk. Instead, he found that:

— The reference in section 120(5) to '*a risk*' does not refer to any particular level of risk and is not graduated. It simply refers to any risk, restrained only by whether it satisfies the other conditions for the existence of a building safety risk.

This interpretation may warrant careful consideration by the industry. With many fire safety experts taking a more practical view that all high-rise buildings carry an inherent fire safety risk to some degree, the UT's approach in this decision, which removes any threshold or grading, appears to align more with that reality.

Further Reading:
For a full breakdown of the original FTT decision and the broader context of RCOs under the Building Safety Act 2022, see our *BSA Annual Review 2025* which provides detailed analysis of *Grey GR Limited Partnership v Edgewater (Stevenage) Limited and Others* [2025] 1 WLUK 680 and the developing case law in this area.

Judge:
Mr Justice Edwin Johnson

References:
— Edgewater (Stevenage) Limited and Others v Grey GR Limited Partnership [2026] UKUT 18 (LC)

Upper Tribunal clarifies scope of leaseholder protections for cladding remediation under the Building Safety Act 2022

On 16 September 2025, the Upper Tribunal ('**UT**') handed down its decision in *Almacantar Centre Point Nominee No.1 Ltd v Penelope de Valk* [2025] UKUT 298 (LC).

The case concerns Centre Point House ('**CPH**') in London and is a significant decision in relation to the interpretation of the leaseholder protections under Schedule 8 of the BSA and whether the proposed works to the façade of CPH fall within the scope of the leaseholder protections in Schedule 8(8) of the BSA.

The façade at CPH was in substantial disrepair and, whilst inherently defective when installed, had also deteriorated over time. The freeholders had proposed a scheme of remediation to address the condition and this deterioration (the '**Proposed Scheme**').

As a result of the UT's decision, landlords should be aware that service charge limitations contained in the BSA are wider ranging than purely fire safety and construction defects.

FTT's decision

At first instance, the FTT determined that no service charges would be payable by the respondent lessees in respect of the Proposed Scheme, as they could rely on the leaseholder protections in Schedule 8(8) of the BSA, which provides that no service charge is payable by qualifying tenants for '*cladding remediation*'.

The freeholders of CPH appealed to the UT.

The UT's Decision

In the UT's words, the question for them to determine was as follows: '*…whether paragraph 8 of schedule 8 applies to defective cladding which is not also a "relevant defect" and if so, are the works proposed to the façade of CPH "cladding remediation" within the meaning of paragraph 8?*'.

This required consideration of the following:

What is the scope of paragraph 8 of Schedule 8 – is it limited to issues which constitute a relevant defect?
The UT held that the benefit of paragraph 8 is not limited by reference to relevant defects, as paragraph 8 of Schedule 8 operates independently of the '*relevant defect*' requirement that applies to other leaseholder protections in Schedule 8.

The UT considered that the wording of paragraph 8 is '*clear and unambiguous*' and if Parliament had intended to limit the scope in that way, they could have done so but instead had deliberately chosen different language. This also aligns with the underlying policy and intention of the BSA that '*no leaseholder living in their own flat 'would pay a penny to fix dangerous cladding*'.

Did the works to the façade of CPH constitute 'cladding remediation'?
This required the UT to consider whether the façade at CPH was '*cladding*' and, if so, whether the proposed scheme of works was '*cladding remediation*' in accordance with Schedule 8(8) i.e. the removal/ replacement of a cladding system or any part of it which forms the outer wall of an external wall system and is unsafe.

The UT upheld the FTT's factual finding that the façade at CPH constituted '*cladding*' for the purposes of the BSA. The façade comprised an underlying structure to which the cladding was attached and met the technical definitions of cladding consistent with PAS9980:2022. The UT also considered that the FTT was correct in finding that the façade at CPH comprised '*the outer wall of an external wall system*'.

The UT also agreed with the FTT that '*unsafe*' in this context should be given its ordinary and natural meaning and could therefore encompass a range of threats to safety and was not limited to fire risk. The façade at CPH, due to its serious degradation and risk of detachment, posed a risk to the safety of residents and the public, and was therefore '*unsafe*' within the meaning of the BSA.

Qualifying lease presumption

The UT also briefly considered the presumption of qualifying lease status. The UT confirmed that the presumption in paragraph 13 of Schedule 8 applies unless and until rebutted by the landlord taking reasonable steps to obtain a qualifying lease certificate. However, the UT declined to make a final determination on the binding nature of the FTT's findings in this respect, as the issue had not been fully argued.

Conclusion

Freeholders, landlords and tenants are all impacted by this decision which now makes it very clear that tenants of qualifying leases are not liable to pay for the costs of remediating unsafe cladding. It is not necessary for the cladding to amount to a relevant defect in order for this to be the case.

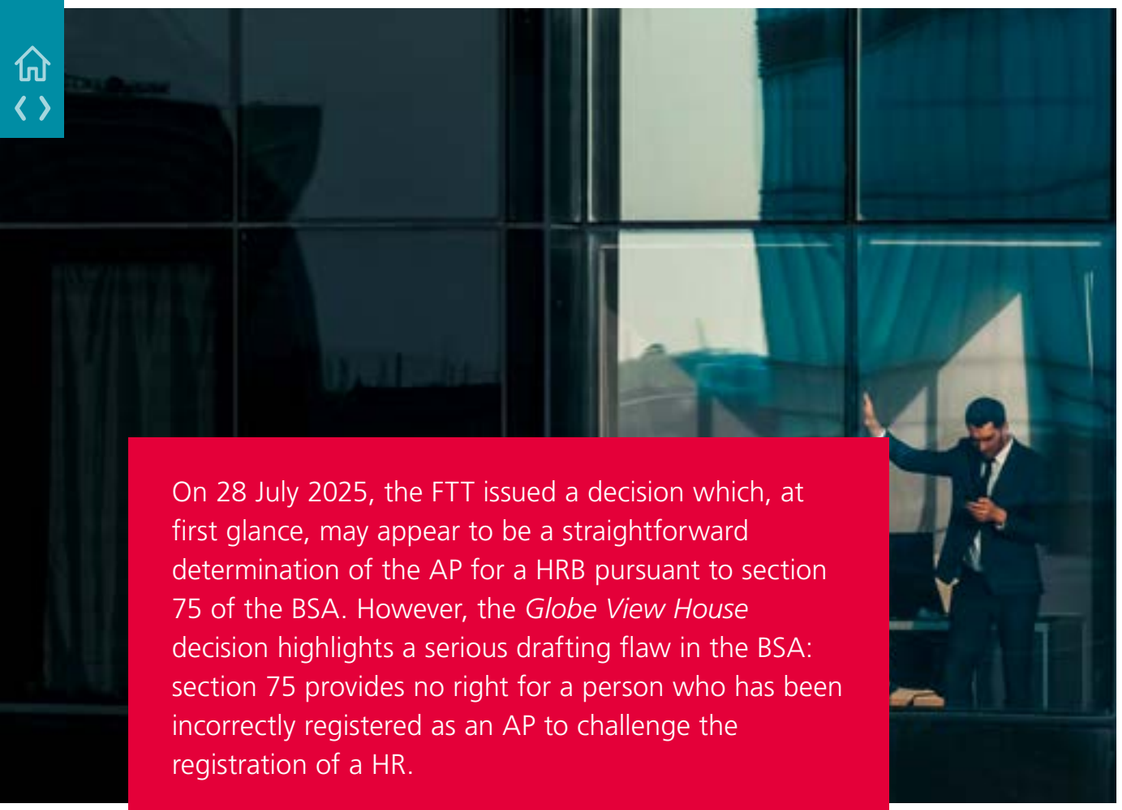
It is therefore clear that cladding (even where there are no fire safety considerations) must be replaced before it deteriorates so significantly so as to become '*unsafe*' to retain the ability to recover repair costs. Determining precisely when that might be is a difficult task and accordingly landlords may be tempted into replacing cladding at a much earlier stage than they ordinarily would, to ensure cost recovery.

Judge:
Siobhan McGrath and Mrs D Martin TD MRICS FAAV

Further Reading:
— *Almacantar Centre Point Nominee No.1 Ltd v Penelope de Valk* [2025] UKUT 298 (LC)

Real Estate

‘Present, extant repairing obligation’ required: FTT clarifies the criteria for an ‘Accountable Person’ under the Building Safety Act



On 28 July 2025, the FTT issued a decision which, at first glance, may appear to be a straightforward determination of the AP for a HRB pursuant to section 75 of the BSA. However, the *Globe View House* decision highlights a serious drafting flaw in the BSA: section 75 provides no right for a person who has been incorrectly registered as an AP to challenge the registration of a HR.

As well as highlighting this ‘quirk’, the case gives useful analysis as to who the AP in a HRB is where the long leaseholders have exercised the right to manage (‘**RTM**’), pursuant to the Commonhold and Leasehold Reform Act 2002 (‘**2002 Act**’).

Clarion Housing Group v Globe View House RTM Company Ltd LON/00BE/BSG/2025/0600

Background

Globe View House is a mixed-use and higher-risk building of 86 residential units in London, managed by Globe View House RTM Company Limited (‘**RTM company**’). Clarion Housing Group (‘**Clarion**’) is the head leaseholder of 27 flats located in Globe View House.

The building was the subject of an application to the FTT, submitted by Clarion to determine whether it should be classified as an AP under section 75 of the BSA.

The FTT found that Clarion was not an AP based on the following:

— all management and repairing obligations concerning the building’s common parts had been transferred to the RTM company after acquiring the right to manage; and

— Clarion does not hold a legal estate in possession of any part of the common parts of Globe View House nor is it under a relevant repairing obligation.

Interested person

The FTT’s decision points to a procedural ‘*quirk*’ in the legislation: a party who is registered as an AP but did not consider itself to be one may not fall within the category of ‘*interested person*’ who can bring an application under section 75 of the BSA.

In this instance, the FTT overlooked the procedural issue given the RTM Company had also sought a determination and was clearly an ‘*interested person*’ so could be treated as the applicant.

However, it then follows that a person/entity who has been wrongly designated as an AP cannot apply to the FTT for a determination that they are not an AP – highlighting the importance of correct registration of APs at the outset.

This may be of particular concern to freeholders where the RTM has been exercised. The BSA is not easy legislation to navigate and, as was the RTM’s position here, the RTM may consider that the freeholder should be an AP even where the BSA does not reflect that. It also seems that simple registration errors, such as naming a Director or Managing Agent instead of a company, cannot be rectified without the cooperation of all parties.

The Substantive Application

In determining whether Clarion was an AP, the FTT considered the following questions:

1. Is Clarion an AP?
Clarion was held to not be an AP, because it did not hold a legal estate in possession in any part of the common parts under the headlease.

2. Does Clarion have a relevant repairing obligation?
No - the FTT confirmed the statutory test under section 72(1)(b) requires a ‘*present, extant obligation*’ to repair or maintain common parts, not merely a right to do so. The headlease gave Clarion rights to connect, use, inspect and maintain certain service installations but imposed no legal obligation for the repair or maintenance of any common parts.

However, the FTT indicated that (although not determinative), that service installations could properly fall within ‘*any part of the building provided for the use, benefit and enjoyment of the residents*’ under section 72(6)(b) of the BSA, rejecting the narrow interpretation of ‘*part of the building*’ as confined to corridors, lobbies and staircases.

Furthermore, the FTT rejected the RTM Company’s argument that an insolvency-triggered duty in the headlease constituted a relevant repairing obligation, because it was conditional.

The RTM Company further argued that failure to impose the responsibilities of an AP on Clarion now could lead to practical issues for building safety risk mitigation and management continuity in the event of manager’s insolvency and/or the termination of the right to manage. The FTT firmly rejected this submission, stating that duality of accountability ‘*whilst an attractive proposition as a matter of practicality… does not follow under the provisions of the statute*’ and therefore is not a ‘*sufficient ground for imposing liability*’.

3. Does the RTM effect whether Clarion is an AP?
Yes – the FTT held that, under sections 96–97 of the 2002 Act, the acquisition of the right to manage transferred all relevant management functions, including repairing obligations, to the RTM Company, unless the section 96(6) exception applied. Therefore, if Clarion had any relevant repairing obligations under its leases, they would not be relevant following the RTM acquisition.

Real Estate

Conclusion

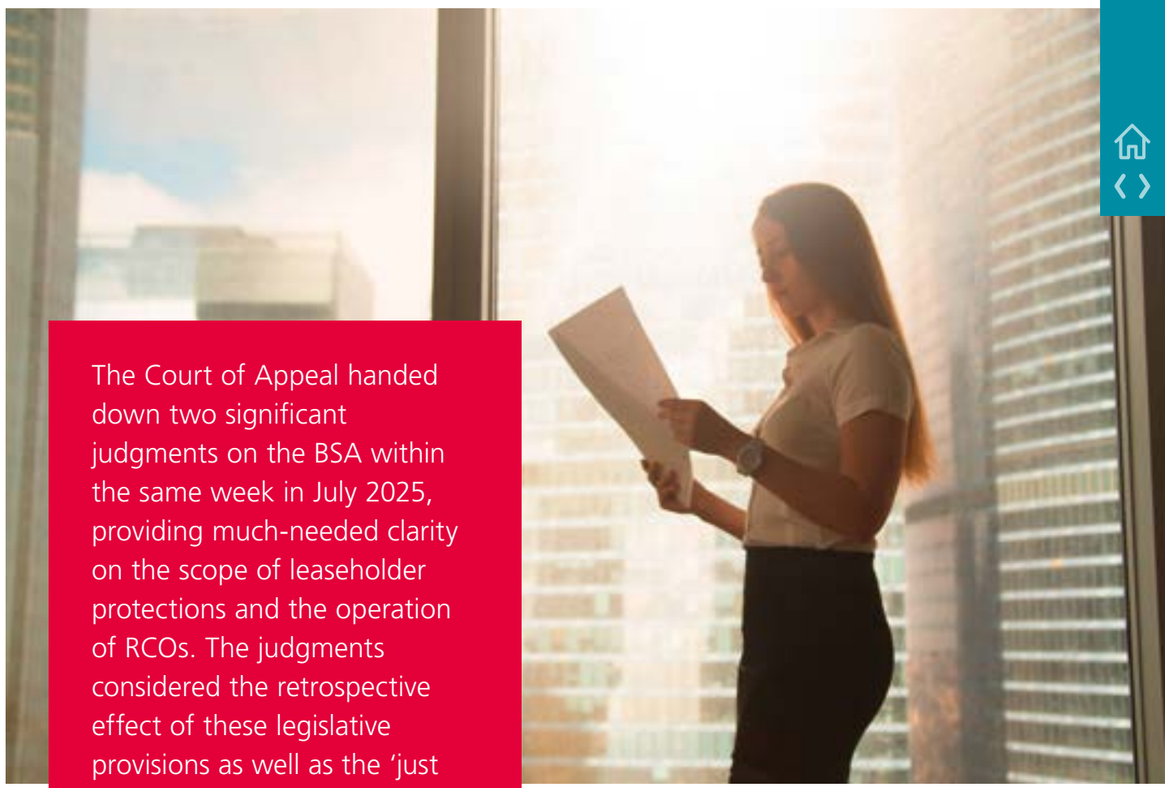
This decision provides clarity on accountability under the BSA, particularly following an acquisition of the RTM. The FTT will strictly apply the AP test outlined in section 72(1) BSA, reinforcing that statutory definitions and lease structures underpin the classification of an AP under the BSA (not practical concerns).

Any person who has been incorrectly registered as an AP will need to liaise with the correct APs to have the register corrected. If there is a dispute as to whether that person is an AP, the AP may need to rely on the person it is in dispute with to make an application to the FTT – something we assume they may not be prepared to do if they maintain that person is an AP. That does not appear to be a satisfactory position, and we consider that the FTT was generous in labelling this as merely a '*quirk*'.

Judge:
Andrew Lawson Baylies Sheftel

References:
— *Clarion Housing Group v Globe View House RTM Company Ltd* LON/00BE/BSG/2025/0600

Court of Appeal considers RCOs and leaseholder protections under the BSA



The Court of Appeal handed down two significant judgments on the BSA within the same week in July 2025, providing much-needed clarity on the scope of leaseholder protections and the operation of RCOs. The judgments considered the retrospective effect of these legislative provisions as well as the 'just and equitable' test for RCOs. These decisions have a direct impact on landlords, leaseholders, developers, and those managing residential buildings affected by historic safety defects.

Triathlon Homes LLP v Stratford Village Development Partnership

The case of *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846 concerned RCOs granted by the FTT against a developer ('**SVDP**') and its parent company ('**Get Living**') in respect of costs incurred both before and after section 124 of the BSA came into force. Section 124 permits the FTT to make RCOs against developers, landlords and their associates, requiring them to contribute to the costs of remedying relevant defects, where it is '*just and equitable*' to do so.

SVDP and Get Living appealed the FTT's decision, challenging the Tribunal's application of the just and equitable test, as well as the ability for RCOs to include costs incurred before section 124 came into force.

The Court of Appeal dismissed the appeal. In relation to the just and equitable test:

— The Court of Appeal upheld the FTT's approach, confirming that the policy of the BSA is to place primary responsibility for remediation costs on developers and those associated with them. It is not relevant that a respondent had no involvement with the work or had acquired the original developer at a subsequent point in time.

— The Court of Appeal also agreed that the fact that funding for the remedial works had already been received from the Building Safety Fund was not a factor against the granting of an RCO (the so-called '*public purse*' argument). The fund is intended to be a '*last resort*' and there was a public interest in securing reimbursement to the fund as quickly as possible. Among other matters, the Court of Appeal noted that recipients of such funding are required by the government's standard funding agreement to use '*all reasonable endeavours*' to recover the cost of remedial works from third parties and to reimburse the fund.

— The motive and identity of the applicant is not a relevant factor, provided the statutory criteria are satisfied and there is no malice or bad faith.

— There is no requirement for other contractual or tortious claims to be pursued first. The intention of the RCO regime is to ensure that funding is available from the outset pending the resolution of those more traditional claims.

The Court of Appeal also found that RCOs can be made in respect of costs incurred before section 124 came into force. This ensures that leaseholders who have already paid for remediation works, or management companies left with unrecoverable costs due to the operation of Schedule 8, are not left without a remedy. The Court of Appeal emphasised that the just and equitable requirement provides a safeguard against unfairness in this regard.

The Court of Appeal drew support for its conclusions as to retrospectivity from the Supreme Court's recent decision in *URS Corporation Ltd v BDW Trading Ltd (Rev1)* [2025] UKSC 21, a case in which CMS acted.

Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point

The case of *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856 considered whether the BSA prevents landlords from recovering service charges for costs incurred before the relevant provisions of the BSA came into force. The dispute centred on paragraph 9 of Schedule 8 to the BSA, which restricts the recovery of legal and professional costs relating to building safety defects from leaseholders with '*qualifying leases*'.

Adriatic Land sought dispensation from the consultation requirements contained in the Landlord and Tenant Act 1985 (required where a landlord intends to carry out major works to a building for which a service charge is payable). Following a review of its initial decision, the FTT granted dispensation subject to a condition that Adriatic Land could not recover its costs. This was appealed to the Upper Tribunal.

The Upper Tribunal determined that the condition could not be upheld as it was wrong in law. Following commencement of the BSA, however, the Upper Tribunal concluded that the costs were nevertheless irrecoverable from leaseholders of qualifying leases, pursuant to paragraph 9 of Schedule 8.

The Court of Appeal upheld the Upper Tribunal's decision for the following reasons:

— **Scope of paragraph 9:** The Court of Appeal confirmed that paragraph 9 is broad in scope, covering legal and professional costs incurred by landlords in relation to their liability (or potential liability) for relevant defects. This includes costs associated with applications for dispensation from consultation requirements under section 20ZA of the Landlord and Tenant Act 1985, where those applications relate to works addressing relevant defects.

— **Retrospective effect:** The majority of the Court of Appeal held that paragraph 9 does not operate retrospectively to extinguish landlords' rights to recover service charges for costs incurred before 28 June 2022 (the commencement date for the relevant BSA provisions). In other words, if a landlord had already incurred costs and rendered a service charge demand before that date, the right to recover those sums is not affected by the BSA. However, from 28 June 2022 onwards, no service charge is payable under a qualifying lease for such costs, regardless of when the underlying costs were incurred, provided the charge had not already been paid.

— **Human rights considerations:** The Court of Appeal also addressed arguments under Article 1 of Protocol 1 to the European Convention on Human Rights ('**A1P1**'), concluding that the BSA's approach – while interfering with landlords' contractual rights – was a proportionate response to the building safety crisis and did not violate A1P1.

Conclusions and implications

The Court of Appeal has again made it clear in these judgments that the central policy of the BSA is to provide a substantial measure of protection for leaseholders from the financial consequences of historic building safety defects and to allocate responsibility to those best placed to bear it – namely, developers, landlords, and their associates. Those parts of the *Triathlon* judgment relating to the just and equitable test will also be of interest to those looking to pursue Building Liability Orders under the BSA.

The *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* judgment also confirms that developers and landlords (and their associated companies) are likely to face an uphill battle when resisting RCO applications (which are not 'fault based'), with defences based on grant funding already being available or claims against contractors and subcontractors already being pursued likely to given little weight. To minimise the potential exposure to RCOs and, where applicable, to comply with any obligation under a grant funding agreement to use reasonable endeavours to recover contributions from liable parties, developers and landlords should be proactive in their pursuing others with responsibility for the defects.

In addition, there is likely to be an impact on transactional arrangements for purchasers of properties or development companies:

— Contractual provisions seeking to limit liability or reallocate risk may be overridden by the statutory requirements of the BSA.

— The lack of sympathy shown for arguments based on changes in ownership is expected to result in increased scrutiny during corporate transactions involving development companies. Parties will need to consider the risk of RCOs in respect of buildings completed up to 30 years ago. This will necessitate more rigorous due diligence on historic projects, a process complicated by the extended period of potential liability and the possible unavailability of records.

References:

— *URS Corporation Ltd v BDW Trading Ltd (Rev1)* [2025] UKSC 21

— *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856

— *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846

Real Estate

Smoke House & Curing House – Upper Tribunal clarifies extent of powers in respect of Remediation Orders

The Upper Tribunal (Lands Chamber) has provided important guidance on the scope of the FTT's powers when making ROs under the BSA, as well as criticising the FTT's commentary regarding the Government guidance in respect of the measurement of HRBs.

In *Monier Road Limited v Blomfield* [2025] UKUT 157 (LC) (the Smoke House and Curing House Decision), the Upper Tribunal re-made a wide-ranging RO, finding that the FTT had acted unfairly and beyond its role by including items not properly before it and by failing to follow fair procedures.

Additionally, the Upper Tribunal criticised the FTT's commentary on the measurement of HRBs, being on a matter not within its jurisdiction and which caused concern across the construction industry. The FTT provided in its decision that Government guidance on determining whether a building is a HRB during the occupation phase should be ignored. The Upper Tribunal undertook its own interpretation of the statute and determined that an enclosed roof top arrangement should be counted as a storey for HRB purposes.

Key points

- The FTT cannot expand the scope of a RO to include defects not specified in the application or the parties' pleaded cases, unless proper procedure is followed.
- If the FTT raises new issues of its own motion (which it may do in certain circumstances), it must give the parties an opportunity to address them, including amending pleadings and adducing evidence as appropriate.
- The FTT must not substitute its own expertise for the evidence before it without giving clear reasons and allowing parties to respond.
- The FTT must be extremely cautious about straying into matters where it has no jurisdiction, which in this case put the parties to cost and caused industry alarm.

Background

The case concerned a mixed-use building in East London, where leaseholders had applied for a RO requiring the freeholder, Monier Road Limited ('**MRL**'), to replace combustible cladding and insulation in the courtyard, as recommended by a fire risk assessment. The application was clear and limited in scope.

During the FTT proceedings, the Upper Tribunal raised concerns about additional elements, including balconies, walkways, bin stores, planters, and the roof terrace, none of which were identified as defects in the application or the expert evidence. The FTT ultimately made a RO requiring MRL to remedy all these '*Additional Items*', despite unchallenged expert evidence that no further works were necessary.

As part of its decision, the FTT commented that it considered Smoke House & Curing House was a HRB in circumstances where neither party had considered it to be. As above, this was on the basis that the roof terrace at the building comprised a '*storey*' and government guidance suggesting otherwise was contradictory. The FTT ordered that the BSR be provided with evidence of completion of remediation works as well as noting that the building ought to be registered as a HRB. Following the decision, in October 2024, the Government updated its guidance on the criteria for the height of HRBs in line with the FTT decision that roof terraces etc were to be included. However, that statement was revised in May 2025. The current position in the guidance is that the department for Levelling Up, Housing and Communities is consulting with the BSR and others to ensure roof gardens are not to be considered a storey under the legislation.

We commented on the FTT decision in more detail in our Building Safety Act Annual Review 2025.

The Upper Tribunal's decision

The Upper Tribunal found that the FTT had exceeded its discretion and acted unfairly in several respects:

- Raising new issues: While the FTT can raise points not identified by the parties, it must do so only in rare cases and must follow a fair procedure. Here, the FTT raised its own concerns, but did not invite the leaseholders to amend their case or allow MRL to respond properly.
- Procedural fairness: The FTT failed to give MRL or its experts a fair opportunity to address the new issues. The Tribunal's approach meant that the dispute became one between the FTT and MRL, rather than between the parties.
- Decision contrary to evidence: The FTT disregarded the unchallenged expert evidence without giving reasons, and relied on its own expertise without explaining why or giving the parties a chance to respond.
- Jurisdictional overreach: The FTT also purported to express an opinion on whether the building was a HRB under the BSA, despite having no jurisdiction to do so, commenting that its decision to do so was 'dangerous'.

The Upper Tribunal set aside the RO insofar as it related to the Additional Items, and remade the order to require only the works identified in the original application and expert evidence. The requirement to submit information to the BSR (which arose from the FTT's view on the height of the building) was also deleted.

Real Estate

Practical implications

This decision is a significant reminder that the FTT's role is to resolve the issues put before it by the parties, not to conduct its own building safety audit. If the FTT identifies a potential risk not raised by the parties, it may draw attention to it, but must then allow the parties to address the issue properly. The FTT cannot impose remediation requirements for defects that have not been properly pleaded and evidenced.

The decision provides reassurance that ROs should be confined to properly identified and evidenced defects and may commence a move towards a more limited form of RO, in circumstances where the FTT's orders have become more wide-ranging.

In terms of determining the number of storeys in a building, the position is no clearer and each building should continue to be assessed on a case-by-case basis with reference to the statutory provisions.

Judge:
Elizabeth Cooke

References:

— *Monier Road Limited v Blomfield* [2025] UKUT 157 (LC)

Real Estate

Corporate

Corporate

Introduction

The Building Safety Act 2022 ('**BSA**') is no longer an emerging concept for the real estate sector; it is now a central feature of asset ownership, development, management, and transactional risk. While the market is still working through aspects of its practical application, the legislation itself is beginning to become more entrenched and its implications are far reaching.

The remit of potential secondary liabilities has increased significantly with the introduction of extended culpability/responsibility across the corporate group, and beyond the realms of privity of contract. With entities inheriting historic liabilities on an unprecedent scale, and the introduction of retrospective limitation periods, the due diligence process has been fundamentally impacted.

Those involved in corporate transactions linked to real estate assets are grappling with the implications of this new legislation alongside regular case updates from the courts.

What's up next in 2026?
As markets acclimatise to doing transactions within the new regime, all participants need to keep a keen eye on the courts and the legislature for further updates that may impact this space.

Impact of Building Safety Act on Corporate Transactions

The Building Safety Act 2022 ('**BSA**') is reshaping how liability risk is assessed and allocated in corporate transactions. The BSA introduces enforcement tools that apply retrospectively, such as Building Liability Orders ('**BLOs**') and Remediation Contribution Orders ('**RCOs**') which enable liabilities to extend beyond the original developer and into wider corporate groups.

Building Liability Orders

A BLO is a High Court Order that may be issued where it is 'just and equitable' to make one or more associated companies jointly and severally liable for a 'relevant liability' of the original entity. To date, BLOs remain relatively rare but the mechanism is available and enforcement appetite is expected to grow.

The concept of association is broad and includes parent companies, subsidiaries, siblings, former group companies, and acquirers of the original entity. The test is similar to that used to ascertain the identity of a PSC/RLE (more than half the shares/voting rights/assets on a winding-up/ability to secure the affairs in accordance with its wishes) and the relevant period to establish an association runs from when the work was done until the BLO is made.

Remediation Contribution Orders

An RCO is a First-Tier Tribunal ('**FTT**') order requiring developers, landlords, or their associated entities/partnerships to contribute to remediation costs for 'relevant defects' in 'relevant buildings'. There have been many more RCOs granted by FTT than BLOs awarded by the High Court, and the FTT has adopted a robust interpretation of the legislation. One view of the FTT's approach is that it will give significant weight to 'policy'/public interest factors, and measures that will ultimately serve to benefit the underlying tenant/avoid the tenant bearing responsibility for the remedial works bill.

The association test is similar to BLOs but with two additional features: common directors create association and association is assessed during the five-year period before 14 February 2022 (for associated entities only). The *Triathlon v Stratford*[3] case suggests that the Court may restrict the scope of entities that fall under the broad definition of 'associated' companies where it considers it is '*fair and equitable*' to do so.

What does this mean for Corporate Transactions?

Primary liabilities under the BSA are likely to be addressed through technical due diligence where the liabilities relate to a building being acquired, albeit indirectly.

However, the BSA widens residual exposure through BLOs and RCOs. It introduces a secondary liability risk which can attach despite an absence of direct involvement in the development or ownership of the building at the relevant time. The potential liability orders are designed so that liability cannot be limited under the legislation and potential claims could be made by unknown third parties.

It is therefore likely that some risk will be assumed in the transaction and so the objectives should be to (i) identify the materiality of a secondary claim arising and then (ii) to mitigate the risk. At a high-level, this would include:

— due diligence to assess the extent of known-issues in a seller's group;

— consider (realistic) contractual risk allocation;

— determine the availability of Warranty and Indemnity ('**W&I**') insurance add-ons and engage early-on with brokers to get these priced into pricing indications from the outset; and

— post-completion restructure. The association is inherited in target but would not necessarily be transferred to the buyer or its wider group. Restructures need to be worked through carefully but if feasible this could assist.

Navigating the deal

The potential for secondary liability under the BSA should be flagged at the outset and discussed with your advisors, whether you are the buyer or seller. On the buy-side, the proposed course of action needs to be proportionate in the circumstances and factor in the nature of the target and its activities. A proactive seller should consider the level of information it is prepared to share as the fewer information gaps, the smoother the due diligence process.

As part of the due diligence, expect a buyer to aim to map out the seller's current and historic group structure, with a view to identifying residential developments in England over the last 30 years, understanding the extent of remediation activity, claims, notices and assessing potential exposure.

Warranties in the sale and purchase agreement will then likely follow the due diligence. If issues are known, then additional contractual protections will need to be considered.

If pursuing W&I insurance, buyers will need to engage the broker at the outset to identify receptive insurers and can then adapt the diligence undertaken to the requirements of the insurer. As with all W&I insurance-backed deals, the insurance is not a panacea. The general principle that 'known-issues' will not be covered equally applies in the context of the BSA and the buyer will still need to take a view on time limits (policy will rarely match BSA-imposed limitation periods) and policy liability limits.

Conclusion

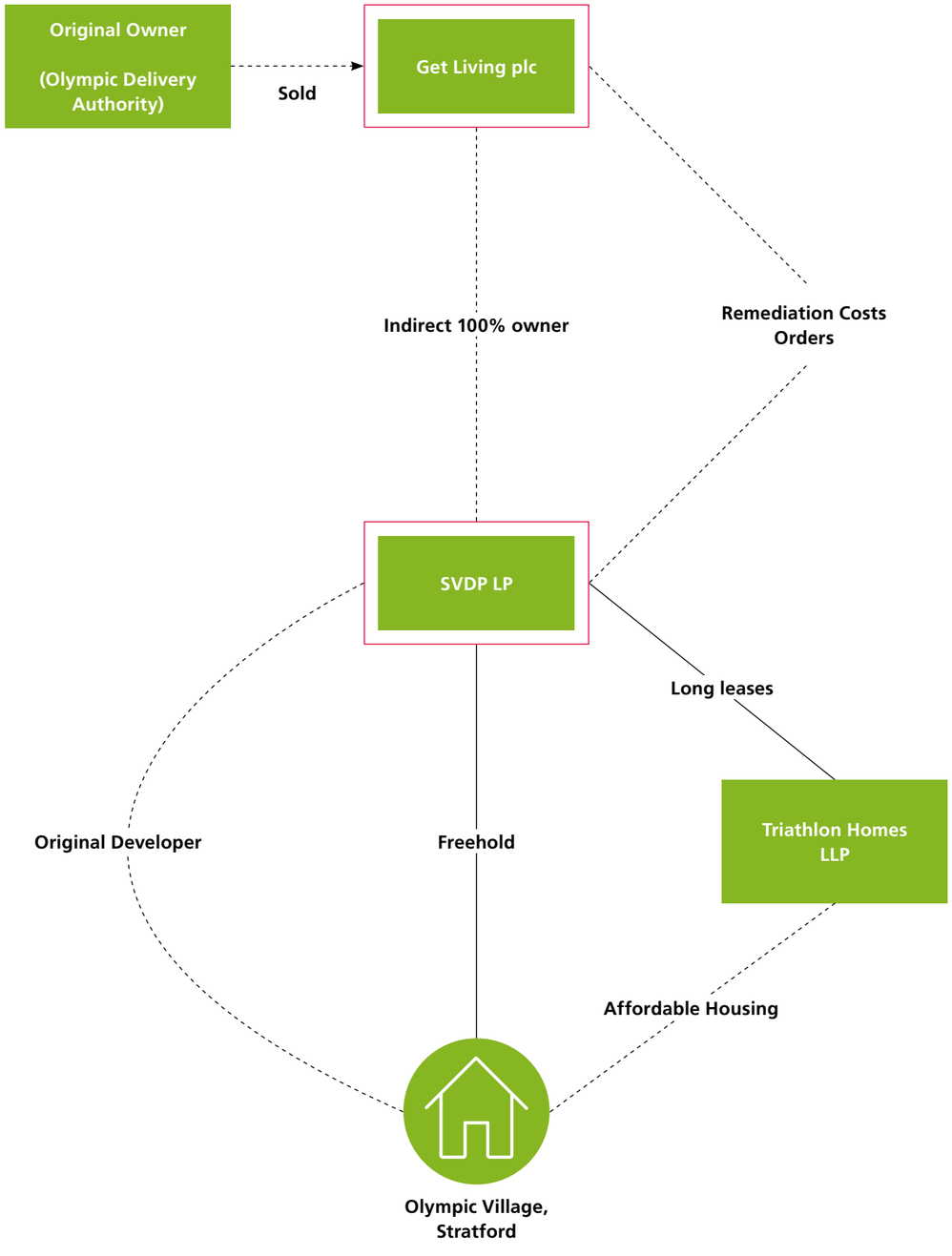
The BSA is reshaping the liability environment for corporate transactions with direct and indirect linkages to residential development activities in a seller's group. Its retrospective effect, extended limitation periods, and broad association tests mean that potential secondary liabilities are increasingly a mainstream risk that needs to be evaluated. A proactive approach from all participants will mean any risks can be understood, priced and mitigated accordingly.

3 *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846. Please see our Law-Now article for an analysis of this case.

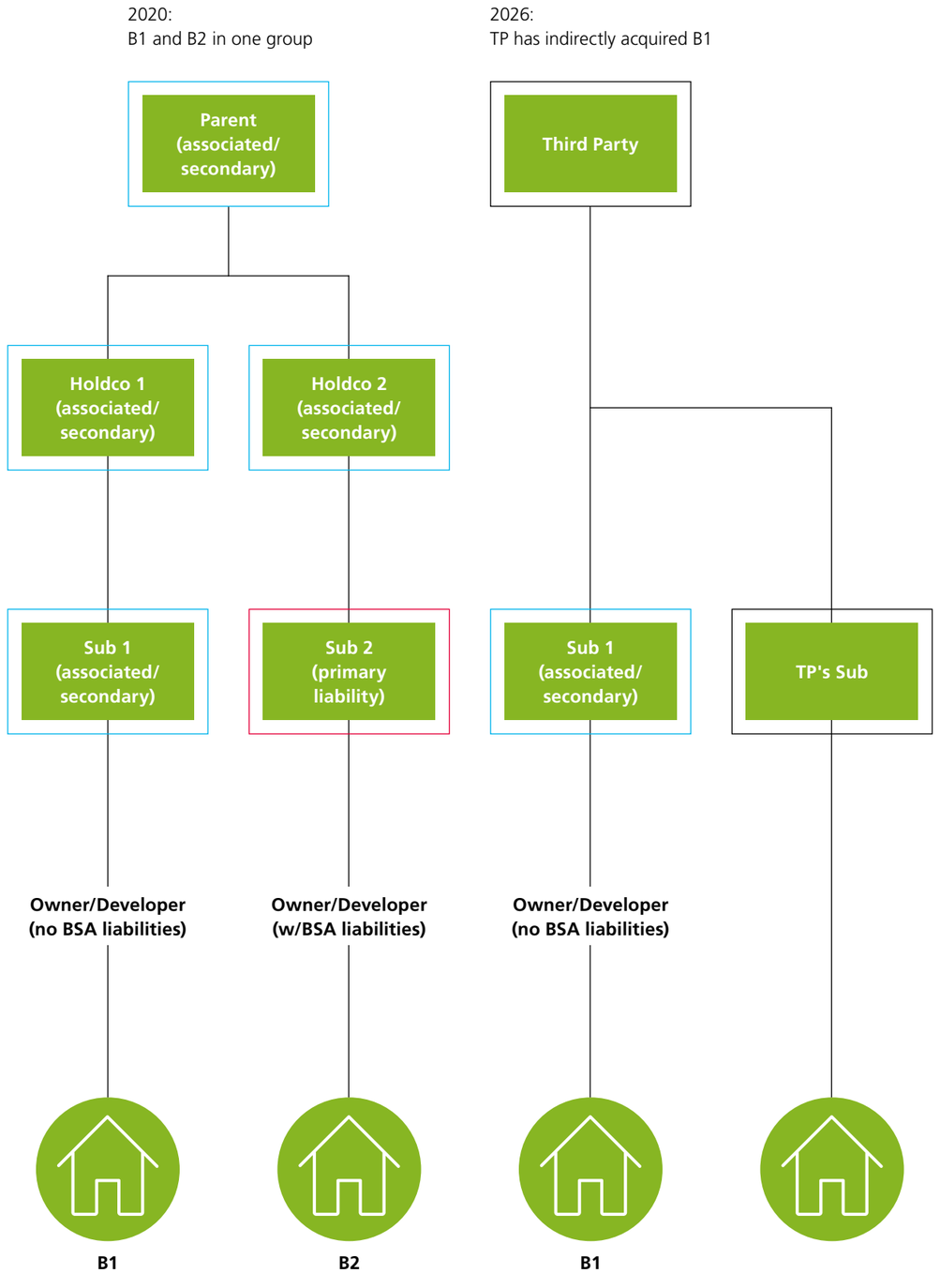
Corporate

Examples of association

Triathlon Homes LLP v Stratford Village Development Partnership [2025] EWCA Civ 846



Transfer of secondary liability



Construction Products

Construction Products

Introduction

The BSA has fundamentally reshaped the construction products landscape in England, introducing new safety duties, enforcement powers and – crucially – a standalone statutory route of redress against product manufacturers and others in the supply chain. The Grenfell inquiry intensely scrutinised the role of construction product designers, manufacturers and retailers in the Grenfell tower tragedy, and a recent wave of litigation is now starting to test, in practical terms, how the BSA's products provisions will operate, and how readily the courts will entertain product-based claims.

The UK Government has started to implement change. The Government's Construction Products Reform Green Paper proposed system wide reform, including tougher oversight/enforcement, and the 'construction library' concept. Equally important, and with echoes of the golden thread of information concept, is the UK's post Brexit product marking regime, forcing manufacturers and importers/distributors to ensure products properly indicate whether safety testing has been completed, and to which standards. It is hoped/anticipated that one benefit will be that the origin of goods and who is responsible for them, as well as the chemical composition of products utilised in the construction industry, will be more easily identified, to better assist when investigating whether buildings are safe to build and occupy.

What's next for 2026?

The UK Government has set out the next steps for product reform in the Construction Product Reforms White Paper, and the consultation on a General Safety Requirement for Construction Products. Both consultations close in May 2026.

In the courts, product claims are likely to become an increasingly prominent feature of BSA disputes, with early cases already raising important procedural issues.

Reforming the Construction Products Regime: Green Paper

On 4 September 2024, the Government published its official response to the Grenfell Tower Inquiry Phase 2 Report, addressing all 58 recommendations and outlining the Government's proposed reforms. As part of its response, the Government also published, on 26 February 2025, the Construction Products Reform Green Paper (the '**Paper**'), which proposes extensive measures for system-wide reform of the construction product regulatory regime, including proposals that address the Inquiry's recommendations. The Paper also serves as the Government's response to the Independent Review of Product Testing and Certification (the '**Morrell-Day Review**'), published back in April 2023. In a nutshell, it sets out the vision and proposals for creating a completely updated system for regulating construction products.

The Paper is the next step in the Government's response to the Grenfell Tower tragedy and a vital one, as construction products are central to the infrastructure and safety of a building.

The proposed reforms

The Paper proposes 11 reforms in total, including:

— Regulatory coverage in the Construction Products Regulation (the '**CPR**') to refer to a much broader definition of a construction product based on the product's intended use, rather than those that are subject to technical standards. It is anticipated this will lead to a threefold increase in the number of products which are subject to the regulatory regime;

— Life and safety of building users – the current regime is intended for a level playing field, and does not have safety or environmental protection as its drivers, whereas the updated regime addresses safety, carbon emissions, energy efficiency and sustainability by encouraging circularity and re-use;

— Establishing a construction library for data on construction products that are placed on the market;

— The implementation of oversight on testing and certification of construction products and changing the licensing of conformity assessment bodies, or CABs;

— Ensuring consistency between the UK's regulatory framework and the revised EU framework (the '**EU CPR**'), potentially leading to the use of Digital Product Passports ('**DPPs**') to mirror the EU laws on construction products regulation;

— Enhanced enforcement mechanisms for the national regulator, such as the ability to impose sanctions and conduct proactive market inspection;

— Increasing penalties, such as unlimited fines and prison sentences for directors; and

— Appointing a Single Construction Regulator.

These are wide-ranging and ambitious proposed reforms. We have focused on three key proposals for the purpose of this article.

Firstly, the introduction of a risk-based general safety requirement for *all* construction products. Under the current regime, only products that fall within the scope of a designated standard are covered by the CPR. This accounts for roughly one-third of all construction products on the market, leaving an estimated 20-30,000 products outside the scope of regulatory oversight. The proposed reform seeks to close this gap by extending safety requirements to the entire construction product landscape, regardless of whether a designated standard exists. As such, manufacturers will be responsible for assessing the safety of their products before placing them on the market. Where there are existing standards or technical assessments required for construction products, such as smoke alarm devices and pre-cast concrete products, these products must continue to comply with those standards.

The Paper also considers and seeks views on how consistency between the UK's regulatory framework and the EU CPR can be ensured to support trade. Within the Paper, the Government states that '*many of our objectives for reform are mirrored in the revised EU-CPR's objectives*'. For example, it explores the concept of digital labels, potentially modelled on DPPs, which are digital information stores that make information on a product's manufacture and intended use easily accessible for users, regulators and the supply chain via a mechanism such as a QR code. It also considers adopting several definitions from the EU CPR, including '*the Construction Product*'.

Originally proposed in the Morrell-Day Review, the Paper agrees with the proposal to establish a '*construction library*' that will serve as a repository for vital information in relation to construction products. The construction library will include data from tests on products and materials to support those who design buildings. Manufacturers would be responsible for making the test results available to all parties. The Paper further proposes the construction library could also host information such as '*Declarations of Performance and fire safety reports and academic reports along with their recommendations*', as it sees it as a helpful tool that can be expanded for further use.

Lastly to highlight briefly here, the regulatory enforcement of construction products is being overhauled, including the appointment of a Single Construction Regulator for the construction sector, with a broader and more powerful ability to proactively investigate compliance and with increased fines where liability is established – a consultation on the Government's proposals for regulatory reform and the development of a Single Construction Regulator (Open consultation - Single construction regulator prospectus) is currently under way and will remain open until 20 March 2026. Similarly, on 27 January 2026, the BSR officially moved to a standalone organisation, paving the way for the creation of a Single Construction Regulator. In the meantime, the Office of Product Safety and Standards (the '**OPSS**') will continue to enforce the legal obligations, having taken over many of the historical duties and powers from local authorities in this regard.

Construction Products

It is likely that implementation of such changes will take a long time, with much engagement needed between the Government and the industry to ensure a safe and workable system that fosters product safety in the construction industry.

The consultation

A formal consultation on the reform proposals was run by the MHCLG. Five key sector groups were identified as critical to supporting the vision for reform. These were named as construction product manufacturers, the construction industry and supply chains, the National Quality Infrastructure,[4] regulators and the Government. However, the consultation was also intended to engage with a range of other stakeholders. The consultation closed on 21 May 2025.

It seems the necessary changes will require significant and long-term effort from both government and industry.

4 Institutional framework that enables confidence that products and services meet necessary standards for health, safety and sustainability, by providing checks and assurance through standardisation, accreditation, measurement/metrology, conformity assessment and enforcement. The UK's National Quality Infrastructure is largely delivered by institutions such as the British Standards Institution, the United Kingdom Accreditation Service, the National Physical Laboratory, the Office for Product Safety and Standards, and local authorities through Trading Standards in Great Britain.

Construction products and the BSA: a shifting regulatory landscape

The BSA has fundamentally reshaped the regulation of construction products in Great Britain, introducing new safety duties, liability regimes, and enforcement powers. Following the Grenfell Tower tragedy, significant gaps were exposed in the standards that applied to the materials and products that were incorporated into buildings / construction projects, or construction products. The BSA was enacted to address these gaps in the regulation (amongst other intended purposes of course) and to enact a more rigorous set of legal standards, as discussed in this construction products general update.

Key changes introduced by the BSA

The BSA establishes a new, strengthened construction products regime in Great Britain, layered on top of, and ultimately intended to replace elements of, the UK's retained Construction Product Regulation ('**CPR**') framework. For these purposes, and for clarity in case helpful, a '*construction product*' means any product, kit or material which is produced and placed on the market for incorporation in a permanent manner in construction works.[5]

5 Legal definition is as follows: a 'construction product' means any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works, and the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works.

The BSA introduces an explicit duty that construction products placed on the Great Britain market must be safe, applying even where no designated standard exists. Manufacturers must understand the foreseeable uses of the product and associated risks, and ensure appropriate design, production controls, and information or instructions to mitigate those risks.

The legislation also enables the Government to designate '*safety-critical*' construction products, for which additional, stricter requirements will apply. These are likely to include defined essential characteristics and performance thresholds, mandatory third-party conformity assessments and traceability, and robust post-market surveillance obligations including incident reporting and corrective actions being put in place where necessary and appropriate.
The BSA also significantly extends limitation periods. Claims relating to construction products may generally be brought up to 15 years after the cause of action accrues, while claims involving cladding products can be brought retrospectively for up to 30 years.

Product compliance impacts

The BSA framework reinforces and, in places, strengthens existing duties on economic operators including manufacturers, importers and distributors. Key obligations include: ensuring products meet applicable requirements and are accompanied by accurate performance and safety information; maintaining technical documentation and traceability (including supply chain records); taking prompt corrective action where risks arise including withdrawal or recall; and co-operating with the regulator, which is many cases will be the Office of Product Safety and Standards ('**OPSS**') including responding to information request and product safety testing formal notices.

Expanded liability and redress under the BSA

One of the most significant impacts of the BSA is the expansion of the potential liability for those involved in the manufacture and supply of construction products, in addition to those who are incorporating products into buildings or constructions. Under traditional contracting structures, where construction products were purchased by sub-contractors, the original contractors were unable to take action against manufacturers in the event of some irregularity of design or manufacture due to privity of contract. This often created a '*liability gap*' where claims were contractually excluded, or where they were difficult to establish, or the original sub-contractor no longer existed. This gap has been addressed by the BSA in sections 147 to 151 by introducing a new, standalone statutory cause of action against construction product manufacturers which cannot be excluded or limited by contract. The impact of which is that liability arises where a product is unfit for use because it fails to comply with a statutory requirement, is inherently defective, or is accompanied by a misleading statement. Such liability for misleading statements also extends beyond manufacturers to any person who markets or supplies the product, and so the new duties really do intend to capture the whole supply chain in ensuring compliance matters.

In addition to the new statutory cause of action, the BSA introduces further mechanisms including the BLO regime, intended to ensure that responsibility for building safety defects rests with those who contributed to them. The BSA enables the courts or the Secretary of State to impose cost contribution orders on manufacturers, suppliers and other economic operators, requiring them to contribute to the costs of remediation caused by non-compliant construction products.

The BSA also provides for the establishment of building industry schemes, through which the Government may impose conditions which, in practice, could be used to restrict or exclude construction product manufacturers or suppliers from undertaking or supporting residential development, subject to further regulations and procedural safeguards.

Interaction with CPR, designated standards, and product marking

The Great Britain regime continues to use '*designated standards*' to define test methods and performance declarations of construction products. Under the BSA, these standards can be supplemented or replaced by product-specific safety requirements, especially for safety-critical products. The CPR lists seven essential basic requirements for construction works under which testing and certification is required, prior to the goods being stamped with the compliance marking, or conformity marking, to demonstrate its compliance with the applicable standards and allow its free movement within the legal territory accordingly. These basic requirements are as follows: mechanical resistance and stability; safety in case of fire; hygiene, health and the environment; safety and accessibility in use; protection against noise; energy economy and heat retention; and sustainable use of natural resources.

As regards the conformity marking for construction products in Great Britain, this has much evolved as a result of Brexit. Although '*UK Conformity Assessed*' ('**UKCA**') is the domestic conformity mark, the Government has repeatedly extended recognition of the '*Conformité Européenne*' ('**CE**') marking due to delays and difficulties in testing and certifying in accordance with the new Great Britain mark and, in September 2024, confirmed the indefinite acceptance of the EU's compliance marking, i.e. the CE mark, for construction products. Where third-party assessment is required, only UK-approved bodies may issue UKCA certificates for the Great Britain market. The BSA framework may also mandate third-party conformity assessment for safety-critical products, even where a designated standard would otherwise permit self-declaration.

Enforcement powers and the role of OPSS

The Government had committed to strengthening oversight of construction products following the Grenfell Tower tragedy and subsequently designated the OPSS as the construction products regulator under the BSA. OPSS already has extensive enforcement powers, including the ability to enter and inspect premises, require documents and product samples, mandate testing, and issue compliance, restriction, prohibition, and recall notices, and has been operating in this role on a phased, risk-based basis while the BSA regime is brought fully into force through secondary legislation. Non-compliance or potential non-compliance is investigated by the regulator with enforcement action following where it is in the public interest. Serious non-compliance may result in civil sanctions or criminal prosecution, with significant penalties and potential personal liability for directors and officers.

Looking ahead

The industry is still in the early stages of adapting to this new regulatory framework, and the next few years will see continued developments as both the industry and the judiciary apply the BSA in practice.

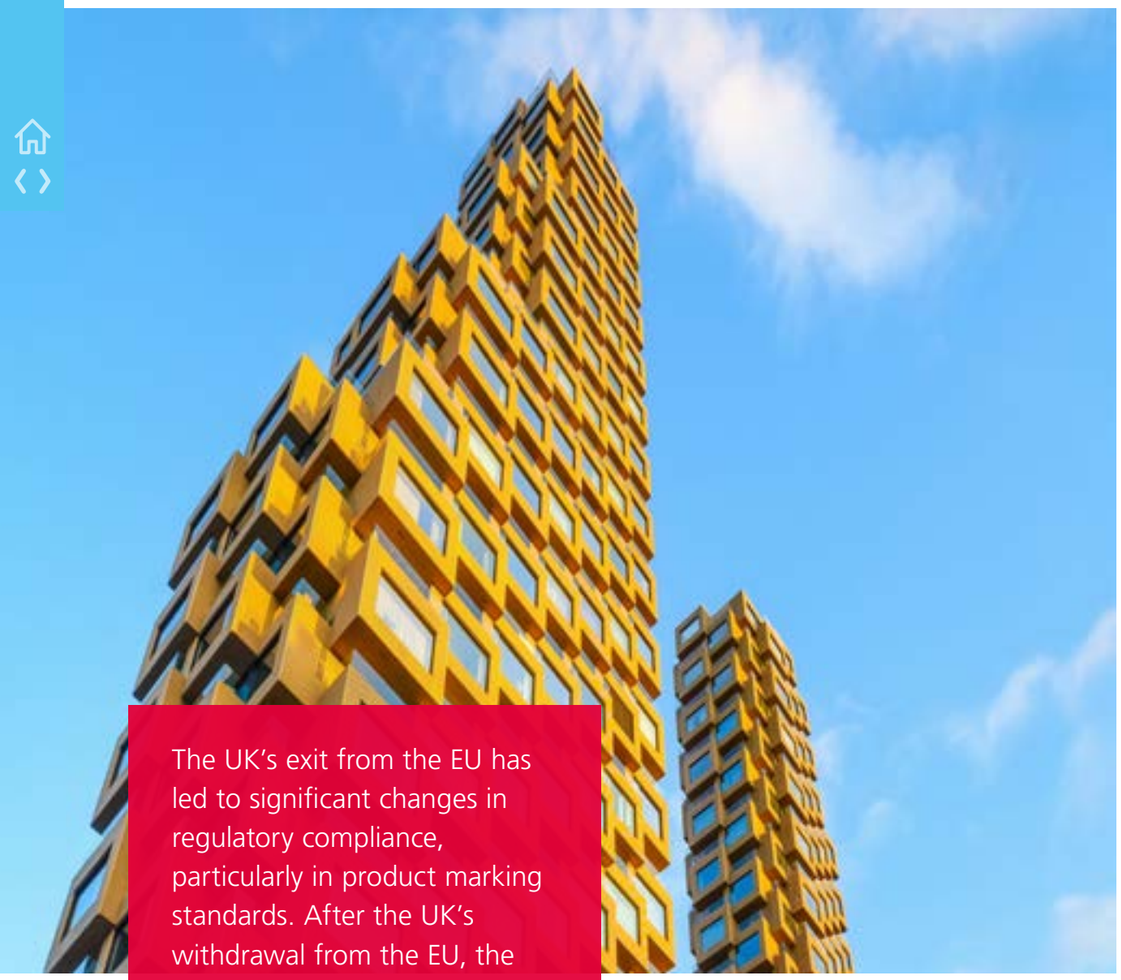
We are awaiting the Government's response to a consultation running from 26 February to 21 May 2025, which sought views on various proposed further changes to the regime from those in the construction supply chain. The consultation was published as part of the Government's Construction Products Reform Green Paper dated 26 February 2025, which set out a range of proposals for further reform and also served as the Government's response to the Morrell-Day Review. Key proposals to note are the expansion of the scope of products classified as '*construction products*', establishing a construction library to store and access data for each product placed on the market, implementing enhanced oversight of safety testing and certification including changes to the licensing of conformity assessment bodies, and creating a Single Construction Regulator. The proposals also explore potential alignment with the revised EU CPR framework, including the possible adoption of Digital Product Passports and requirements for climate-related reporting, whilst acknowledging that full EU alignment alone would not meet all UK objectives.

The direction of travel is unmistakably towards more stringent standards, greater accountability, and enhanced oversight of the entire construction products ecosystem. The next steps following the Green Paper will include the publication of responses for review, the publication of draft Regulations, and Government guidance.

Those in the supply chain would be well advised to monitor both the secondary legislation emerging under the BSA and the outcomes of the Green Paper consultation, which will shape the regulatory landscape for years to come.

Construction Products

Changes in construction product marking in UK: Indefinite extension of CE marking



The UK's exit from the EU has led to significant changes in regulatory compliance, particularly in product marking standards. After the UK's withdrawal from the EU, the government planned to replace CE marking with UK Conformity Assessment ('**UKCA**') marking in Great Britain, with a grace period ending on 30 June 2025.

However, following the Independent Review of Product Testing and Certification, which highlighted the UK's inadequate testing capacity, the government confirmed that CE marking would continue indefinitely for construction products. It also committed to providing a minimum two-year transition period for any future changes to CE marking recognition.

The Background

Following the UK's withdrawal from the EU, it was announced that CE marking would no longer be recognised as the compliance mark for installations in Great Britain, and instead it would be replaced by the UKCA marking. However, to allow businesses time to transition to the new standards, the government introduced a transition period during which businesses could use either CE or UKCA marking. Initially, the transition period was due to expire on 1 January 2022; however, the government delayed this date multiple times.

On 1 August 2023, the Department for Business and Trade ('**DBT**') announced its intention to indefinitely extend the use of CE marking applicable to 18 regulations that fall under the DBT, allowing businesses selling electronic, industrial and consumer products to use either CE or UKCA marking when placing their products on the market in Great Britain. The Product Safety and Metrology etc. (Amendment) Regulations 2024 were then made on 23 May 2024 and came into force on 1 October 2024. The Regulations amended 21 product regulations by removing the expiry of CE marking and were applicable to a range of products, including construction machinery. However, construction products were not covered by these measures.

The Morrell-Day Review

The Independent Review of Product Testing and Certification, known as the '*Morrell-Day Review*' (the '**Review**'), was published in April 2023. The Review undertook a critical assessment of the system for testing and certifying construction products in the UK. It found that the UK's testing capacity was inadequate to meet '*the projected growth in demand as a consequence of the end of recognition of CE marking and changes to the Construction Products Regulations*'. One of the ways in which the Review recommended that the Government take action to relieve the pressures on the testing market was by continuing to accept CE marking indefinitely.

The Changes

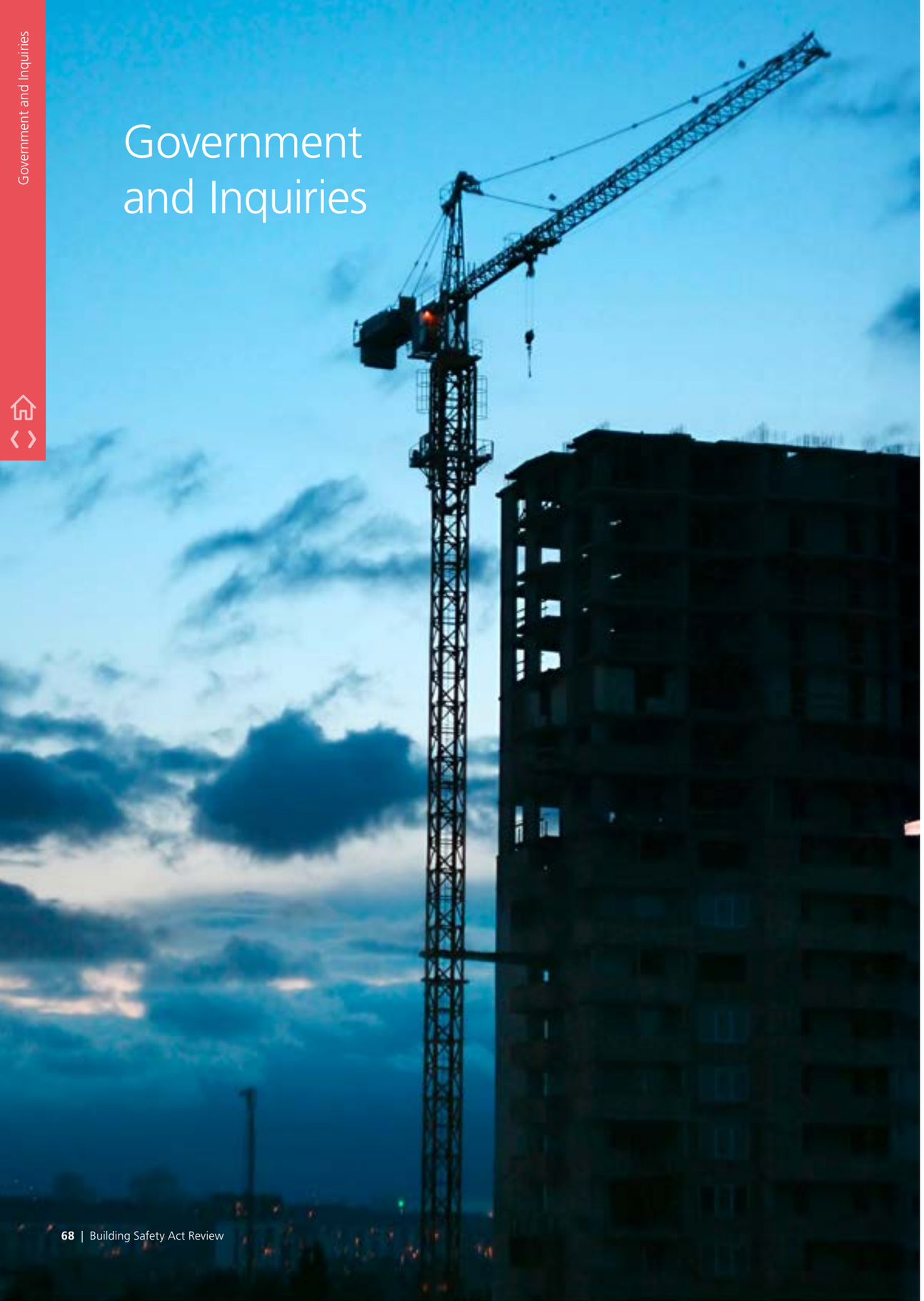
Subsequently, in September 2024, the Parliamentary Under-Secretary of State for Building Safety and Homelessness issued a statement confirming that CE marking would continue to be recognised indefinitely when placing construction products on the market in the UK. Rushanara Ali, the Secretary of State for Building Safety and Homelessness, set out in her written statement that the government acknowledged the findings of the Review and agreed that *'there is currently insufficient testing and certification capacity in the UK alone to provide the volume of conformity assessment that would be required were CE recognition to end'*. She also stated that it is clear that *'ending recognition of CE marking without reforming the domestic regime would create trade barriers and negatively affect the supply of products that meet recognised standards'*. However, it was made clear that the extension is conditional on the government committing to system-wide reform of the construction products regime. The Government has begun this process by issuing the Construction Products Reform Green Paper 2025 and running a consultation, we explore this in more detail above.

Looking Forward

Rushanara's statement recognises the need for the construction industry to have sufficient certainty in order to support supply chains. As a result of this, the government confirmed that any subsequent changes to the recognition of CE marking would be subject to a minimum two-year transition period, which should be a source of some comfort for the industry.

Construction Products

Government and Inquiries



Introduction

Government activity, regulatory reform and inquiry findings continue to shape the building safety framework, with significant implications for construction products, higher risk buildings and compliance processes.

The Government has now issued its full response to the Grenfell Tower Inquiry Phase 2, progressed wide ranging proposals in the Construction Products Reform Green Paper, and overseen further scrutiny through parliamentary inquiries into the performance of the Building Safety Regulator ('**BSR**'). These developments, together with new guidance and targeted enforcement action, reflect a steady move towards a more structured and closely supervised regulatory environment.

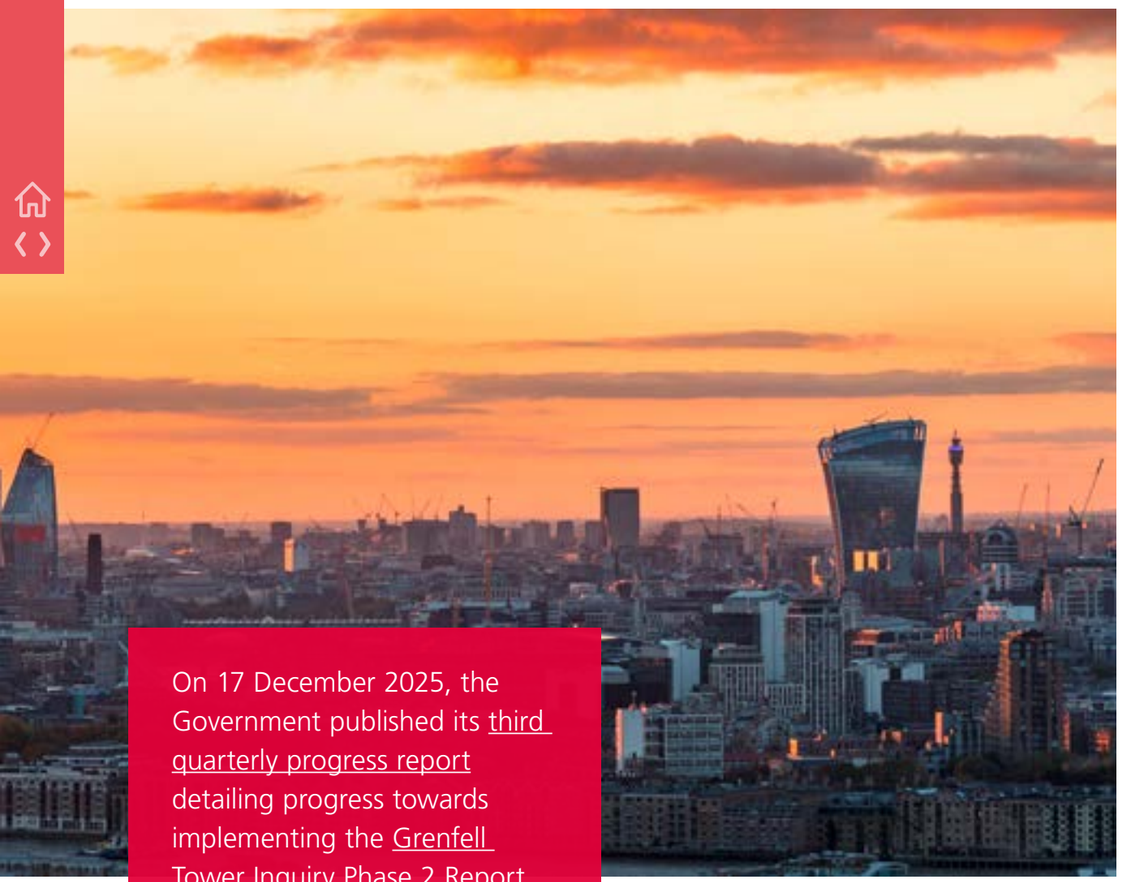
During 2026, several changes will take effect. On 27 January, the BSR moved from the Health and Safety Executive to operate as a standalone arm's length body, supported by new leadership, increased staffing and measures designed to reduce delays in the Gateway approval system. Its effectiveness in delivering more timely decisions will be of close interest to all stakeholders. The Building Safety Levy, now expected to take effect on 1 October 2026, is intended to ensure that developers contribute directly towards the costs of addressing historic building safety defects.

Further reform is also under consideration. The Government's consultation on a Single Construction Regulator proposes consolidating multiple existing functions within one body, with the aim of reducing complexity within the regulatory landscape. At the same time, inquiries such as the House of Lords Industry and Regulators Committee review have identified ongoing challenges, including resource shortages and the need for clearer and more consistent guidance. In response, the Construction Leadership Council has issued additional guidance to support more reliable and complete submissions at Gateways 2 and 3.

Overall, the regulatory environment remains in a period of transition. Continued legislative change, updated guidance and further structural proposals expected through 2026 will determine the extent to which the post Grenfell framework can provide a predictable, efficient and proportionate system for managing building safety.

Government and Inquiries

Grenfell Tower Inquiry – Third Progress Report



On 17 December 2025, the Government published its third quarterly progress report detailing progress towards implementing the Grenfell Tower Inquiry Phase 2 Report recommendations. The first quarterly progress report was published on 29 May 2025, followed by the second report on 30 September 2025.

By way of background, the Grenfell Tower Inquiry produced two reports. The Phase 1 report focused on the immediate emergency response, while the Phase 2 report sets out reforms to standards and regulations across the built environment. Please see our Law-Now article for an analysis of the key findings from the Phase 2 report.

This latest report confirms that the Government expects that it will take at least four years for all 61 recommendations to be completed. As the report suggests, it seems these recommendations will require significant and ongoing commitment from both Government and industry stakeholders.

We have focused on the key updates for the purpose of this article:

— **Definition of HRBs**: The Government accepted the BSR's recommendation not to revise the definition of HRBs because the current definition aligns with the available evidence. Further, changing the definition may lead to slower construction timelines as duty-holders and stakeholders are still getting to grips with the current regulatory regime. The BSR is however keeping the definition under continuous review.

— **Single Construction Regulator**: The Government published the Single Construction Regulator Prospectus: Consultation Document, setting out how the new Single Construction Regulator will be established. In November 2025, the Government laid before Parliament a Statutory Instrument to transfer building safety functions from the HSE into a newly created arm's length body. On 27 January 2026, the BSR transitioned from the HSE to a standalone organisation.

— **The MHCLG**: The report recommended consolidating fire safety functions under a single Secretary of State. The Government has gone further, transferring responsibility and staff for the entirety of fire functions – not just fire safety – to the MHCLG in the summer of 2025. Thouria Istephan, a former panel member of the Grenfell Tower Inquiry, is the interim Chief Construction Adviser to the MHCLG Secretary of State until September 2026.

— **Fire Engineers**: The Fire Engineers Advisory Panel, established in April 2025, published on 17 December 2025 an authoritative statement setting out the key principles that should underpin future reform of the skills, knowledge, and responsibilities required of a competent fire engineer. Alongside this statement, the Panel also issued a '*Next Steps*' paper proposing: (i) legislation to define the statutory function of 'fire engineer', which would restrict specified fire engineering functions to registered individuals; and (ii) the creation of a Fire Engineers Transitional Board to support the MHCLG in developing competency standards and education programmes.

— **Approved Documents**: The BSR convened an expert panel to support the review of Building Regulations Guidance, known as the Approved Documents, with a final report expected in summer 2026. In addition to that, the BSR expects to conduct a consultation '*shortly*' on ADB.

— **Construction Products Reform**: The reform agenda, long trailed since the post-Grenfell reviews, has been slow to materialise. Following the April 2023 Independent Review of the Construction Product Testing Regime and the subsequent February 2025 Construction Products Reform Green Paper, a White Paper is now scheduled for spring 2026. This paper will set out policy on test data, the construction library and oversight of conformity assessment, providing long-awaited clarity for the industry.

— **Building Control Independent Panel**: The Building Control Independent Panel is expected to publish a final report '*in the coming months*'.

— **National Fire Chiefs Council ('NFCC') Action Plan**: The NFCC published various pieces of guidance including guidance on site-specific information and on lifts and lift keys on 23 October 2025. The NFCC is currently engaging with the Water Services Regulation Authority ('Ofwat') to discuss issues faced by the Fire and Rescue Services with regard to water supply.

— **Residential Personal Emergency Evacuation Plans ('PEEPs')**: The Fire Safety (Residential Evacuation Plans) (England) Regulations 2025 came into force on 4 July 2025, mandating Residential PEEPs in high rise and high-risk residential buildings.

The Government's latest update signals steady progress, but the implementation of these recommendations is likely to require sustained, structured engagement between the Government and the construction industry. Looking ahead, the Government recognises that certain works in HRBs can be disproportionately time consuming and costly and therefore plans to consult stakeholders and the BSR in the new year on proposals to streamline procedural requirements for specified types of building work to existing HRBs.

Government publishes dispute resolution guidance under Developer Remediation Contracts

On 31 March 2025, the government published **guidance** under the provisions of its *Developer Remediation Contracts* ('**DRC**') agreed in connection with the Responsible Actors Scheme. The guidance focuses on the use of mediation to resolve disputes arising between third parties and developers in connection with DRCs.

Developer Remediation Contracts

As part of the drive to remediate unsafe HRBs, in 2023, the government asked major developers to sign a DRC committing the developer to progress work to address life-critical fire-safety defects in their buildings. As of 14 October 2024, 54 developers had entered into a DRC with the Ministry of Housing, Communities & Local Government ('**MHCLG**'). Developers who refused to sign DRCs would be prohibited from carrying out development work under the Responsible Actors Scheme. For more information about the Responsible Actors Scheme and the operation of DRCs please see our Law-Now here.

Clause 16 of the DRCs refers to the possibility of a dispute arising between the developer and a third party (for example freeholders, building managers, or tenants) in relation to the developer's performance of its DRC obligations. This likely envisages circumstances where there is a disagreement about the scope or cost of remediation, or issues with accessing a property to undertake investigations, and the failure to resolve these issues means that remedial works contracts cannot be finalised. Reference is also made to developer/works contractor disputes concerning the scope of remedial works following assessments to understand the fire safety risk profile of a property.

The Guidance

Clause 16 empowers the MHCLG to facilitate the adopting of a dispute resolution process by issuing guidance. This guidance has now been issued by MHCLG and sets out a unique form of mediation which is to be supervised by the MHCLG (the '**Guidance**'). The Guidance notes that a refusal to engage in good faith in the mediation process '*may be interpreted by MHCLG in a way which has significant contractual consequences for parties and/or future remedial works*'. Whilst it is not explicitly stated, this presumably means that a warning notice threatening the revocation of the developer's membership of the Responsible Actor's Scheme (making the developer subject to planning and building control prohibitions) could be issued under regulation 25 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (the '**RAS Regulations**').

The Guidance discusses the key tenets of the mediation process (i.e., quicker and less expensive than more formal dispute resolution processes) with the parties having greater control over the outcome and a greater chance of a mutually agreeable resolution. However, the Guidance also proposes some amendments to the traditional mediation process to better suit disputes arising under the DRC. The MHCLG expects the process to be finalised within 60 days and proposes that the developer is responsible for the mediator's fee. However, the MHCLG also reserves the right to choose the mediator in circumstances where it has not been possible to reach an agreement on the appointment, and to also attend the mediation if it considers it is necessary to do so.

In addition, and significantly, where a settlement is not achieved, the mediator is required to share a non-binding statement of the key facts and circumstances with the MHCLG and the parties, as well as '*details of any next steps or material matters in progressing the remediation as appropriate to the parties*' and any other observations the mediator considers relevant. The DR Guidance notes that if a developer appears to be failing to engage properly with the mediation or is failing to act in good faith to reach a resolution, the MHCLG may take action under the DRC. This presumably includes a warning notice under the RAS Regulations, as noted above.

Where settlement is achieved, any agreement (binding or non-binding) recording the terms of the settlement is to be shared with the MHCLG in order that the remediation progress can be monitored.

Conclusions and implications

While, in a bid to facilitate progress, the Guidance signposts the government's drive to resolve disputes between parties involved with the remediation of high-rise properties, the proposals raise a number of legal issues:

- Whilst the Guidance states that developers are '*obligated*' to comply with it, Clause 16 of the DRC is less emphatic, referring to a '*Dispute Recommendation*' which can '*facilitate the adoption of a dispute resolution process*'.
- Communications between the parties concerning a proposal to mediate are often protected by without prejudice privilege. This would include a party's refusal to agree to mediation. However, the Guidance invites other parties to provide the MHCLG with evidence of a developer's refusal to participate, which may be a breach of such privilege.
- Considerable tension also exists between the rules of without prejudice privilege and the mediator's report required at the end of an unsuccessful mediation. The pro forma mediation agreement included within the Guidance confirms that all information and communications made in connection with the mediation are to be without prejudice and privileged but does not address how this relates to the mediator's report. If the mediator's report is to result in an absence of privilege, this in itself may cause a mediation to be less effective than it otherwise may be.
- The suggestion that MHCLG may rely on a mediator's report to take action against an uncooperative developer may raise fairness issues as to the developer's ability to rely on its own evidence of the mediation to dispute the mediator's account. If fairness requires that the developer be permitted to rely on such evidence, an even greater erosion of without prejudice privilege will follow.
- The requirement to deliver a mediator's report, and the scope for dispute which such reports may give rise to, may be unattractive to many mediators, who often insist on terms requiring the parties to agree that they will not be called to give evidence in any future proceedings concerning their mediations. It is unclear whether the DR Guidance has the support of industry mediation bodies.

Whilst the government's focus on removing obstacles to progressing fire safety work remediation will be very welcome, it remains to be seen to what extent parties will actively engage with the Guidance, and whether, if they do, it will achieve the MHCLG's desired aim of speeding up remedial work.

Government and Inquiries

Scotland

Introduction

Whilst Scotland is subject to certain elements of the Building Safety Act ('**BSA**') (including rights of action in respect of construction products), the main body of building safety legislation changes in Scotland is to be found in the Housing (Cladding Remediation) (Scotland) Act 2024. A different approach has been taken by the Scottish Government in several areas, such as the adoption of a direct procurement approach for the remediation of building safety issues. The Housing (Cladding Remediation) (Scotland) Act 2024 came into effect on 6 January 2025, and is aimed at accelerating the remediation of buildings with potentially defective external wall cladding and introduces measures intended to overcome barriers to remediation. However, secondary legislation, still in the process of being introduced, will set out much of the detail as to how the legislation will operate in practice so practitioners are advised to keep a close eye on developments.

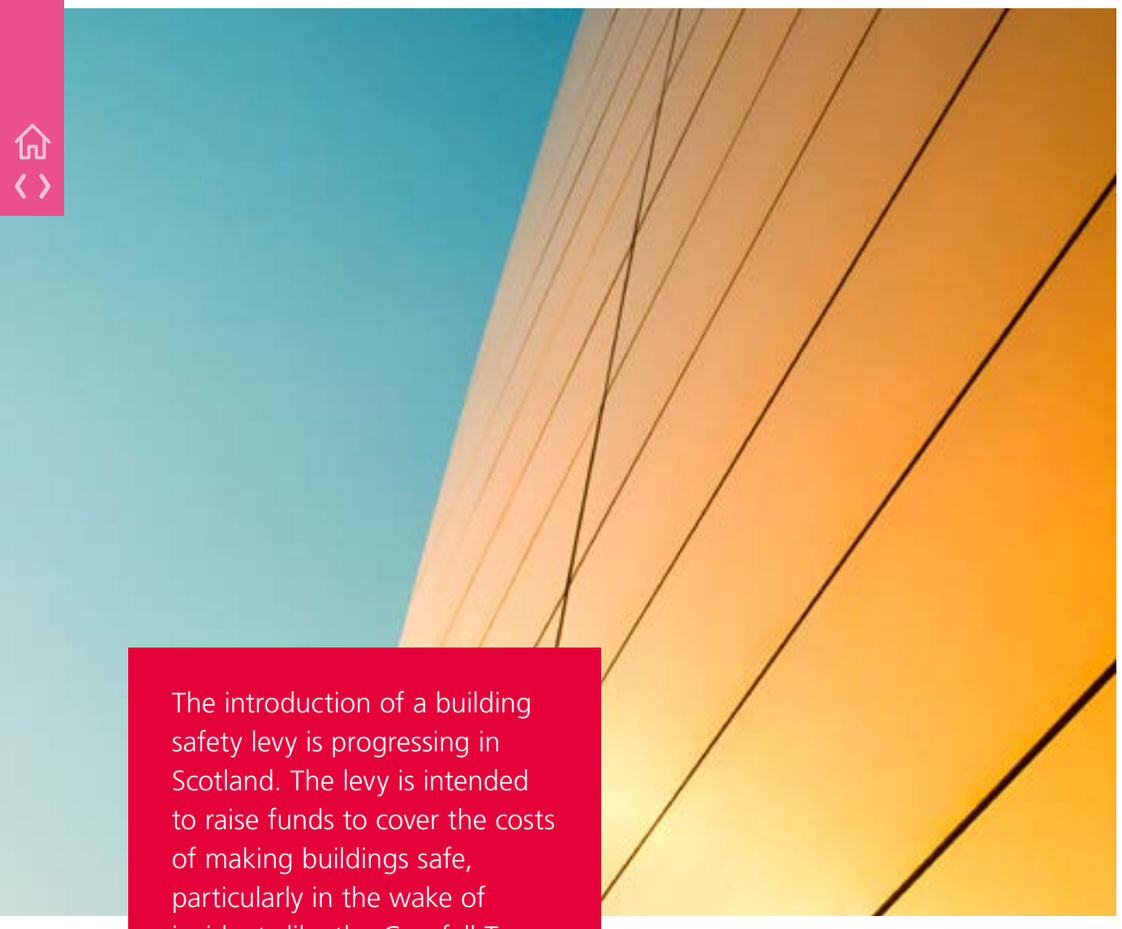
2025 saw a focus on funding Single Building Assessments ('**SBAs**'), the lynchpin of Scotland's regime that determines what remediation, if any, is required. Despite this push, Scottish Government figures show slow progress. The Scottish Government published its Developer Remediation Contract in November; to date, Persimmon is the only Accord signatory. The Building Safety Levy Bill was also published, with commencement deferred to 1 April 2028.

What will 2026 bring?

The Scottish Government has yet to publish draft regulations for the Responsible Developers Scheme. Legislation is also expected to implement the Compliance Plan Approach, which concerns compliance with Scotland's building standards system. However, any legislative change is unlikely to be enacted until after the 2026 Scottish Parliament election.

Scotland

The Building Safety Levy in Scotland: Key developments and considerations



The introduction of a building safety levy is progressing in Scotland. The levy is intended to raise funds to cover the costs of making buildings safe, particularly in the wake of incidents like the Grenfell Tower fire. It aims to ensure that developers contribute to the costs of rectifying safety issues in buildings they have constructed.

Purpose and policy context

In late 2024, the UK Government devolved the power to introduce a building safety levy in Scotland to the Scottish Government. The Scottish Government is targeting approximately GBP 30m per year. The Building Safety Levy (Scotland) Bill was introduced to the Scottish Parliament on 5 June 2025 and is intended to be enacted in 2026, with the levy coming into force from 1 April 2028.

The Bill has **completed Stages 1 and 2 of the Scottish parliamentary process and is now at Stage 3**, which is the final stage at which the Parliament considers amendments and decides whether the Bill should be passed.

During earlier parliamentary scrutiny, the Finance and Public Administration Committee raised a number of concerns, including:

— the potential impact of the levy on the housing market;

— the delivery of housing in areas where the viability of building sites is already a challenge; and

— whether the power to modify existing enactments is appropriately limited in scope.

While the Bill has progressed to Stage 3, amendments may still be made before it is passed. As with all Scottish legislation, the introduction of the levy remains subject to the Bill successfully completing the parliamentary process.

The implementation date was delayed from 1 April 2027 to provide the sector with additional lead in time to prepare. The Public Finance Minister has confirmed that, in light of this delay, no transitional arrangements are currently proposed.

Responsibility for paying the levy

The person liable to pay the levy is the owner of the building on the date of either (a) the submission of a completion certificate, or (b) the application for the grant of permission for temporary occupation. If more than one person owns the unit, then the levy is payable jointly and severally, that is, in whole or in part, by any owner.

Scope of the levy

The scope of the levy in Scotland focuses on new residential developments and purpose-built accommodation.

The levy will apply to:

— New residential units consisting of a wholly constructed or converted dwelling or part of a constructed or converted building intended to be used as a dwelling. This will apply to new homes built by developers for onward sale, new purpose-built accommodation, such as student flats and build-to-rent properties and the redevelopment of existing buildings to provide accommodation.

The levy will not apply to:

— Hotels, care homes, supported housing, children's homes, hospitals or hospices, accommodation for armed services personnel, residential accommodation for school pupils, homes for ministers of a religious denomination, monasteries, nunneries or similar, and accommodation for the provision of support of asylum-seekers and dependants.

— An '*exempt new residential unit*': a building or part of a building which, on the building completion date:

- does not increase the number of dwellings within the property (if it is a pre-existing residence that immediately before the construction or conversion works consisted of one or more parts which were, or were suitable for use as, dwellings);
- is considered to be social housing within the meaning of the Housing (Scotland) Act 2001;
- is considered to be affordable housing, that is a building or part of a building for which construction funding has been provided under sections 1 or 2 of the Housing (Scotland) Act 1988 or section 92 of the Housing (Scotland) Act 2001; or
- is situated on an island.

It is not yet known whether the levy will apply to Scottish projects that are already underway at the time of implementation or whether a grace period will apply.

Calculation of the levy

The levy shall become payable on the building completion date – meaning the earlier of:

— acceptance of a Building (Scotland) Act 2003 compliant completion certificate, or

— the grant of permission for temporary occupation of the building.

The person liable to pay the levy will be the owner of the new residential unit at the earlier of:

— the date a submission of a completion certificate is made to a verifier, or

— the date when an application for a grant of permission for temporary occupation is made.

Further regulation is expected in Scotland, setting out the rate (or rates) of the levy, and whether this will differ by geographic area, different types of land or any other factor. However, the Bill does confirm that this rate will be multiplied by the area in square metres of the floorspace of the unit to determine the amount payable.

Scotland

Sanctions and enforcement

Details of the enforcement regime in Scotland are still under development. The Scottish Government is considering a system based on a Compliance Plan, to be submitted at the pre-warrant stage and again at final warrant approval. The Scottish Bill introduces a range of penalties for failures, such as not making returns, not paying the levy, inaccuracies in documents and failure to register.

Conclusion

The Building Safety Levy (Scotland) Bill has now reached **Stage 3** of the Scottish parliamentary process, marking the final phase of parliamentary scrutiny before a decision is taken on whether the Bill should be passed. While amendments may still be made at this stage, the Bill's progression to Stage 3 represents a significant step towards enactment.

Developers, landowners and other stakeholders involved in residential development in Scotland should therefore continue to monitor developments closely, particularly any amendments agreed at Stage 3 and the anticipated secondary legislation that will set the levy rates and detailed operation of the regime. Given the proposed commencement date of 1 April 2028 and the absence of transitional arrangements, early consideration of the potential impact of the levy on scheme viability and structuring remains advisable.

Scotland's new High Risk Building regime: Preparing for the Compliance Plan Approach

In December 2025, the Scottish Government published guidance on the operation of its new Compliance Plan Approach ('**CPA**'), a strengthened building control process intended for use on HRBs.

Although currently voluntary, the CPA is designed to inform future legislative change and forms part of the Scottish Government's response to the Grenfell Tower Phase 2 recommendations. Those recommendations include a requirement to revisit and define the 'high risk' category by May 2026 in anticipation of new statutory controls.

A phased, 'test before implementation' approach

The Government's intention is that verifiers and industry participants begin applying CPA principles in practice over the coming year. The newly issued guidance encourages local authority verifiers to trial the approach on live projects and provide feedback before any mandatory regime is introduced.

This early testing phase seeks to avoid the implementation challenges seen in England following the introduction of the new building control regime in October 2023, where parts of the industry felt underprepared despite lengthy consultation and draft regulations.

Which buildings and works fall in scope?

Unlike the prescriptive definitions used in England and Wales, Scotland's proposed HRB criteria allow greater discretion. The CPA will apply to *major works* involving:

— Domestic or residential buildings taller than 11 metres

— Educational, community, and sports buildings

— Non domestic public buildings under local authority control

— Hospitals

— Residential care buildings.

The regime may later extend to other project types such as stadia or shopping centres.

'*Major works*' are defined by their impact on life safety, taking into account:

— complexity and scale

— value of the works

— evacuation and escape characteristics

— presence of vulnerable occupants

— cladding alterations or installations.

The relevant local authority verifier decides whether a building warrant proposal constitutes major works for CPA purposes, and will label qualifying projects with the prefix '*HRB*'.

This flexible, risk based approach may better capture project specific hazards, but it also introduces uncertainty. The absence of a single statutory definition means that application may vary between local authorities, raising the potential for inconsistency.

What is new about the Compliance Plan Approach?

The CPA does not replace Scotland's existing building warrant system but seeks to ensure that it operates in practice as intended. It introduces a more structured, auditable compliance process in which the actions of designers, contractors and verifiers are planned, monitored and recorded.

Two new features underpin the approach:

1. **The Compliance Plan (CP)** – a project specific document prepared *before* and *during* the warrant application, detailing how compliance will be achieved.
2. **The Compliance Plan Manager (CPM)** – a new role responsible for overseeing and evidencing compliance throughout the project.

Together, these measures are intended to create design, construction and inspection information equivalent to a '*golden thread*' to support the verifier's reasonable inquiry at completion.

The Compliance Plan

Current practice is that the Construction Compliance and Notification Plan ('CP') is issued by the verifier when the building warrant is approved, identifying required inspection stages.

Under the CPA, this process is reversed: the CP must be prepared and submitted as part of the pre warrant and warrant stages.

The CP will set out:

— controls and systems in place to manage compliance on site

— evidence that must be gathered and retained

— verifiers' inspection requirements

— how compliance will be demonstrated at key stages.

This front loads scrutiny into the earliest stages of project development, similar in intent to Gateway 2 in England, although without the same statutory stop/go mechanism.

The Compliance Plan Manager (CPM)

The CPM will become a mandatory appointment once legislation is introduced. For now, the guidance anticipates that CPMs should be:

— suitably qualified construction professionals

— accredited under an expected industry led competency scheme

— appointed by the Relevant Person (usually the owner) and not by the contractor or developer, to avoid conflicts of interest.

The CPM's responsibilities include:

— verifying that building warrant stages are completed in accordance with approved plans

— confirming and authorising notifiable verification stages

— monitoring compliance and reporting contraventions

— supporting the Relevant Person in assembling evidence for completion submissions.

Experience from England suggests that the market may face challenges in supplying sufficient competent professionals for new dutyholder roles, particularly where insurance and liability remain problematic. Similar constraints may emerge in Scotland unless engagement terms and risk profiles are clearly defined.

Implementation timeline and next steps

The current expected implementation pathway is:

— **Phase 1 – From 1 April 2026:** Local authority verifiers are expected to begin applying the principles set out in the newly issued Phase 1 CPA guidance and the updated Building Standards Performance Framework.

— **By March 2026:** The Scottish Government plans to publish full CPA guidance for voluntary adoption.

— **2026–2031:** Legislative changes are anticipated to mandate the CPA for defined HRBs. The extended timeframe reflects the need to test, refine and ensure the regime operates effectively before statutory implementation. Despite this long lead in period, stakeholders should treat 2026–2031 as an active transition phase to embed new processes and clarify competency and evidential requirements.

What should stakeholders do now?

Owners, developers and project teams operating in Scotland should begin preparing by:

— Reviewing upcoming projects that may fall within the evolving HRB definition.

— Familiarising themselves with CPA guidance and participating in pilot projects where possible.

— Identifying who within their organisation or consultant team may be able to meet CPM competency expectations.

— Ensuring systems are in place to maintain detailed design and construction records consistent with a '*golden thread*' approach.

— Engaging early with verifiers to understand local expectations and avoid project delays.

— Responding to the Scottish Government *Scottish Building Regulations – Fire Safety Review and Compliance: Call for Evidence* which seeks views by 10th April 2026 on a number of issues closely connected to the development of the Compliance Plan Approach.

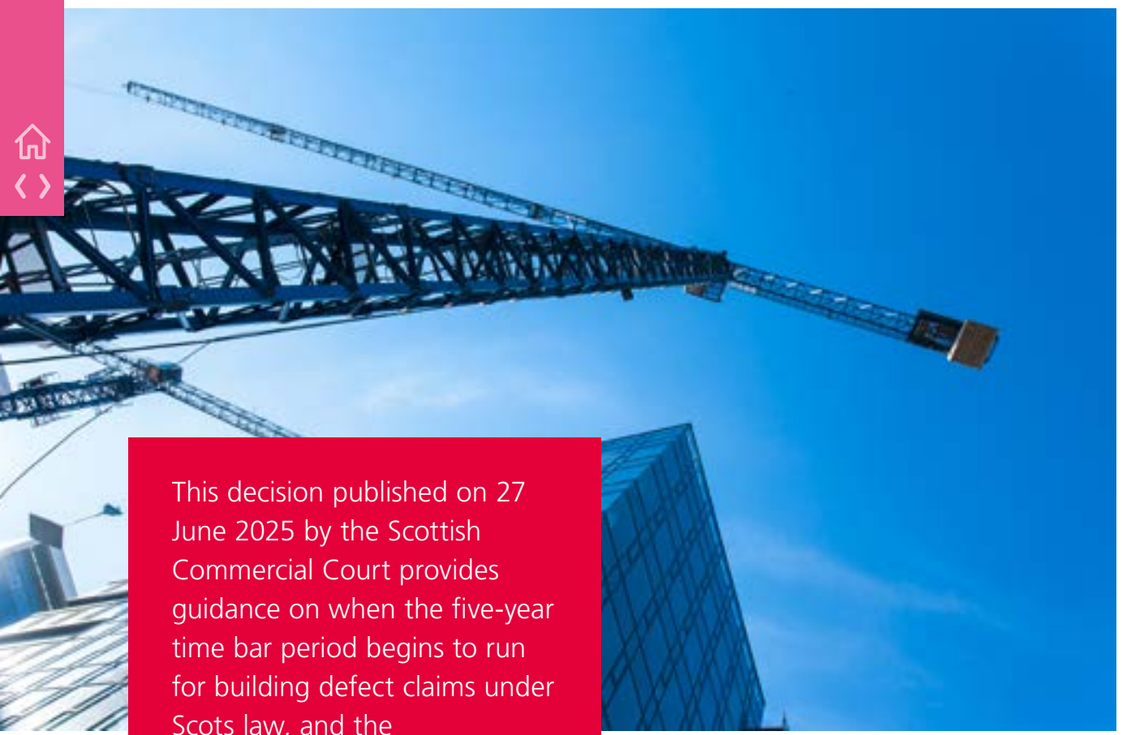
Conclusion

Although legislative adoption may be several years away, the CPA represents a significant shift in Scottish building control, prioritising early stage design assurance, greater scrutiny of high risk projects and enhanced evidence gathering. The approach does not mirror the English or Welsh HRB regimes, but it aims to achieve the same core objectives: improving building safety for vulnerable occupants, strengthening oversight and increasing confidence in compliance at completion.

All parties procuring or undertaking building work in Scotland should now take steps to understand the CPA and prepare for its future mandatory implementation.

Scotland

Greater Glasgow Health Board v Multiplex & Others: Cladding claims and time bar in Scotland



This decision published on 27 June 2025 by the Scottish Commercial Court provides guidance on when the five-year time bar period begins to run for building defect claims under Scots law, and the circumstances in which an employer may postpone or suspend that period. The decision is significant, especially considering that time bar in Scotland is undergoing both legislative and judicial developments.

Greater Glasgow Health Board v Multiplex & Others [2025] CSOH 56 (CA80/24)

Background

In 2009, Greater Glasgow Health Board ('**GGHB**') and Multiplex entered into a D&B NEC option C contract to design and build the Queen Elizabeth University Hospital in Glasgow. The atrium cladding used an ACM product, that, according to GGHB, did not meet the relevant fire safety requirements. GGHB sought approximately GBP 16m from Multiplex (after crediting for prior adjudication payments worth approximately GBP 7m). Multiplex counterclaimed for the GBP 7m adjudication payment and an additional payment of GBP 9m paid under a subsequent adjudication, on the ground that the adjudication decisions were wrong in fact and law. Multiplex also joined the architect and the fire consultant into the action. There was a preliminary trial addressing questions of prescription (time bar under Scots law).

The relevant sectional completion was achieved on 26 January 2015. Even after extensive reviews after the Grenfell fire, GGHB did not review the atrium O&M records until 2021. The court had to consider the following:

— When did the five-year prescriptive period begin to run for GGHB's principal claim?

— Could GGHB postpone commencement of the five-year prescriptive period under section 11(3) of the Prescription and Limitation (Scotland) Act 1973, that is, was it not aware and could not with reasonable diligence have been aware of the defects?

— Was the running of prescription suspended under section 6(4)(a)(ii) due to '*error induced*' by Multiplex's words or conduct (including silence)?

— If section 6(4) applied, when could reasonable diligence have ended the suspension?

Decision

The commercial judge held that prescription began at practical completion on 26 January 2015, and not at earlier interim payment dates, as argued by Multiplex. Construing the contract, the '*core obligation*' was to provide the works in accordance with the Works Information, which includes both design and construction. Any defect in a section could have been rectified by Multiplex before completion. Further, GGHB's claim focused on non-compliant construction rather than a pure design breach.

GGHB could not rely on section 11(3). On the pleadings and current law, GGHB was objectively aware of loss on taking possession of a defective building at completion. Under applicable law, prescription starts running once GGHB was aware of the objective facts that constitute loss, injury, or damage caused by Multiplex's act or omission (*David T Morrison & Co Ltd v ICL Plastics Ltd* [2014] UKSC 48; *Gordon's Trustees v Campbell Riddell Breeze Paterson LLP* [2017] UKSC 75; *Tilbury Douglas Construction Ltd v Ove Arup & Partners Scotland Ltd* [2024] CSIH 15).

The court further rejected reliance on section 6(4). In its opinion, '*routine acts*', such as payment applications, completion certificate processes, and general assertions of compliance are not the kind of conduct that objectively induces error about rights or remedies under Scots law. This was based on an earlier Inner House decision in *Tilbury Douglas*, which emphasised that everyday invoicing or expressions of confidence do not engage section 6(4). Further, there was also no evidence that any identified representation actually induced error in GGHB's directing mind or relevant agents.

Representations to employees who do not have control over GGHB's actions would not be sufficient. Therefore, section 6(4) was not engaged, and the claim was time barred.

Even if section 6(4) had applied, the court found GGHB could, with reasonable diligence, have discovered the relevant facts by following NHS Scotland fire safety policy ('**CEL11**') at handover and in early fire risk assessments. CEL11 required GGHB to review O&M materials, keep accurate records, and ensure suitable fire risk assessment in a fire-engineered space like the atrium. Had the O&M been read diligently, inconsistencies would have been spotted and inquiries made of the cladding contractors. Allowing about six months from the first post-completion FRA in November 2015, GGHB could have established the as-built condition by around May 2016, still more than five years before service of the court proceedings in March 2022.

Comment

This decision underscores that, for complex building safety claims, the five-year prescriptive period will often run from practical completion, not from later discovery of non-compliance. Further, it is difficult to pause the clock based on routine '*we've complied*' statements, applications for payment or completion, or silence. Owners must proactively verify, record, and diarise rather than assume compliance.

The application of Scots law of prescription to building safety claims is in a state of flux: First, the Prescription (Scotland) Act 2018 amended section 11(3), introducing a different test of 'discoverability'. Although the new provision has not been interpreted by a court, the commercial court has commented in a different decision that the amendment has effect of restoring section 11(3)'s '*previously-understood role*'. Second, the decision in *Greater Glasgow* has been appealed before the Inner House. While a hearing took place in January 2026, a decision is awaited.

Opinion:
Lord Braid

References:

— *Greater Glasgow Health Board v Multiplex & Others* [2025] CSOH 56 (CA80/24)

— *David T Morrison & Co Ltd v ICL Plastics Ltd* [2014] UKSC 48

— *Gordon's Trustees v Campbell Riddell Breeze Paterson LLP* [2017] UKSC 75

— *Tilbury Douglas Construction Ltd v Ove Arup & Partners Scotland Ltd* [2024] CSIH 15

Scotland

Wales

Introduction

As we noted in the first edition of the Building Safety Act ('**BSA**') review, Wales initiated its own response to the Grenfell tower tragedy. The building safety agenda in Wales has evolved significantly since late 2025, with new/fundamental pieces of legislation coming into play in 2025. The Building (Amendment) (Wales) Regulations 2025 – which came into force on 20 December 2025 – amend the previous Building (Amendment) (Wales) Regulations 2019, which in turn amend the Building Regulations 2010 so far as they apply in Wales. The impact of the legislation is to:

1. ban the use of 'relevant metal composite material' ('**MCM**') from external walls and specified attachments;
2. extend the combustibles prohibition to hostels, hotels, and boarding houses;
3. lower the material-change-of-use trigger for external-wall compliance from 15m to 11m; and
4. bring solar-shading devices within scope.

A transitional window preserves the previous regime only where notices or plans were submitted before 20 December 2025 and works started within six months.

Running alongside these technical changes are reforms to the occupation phase of residential properties. The Building Safety (Wales) Bill (introduced in July 2025) proposes a Wales-specific regime for multi-occupied residential buildings, including accountable persons, registration requirements for taller buildings, and enhanced local authority enforcement powers.

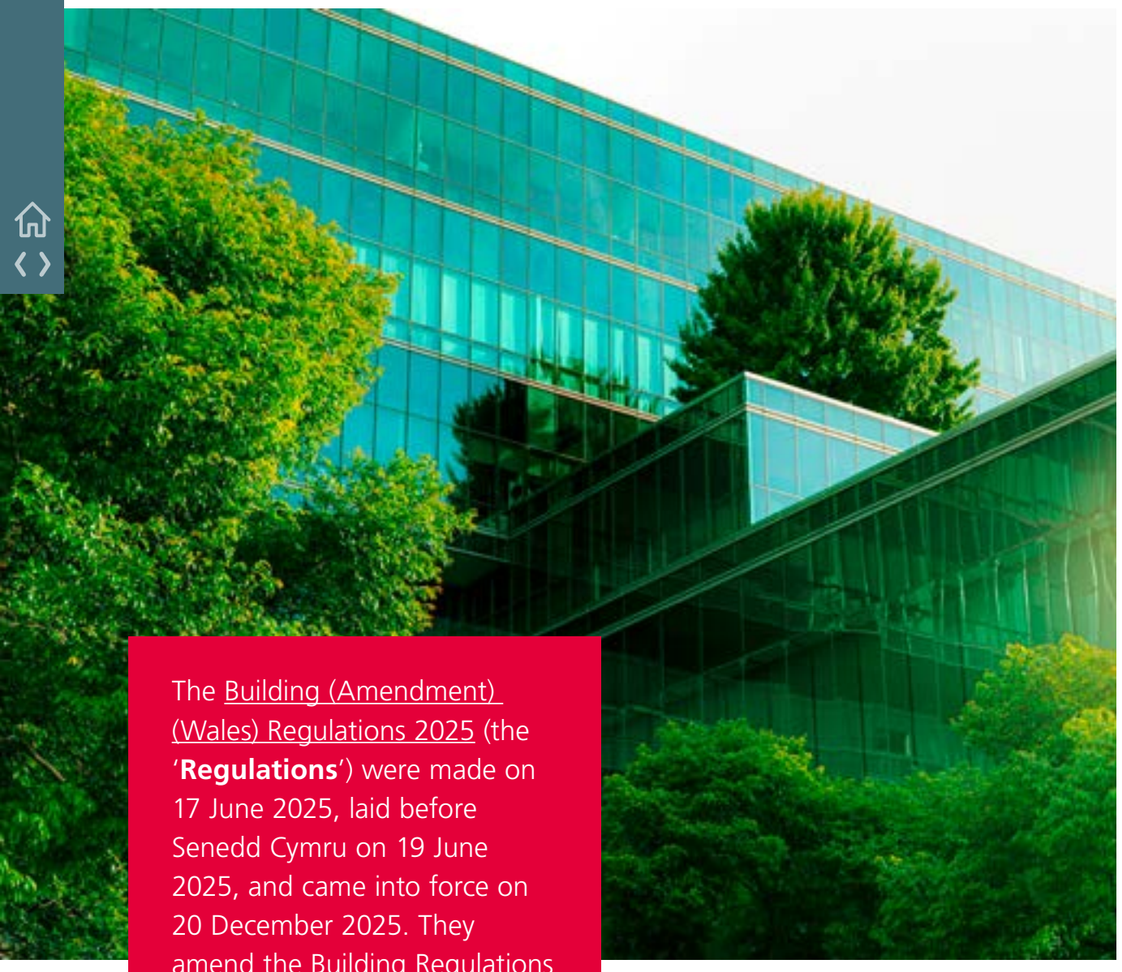
What's next for 2026?

Projects relying on the previous regulations must have started by 1 July 2026 or otherwise comply with the Building etc. (Amendment) (No.2) (Wales) Regulations 2025.

From 1 July 2026, Wales begins phasing in its higher-risk building design and construction reforms via the Building etc. (Amendment) (No.2) (Wales) Regulations 2025 and the Building (Higher-Risk Buildings Procedures) (Wales) Regulations 2025, introducing staged gateway approvals with local authorities acting as the building control authority, alongside new dutyholder and competence requirements for all building work, largely reflecting similar arrangements in England albeit with a broader definition of higher risk building. The construction phase regime and Welsh higher-risk building regime will commence from this date, subject to transitional provisions. Implementation of the occupation-phase regime is expected to follow from April 2027.

Wales

The Building (Amendment) (Wales) Regulations 2025



The Building (Amendment) (Wales) Regulations 2025 (the '**Regulations**') were made on 17 June 2025, laid before Senedd Cymru on 19 June 2025, and came into force on 20 December 2025. They amend the Building Regulations 2010 (the '**Building Regulations**') as they apply in Wales, targeting external fire spread risks by tightening definitions, widening scope, and refining exemptions.

At the heart of the Regulations is a new definition of 'relevant metal composite material' ('**MCM**'). The Regulations prohibit such MCM from becoming part of any external wall or specified attachment when building work is undertaken, removing the previous ambiguity around the use of metal skinned composite panels with combustible cores.

The Regulations also broaden the combustibles ban by adjusting the definition of a 'relevant building' so that the prohibitions in the Building Regulations, clauses 6(3) and 7(2) now apply to hostels, hotels, and boarding houses, as well as the categories already in scope. In parallel, solar shading devices attached to external walls are expressly brought within 'specified attachments' – with an exclusion where the device is attached at 4.5m or below – so their components fall squarely under the reaction to fire regime unless otherwise exempt. Together, these changes extend the scope of building types and façade accessories that fall within the remit of the legislation, and that had previously been grey areas in practice.

With regard to building conversions, the Regulations have introduced a lower height threshold. Where there is a material change of use of the whole building, the height threshold that engages the duty to ensure the external wall meets Part B4(1) (external fire spread – walls) is reduced from 15m to 11m. This reshaping of the requirements is likely to bring into the remit of the act many updating/repurposes construction projects, aligning regulatory expectations across these types of projects with external-wall remediation works.

Clarification and specificity are also brought to the exemptions under the Building Regulations 7(2). Notably, it exempts fibre optic cables, and adds detail to the requirements for a horizontal floor layer of a balcony. These refinements are designed to take a proportionate approach to compliance – taking into account low-risk/ discrete elements, while keeping façade fire strategy at the core of the legislation.

The prior regime, and not the Regulations, will apply for buildings where a building notice or initial notice was provided, or full plans were deposited with, a local authority before 20 December 2025, and the work had started by that date/ within six months of it. Outside those parameters, the new regulations will apply, so timing and 'start on site' evidence are critical for any project hoping to rely on the prior regime.

In practical terms, the Regulations have brought in the following exemptions/restrictions in Wales from 20 December 2025:

1. External walls and covered attachments must not include MCM;
2. the combustibles ban applies to a wider collection of 'relevant buildings', including hotels, hostels, and boarding houses; and
3. change of use schemes will hit the external wall fire spread restrictions at 11m, not 15m.
4. Specification, procurement, and risk allocation for façades, balconies, and shading systems will need to reflect the Regulations as the default position on projects in 2026 and beyond.

Wales

Building Safety (Wales) Bill: the anticipated next stage of Welsh building safety reform

On 7 July 2025, the Welsh Government published the Building Safety (Wales) Bill (the '**Bill**'), along with an Explanatory Memorandum and other supporting material. The primary aim of the Bill is to improve the safety of residents living in multi-occupied residential buildings in Wales. The Bill seeks to address issues identified by the Hackitt Review, the Grenfell Tower Inquiry and the Welsh Government's Building Safety Expert Group which was set up in the aftermath of the Grenfell Tower tragedy in June 2017.

The Bill introduces an all-encompassing new regulatory framework which, if passed, will:

— identify 'duty holders' responsible for satisfying the statutory obligations set out in the Bill;

— require buildings which are at least 11 metres in height or have at least 5 storeys to be registered with a building safety authority;

— assign each of the Local Authorities in Wales as a 'building safety authority' that must oversee safety during the occupation phase;

— confer new functions on the fire and rescue authorities and fire inspectors in Wales in relation to Crown buildings, designating them as a 'fire safety authority';

— create new rights for residents; and

— establish an enforcement regime if the new duties are not met.

Buildings within Scope

Unlike the Building Safety Act ('**BSA**') in England which only focuses on high-rise buildings (over 18 metres or 7 storeys), the Bill applies to three categories of multi-occupied residential buildings:

— **Category 1 buildings** - at least 18 metres in height or has at least 7 storeys. These are subject to the strictest requirements.

— **Category 2 buildings** - less than 18 metres in height and has fewer than 7 storeys, and is at least 11 metres in height or has at least 5 storeys. These buildings have similar requirements to Category 1 buildings with fewer restrictions.

— **Category 3 buildings** - less than 11 metres in height and has fewer than 5 storeys. These have the fewest restrictions.

Category 1 and Category 2 buildings will be required to register with the building safety authority (local authorities in Wales) and will be subject to both fire safety and structural safety duties. In contrast, Category 3 buildings will be subject to only the fire safety requirements.

The Bill also makes provision for certain houses in multiple occupation (referred to as 'relevant **HMOs**') and these will be subject to the new fire safety duties (including fire risk assessment) contained in the Bill.

Duty Holders

Accountability for building and fire safety is a key focus of the Bill. The Bill introduces the role of an 'accountable person' ('**AP**') and a 'principal accountable person' ('PAP'). An AP is generally the person who owns or has a repairing obligation for any of the common parts of the building, and would be an AP for that part. The PAP will generally be the person who owns or has a repairing obligation for the external structure of the building (i.e., the foundations, external walls and roof).

Where there is only one AP for a building, then that person would be the PAP. In circumstances where there is more than one AP, the person with the legal or repairing responsibility for the external structure is automatically elevated to a PAP, who acts as the lead duty holder.

The Bill also provides that where there is more than one AP and different APs are responsible for different parts of the external structure then an application can be made to the building safety authority by an AP to determine which person is the PAP for the building.

Furthermore, an interested person can also apply to a residential property tribunal for a determination as to who are the APs or the PAP for a regulated building.

With regard to enforcement, a key feature of the Bill is the introduction of special measures orders ('SMOs'), which is a proactive tool designed to be used as a 'last resort' enforcement measure. It allows the enforcing authority to make an application to the residential property tribunal for an order that will appoint a special measures manager to take over building safety functions from failing duty holders in Category 1 buildings. It is a temporary measure to be used where residents are at risk and existing duty holders are failing to carry out their duties.

Registration and certification duties

The PAP is responsible for ensuring that a Category 1 and Category 2 building is registered with the local building safety authority before first occupation. Continuing occupation without registration constitutes a criminal offence by the PAP, attracting unlimited fines and up to two years' imprisonment. The registration application must be supported by core data such as address, height, storeys, number of dwellings, and the identity and contact details of the PAP. Once on the register, the building is assigned a registration number, and the relevant information is recorded in a register maintained by the relevant building safety authority. Welsh Ministers may make regulations regarding the publication of the register or information contained within it. Once registered, the PAP must keep the entry up to date, notify the authority of specified changes within 14 days, and provide a declaration of accuracy every five years.

For Category 1 buildings, a further layer of control is the building certificate. The authority may direct the PAP to apply for the first certificate, and a fresh application is required every five years thereafter. The submission must include a safety-case report, evidence of an occurrence-recording system, a summary of resident engagement arrangements and information demonstrating that every AP has complied with their information sharing obligations. Certificates are issued only when the authority is satisfied that all 'relevant duties' are being met. A valid certificate must be displayed prominently in the building. Failure to apply for, renew, or display a certificate is a triable offence punishable by a fine and up to two years' imprisonment.

Fire and structural safety duties

The Bill sets out a framework of duties designed to identify, assess, and manage the two classes of 'building safety risk': (1) fire safety risk; and (2) structural safety risk. The Bill adopts a more holistic approach compared to the BSA, which primarily focuses on fire safety (albeit there is also a lesser focus on structural safety). Fire risk assessments are compulsory for all three categories of buildings whilst structural safety assessments are only required for Category 1 and Category 2 buildings.

Wales

For every occupied regulated building, the PAP must ensure that a suitable and sufficient fire risk assessment is carried out by a 'competent person'. The first fire risk assessment must take place no later than 6 months after the later of: (1) the day on which the building becomes occupied; or (2) the day on which the Bill comes into force. The fire risk assessments must be reviewed annually or sooner if (1) there is work carried out in relation to the building, (2) fire damage occurs, or (3) there is reason to suspect the assessment is out of date.

APs are obliged to take 'all reasonable steps' to prevent fire safety risks from materialising and to mitigate their consequences, recording both the assessment findings and the risk control measures adopted. Accountability extends beyond the duty holders themselves. Adult residents and owners in all regulated buildings must refrain from actions that create a 'significant risk' of fire.

In Category 1 and Category 2 buildings the same regime applies to structural safety risks: an assessment by persons with 'sufficient expertise and experience', regular reviews, and a positive duty on each AP to manage those risks and record the action taken. For Category 1 buildings the conclusions are recorded in a safety case report detailing how fire and structural safety risks are being managed, which is lodged with the building safety authority and reviewed whenever the underlying risk assessments change. Adult residents and owners in Category 1 and Category 2 buildings must also avoid behaviour that could compromise structural integrity.

Resident engagement and complaints

The Bill introduces a statutory right for occupants and leaseholders of all regulated buildings to obtain relevant building safety information held by APs. In Category 1 buildings, the PAP must prepare, keep under review and act in accordance with a 'residents' engagement strategy'. The strategy must explain how adult residents and leasehold owners will be informed of, and consulted on, building-safety decisions that affect them. The strategy must set out: (1) the information that will be provided to residents before decisions are taken; (2) the aspects of each decision on which residents' views will be sought; and (3) the practical arrangements for obtaining and considering those views. The PAP is required to consult residents on the content of the strategy itself and to revise it where necessary, ensuring that engagement remains a live, iterative process. Copies of the strategy must be supplied to every AP, every adult resident and every owner of a residential unit.

Although the statutory requirement to maintain a formal strategy is confined to Category 1 buildings, all APs – irrespective of building height – must provide prescribed building safety information to residents consistent with the overarching principles of the Bill.

Alongside these information rights, the Bill creates a tiered complaints architecture. In Category 1 buildings, the PAP must establish and operate an internal complaints system capable of investigating 'relevant complaints' – namely, concerns about building-safety risks or about the performance of the AP's statutory duties. In Category 2 and Category 3 buildings, regulations will require each AP to put in place arrangements for considering such complaints. Every building safety authority must also operate its own complaints scheme, enabling residents or other specified persons to escalate matters externally.

Summary of the proposed regime

The table below sets out a summary of the proposed new regulatory framework:

	Category 1	Category 2	Category 3
Height	≥18m or ≥7 storeys	11–18m or 5–6 storeys	<11m & <5 storeys
Registration with a building safety authority	Yes	Yes	No
Building certification	Yes	No	No
Golden thread (keeping and maintaining information)	Extensive	Proportionate	Proportionate
Annual fire risk assessments	Yes	Yes	Yes
Annual structural risk assessments	Yes	Yes	No
Safety case report	Yes	No	No
Live occurrence-recording system	Yes	No	No
Resident engagement strategy	Yes	No	No
Complaints system	Formal system	Duty to have arrangements in place	Duty to have arrangements in place

Conclusion

The Bill has been long-awaited and is due to be enacted in April 2027, nearly 10 years after the Grenfell tragedy. Despite the delay, it is positive to see that Wales has taken a holistic approach to building safety focussing on fire and structural risks in both mid-and high-rise buildings.

The Bill is progressing through the Senedd and is currently being considered by the Housing and Local Government Committee which provided its report on 28 November 2025. The report largely supports the Bill but highlights significant issues that need to be addressed in relation to funding for local authorities to act in their new role as building safety authority; stronger resident and leaseholder protections; clearer definitions and guidance on accountable person roles; and the need for tougher remediation measures to ensure developers accelerate the fixing of historic building safety defects.

In addition to the Bill, the Welsh Government intends to develop secondary legislation under the BSA which will focus on the design and construction of higher-risk buildings, including the introduction of 'golden thread' requirements, duty holders' responsibilities and mandatory occurrence reporting. On 26 March 2025, the Welsh Government launched an 8-week consultation seeking feedback on its proposals. The results of the consultation were published on 26 November 2025 with the Welsh Government aiming to implement the necessary regulations before the end of 2025 and bring them into force in 2026.

Stakeholders should use this time to plan ahead and make preparations for complying with the Bill. Owners of multi-occupied residential buildings in Wales should consider whether any of their buildings fall within Categories 1, 2 or 3 and if so, identify the duty holders for each building, and carefully consider the new responsibilities that the Bill will introduce.

Defined terms

Accountable Person
— Broadly speaking, an AP for a HRB is an organisation or individual who owns or has a legal obligation to repair any common parts of the building.

Building Assessment Certificate
— The PAP must apply for a building assessment certificate for a registered HRB within 28 days of a BSR request to do so. It is an offence not to make the application without a reasonable excuse.

Building Liability Orders
— Provisions under section 130 of the BSA which allow liability for defective construction work to be extended to associated entities such as parent or sibling companies. Ordered at the court's discretion if it is considered *'just and equitable to do so'*, a Building Liability Order can be made in relation to any liability arising under the DPA (as amended), section 38 of the Building Act 1984 (not yet in force) or any other claim arising from a building safety risk.

Building Safety Act Working Group
— A group of judges, barristers and solicitors which was set up with the stated aim of providing some consistency of approach in relation to claims under the BSA, whether these are in the Technology and Construction Court or the First-tier Tribunal (Property Chamber).

Building Safety Fund
— The BSF is overseen by the Ministry of Housing, Communities and Local Government and has more than GBP 5bn available to fund the carrying out of fire safety works.
— The purpose of the BSF is to ensure that these safety critical defects can be rectified without delay. In the words of the Guidance, the BSF is intended to ensure that residents of high-rise buildings *'are safe – and feel safe – in their homes now'*. Note that applications to the BSF closed on 1 September 2025.

Building Safety Levy
— The purpose of the Building Safety Levy is for those profiting from property development to contribute to the cost of remediating defects in historic developments. The plan is for a single payment prior to the issuing of the building control certificate, and the levy will be calculated on the floorspace area of a property.
— The Government intends the levy to raise around GBP 3.4bn to contribute towards making buildings safe. The levy is due to come into force on 1 October 2026.

Building Safety Regulator
— The BSR was set up under the BSA to regulate higher-risk buildings, raise safety standards of all buildings, and help professionals in design, construction and building control, to improve their competence.
— Originally part of the Health and Safety Executive, on 27 January 2026 the BSR moved to the Ministry of Housing, Communities and Local Government, where it will become a single regulator by promoting competence and higher standards.

Building Safety Risk
— Pursuant to Part 4 of the BSA, a building safety risk is a *'risk to the safety of people in or about a building arising from any of the following occurring as regards the building (a) the spread of fire (b) structural failure or (c) any other prescribed matters'*.

Cladding Assurance Register
— Register under the Housing (Cladding Remediation) (Scotland) Act 2024. An entry will list properties where a Single Building Assessment has been undertaken and what work (if any) has been identified as being needed to eliminate or mitigate risks.
— The entry requires to be amended after any Additional Work Assessments have been carried out.
— The entry is also amended after the Scottish Ministers are satisfied that any remedial works required under the SBA and/ or the Additional Work Assessments have been completed.
— This will be accessible by, among others, conveyancers and mortgage lenders, with the hope that the market for these properties will be strengthened by the assurance a review has been undertaken and issues resolved.

Compliance Plan
— The Scottish Government's Building Standards Futures Board has been developing a strengthened 'Compliance Plan' model, focusing on complex and high-risk buildings.
— A Compliance Plan should typically record key compliance risks, how evidence will be gathered and stored, roles and responsibilities for compliance oversight, critical inspection stages, and information to be submitted to the verifier (local authority building standards service).
— It is prepared before and during the warrant application, detailing how compliance will be achieved.

Compliance Plan Approach
— Refers to a strengthened building-control pathway intended for buildings that present increased complexity or safety risk (most notably Higher-Risk Buildings) as understood within the Scottish programme of legislative fire safety reform.
— Guidance on how a compliance plan approach relates to HRBs was published by the Scottish Government in December 2025. The guidance aims to strengthen the verifier's scrutiny and inspection regime, require more robust evidence at key stages, ensure early identification of compliance risks and formalise communication and information management processes.

Compliance Plan Manager
— A new role introduced as part of Scotland's strengthened building standards reform. The CPM is responsible for overseeing, coordinating, and evidencing compliance activities throughout the lifecycle of a building project. They would act as the single point of responsibility for managing the Compliance Plan.

Construction Products Reform Green Paper
— This government consultation document published on 26 February 2025 sets out proposals to overhaul how construction products are regulated.
— It is a direct response to lessons from the Grenfell tragedy and proposes reforms to make sure products used in buildings are safe, properly tested, accurately described, and effectively enforced.
— It also serves as the government's formal response to the Independent Review of Product Testing and Certification (the 'Morrell-Day Review').

Construction Leadership Council
— A body that works between industry and the government to identify and deliver actions supporting UK construction in building greater efficiency, skills and growth.

Developer Remediation Contract
— A legally binding agreement between large property developers and the Ministry of Housing, Communities and Local Government to facilitate the remediation of residential buildings, which were developed or refurbished during the relevant period (as defined in the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023) and which are assessed to possess life-critical fire safety defects.

Digital Product Passports
— Digital record required under EU product legislation that provides standardised, product-specific information in order to improve transparency, traceability and sustainability across a product's lifecycle.

Finance and Public Administration Committee
— A Scottish Government committee made up of MSPs, established in June 2021.
— The committee considers issues related to Scotland's public finances, public service reform, the National Performance Framework and public administration in government.

Grenfell Tower Inquiry Phase 1 Report
— First stage of the public inquiry into the Grenfell tragedy, chaired by Sir Martin Moore Bick, and published on 30 October 2019.
— Its purpose was to establish the factual account of what happened on the night of the fire at Grenfell Tower.

Grenfell Tower Inquiry Phase 2 Report
— Final report of the public inquiry into the Grenfell tragedy, published on 4 September 2024. It examined systemic failures behind the tragedy, including Government regulation, product testing, building design, procurement, and fire safety oversight.
— It made 58 recommendations aimed at preventing a similar disaster from happening again.

Health and Safety Executive
— Britain's national regulator for workplace health and safety and responsible for preventing work-related death, injury and ill health by regulating risks arising from work activities in Great Britain.
— In 2021 the Building Safety Regulator was formally established within the HSE, although on 27 January 2026 it moved out of the HSE and into the Ministry of Housing Communities and Local Government.

Higher-Risk Building
— In England, for the construction phase, a HRB is a building that is at least 18 metres high or has at least 7 storeys; and
  - contains at least two residential units; or is a care home or a hospital; and
  - does not comprise entirely of a secure residential institution; a hotel; or military barracks.
— In England, for the purposes of Part 4 of the BSA, (the occupation phase) a HRB is a building that:
  - is at least 18 metres in height or has at least 7 storeys; and
  - contains at least two residential units.
  - The following are excluded from this definition:
  - care homes, hospitals, secure residential institutions, hotels and military barracks.
— In Wales a HRB is a building that is at least 18 metres in height, or has at least 7 storeys and (unlike England) contains:
  - at least one residential unit;
  - a hospital that has at least one bed intended for use by a person admitted to the premises for an overnight stay;
  - a care home; or
  - a children's home.
— In Scotland there is currently no primary or secondary legislation setting out what constitutes a HRB. However, the Housing (Cladding Remediation) (Scotland) Act 2024 states that the legislation applies to properties over 11m with at least one residential unit. With this in mind, the following are likely to constitute a HRB in Scotland:
  - domestic buildings or residential buildings with any storey at a height of more than 11m above the ground;
  - educational establishments (schools, colleges, and universities), community/sport centres;
  - hospitals; and
  - residential care buildings.

Independent Review of Product Testing and Certification (the 'Morrell-Day Review')
— Published on 20 April 2023, the Morrell-Day review examined the UK construction product testing and certification system. It found major weaknesses, including that many products were unregulated, standards were outdated, and enforcement was weak.
— The review made ten recommendations to strengthen testing, certification and oversight, so construction products could be trusted to perform safely as marketed.

Mandatory Occurrence Reporting
— The PAP must establish and operate an effective mandatory occurrence reporting system. All PAPs must ensure that reportable information related to the safety of the occupied HRB is given to the BSR.
— The Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023 set out further requirements in relation to mandatory occurrence reporting, and in particular:
  - reporting should occur where a safety occurrence (i.e., an incident or situation relating to the structural integrity of, or spread of fire in a HRB that meets the 'risk condition') takes place in an area for which the AP is responsible; and
  - the information provided must be:
    – a brief description of the nature of the safety occurrence; and
    – a report including (but not limited to) details of the safety occurrence i.e., details of injuries, recent building work and the measures taken to mitigate or remedy the safety occurrence.

National Fire Chiefs Council Culture Action Plan

Defined terms

— Package of nationally coordinated actions, guidance and operational changes led by the NFCC to implement the Grenfell Tower Inquiry Phase 1 Report evacuation-related recommendations across all Fire and Rescue Services.

National Quality Infrastructure
— Institutional framework that enables confidence that products and services meet necessary standards for health, safety and sustainability, by providing checks and assurance through standardisation, accreditation, measurement/metrology, conformity assessment and enforcement.
— The UK's National Quality Infrastructure is largely delivered by institutions such as the British Standards Institution, the United Kingdom Accreditation Service, the National Physical Laboratory, the Office for Product Safety and Standards, and local authorities through Trading Standards in Great Britain.

Office of Product Safety and Standards
— The UK's national product regulator within the Department for Business and Trade, with its primary purpose being to protect people and places from product-related harm, enabling trade and growth by ensuring consumers and businesses can buy and sell products with confidence.
— Following the Grenfell tragedy, the Government committed to strengthening oversight of construction products. As part of the building safety reforms, the Office of Product Safety and Standards was designated as the national regulator for construction products, with responsibility for market surveillance and enforcement under the BSA regime.

Principal Accountable Person
— If there is just one AP for a building, they are the principal accountable person (the 'PAP').
— If there are multiple APs, whoever owns or has a legal obligation to repair the structure and the exterior of the building is the PAP.
— (NB: The PAP and APs can be individuals, partnerships or corporate bodies. To establish who the dutyholders are for each HRB, the property ownership structure must be analysed on a case-by-case basis. It is not always the case that the freeholder will be the PAP.)

Principal Contractor
— The Building Regulations 2010 Regulation 11D (as amended by the BSA) provide for the client to appoint dutyholders, including a principal contractor as the contractor with control over the building work of a project involving more than one contractor.

Principal Designer
— The Building Regulations 2010 Regulation 11D (as amended by the BSA) provide for the client to appoint dutyholders, including a principal designer as the designer with control over the design work.
— The appointment of a principal designer for a HRB must be made before an application for building control approval is made.

Registered Building Control Approvers
— Government-approved private sector companies or individuals who oversee building projects to ensure compliance with the Building Act 1984 and related regulations.

Remediation Acceleration Plan
— The UK government's plan to accelerate the remediation of residential buildings with unsafe cladding in England.

Remediation Contribution Order
— A remediation contribution order is an order made by the First Tier Tribunal pursuant to section 124 of the BSA. An RCO is 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, or in connection with, relevant defects (or specified relevant defects) relating to a relevant building. The First Tier Tribunal will make an RCO if it considers it 'just and equitable' to do so.

Remediation Order
— A remediation order is an order made by the First Tier Tribunal pursuant to section 123 of the BSA against a 'relevant landlord'. It requires the landlord to remediate certain building defects.
— A relevant landlord is defined as a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of enactment, to repair or maintain anything relating to a relevant defect. This is commonly known as a repairing obligation.

Residential Personal Emergency Evacuation Plans
— Person-centred evacuation arrangements required under the Fire Safety (Residential Evacuation Plans) (England) Regulations 2025, developed following a person-centred fire risk assessment.
— The responsible person identifies the support or mitigation measures needed to assist residents who may have difficulty evacuating a residential building independently in the event of a fire, including due to physical, sensory or cognitive impairments.

Responsible Actors Scheme
— A statutory scheme established under the Building Safety Act 2022 and brought into force in July 2023 by the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023. The scheme, which applies in England, is targeted at eligible residential property developers who were involved in the development or refurbishment of certain residential buildings meeting the statutory definition of 'relevant buildings'.
— The scheme is intended to ensure that responsibility and cost for remediating life critical fire safety defects do not fall on leaseholders, residents or the public purse, but instead rest with the developers responsible for constructing or refurbishing the buildings. It forms part of the Government's response to systemic building safety failures identified following the Grenfell tragedy.

Safety Case Reports
— PAPs are required to produce and maintain safety case reports in respect of HRBs. A safety case report comprises the full body of evidence relating to the (i) assessments and (ii) ongoing management of building safety risks. PAPs are required to submit the safety case report to the BSR as part of the building assessment certificate process, or at the request of the BSR.

Single Building Assessment
— Introduced by the Housing (Cladding Remediation) (Scotland) Act 2024 to be undertaken on properties with potentially dangerous cladding.
— SBAs can be ordered by a building owner or developer, or the Scottish Ministers where this has not otherwise been done (or where it is an orphan building).
— The SBA assesses whether work is required on the property to eliminate or mitigate a risk to human life directly or indirectly created or exacerbated by a building's external wall cladding system.

Primary and Secondary Legislation

Architects Act 1997
— As amended by the BSA to set out amendments to the Architects Registration Board particularly with regard to discipline, continuing professional development and appeal committees.

Building Act 1984
— Section 38 provides a general right of action for breaches of the Building Regulations. However this section is not yet in force.

Building Act 1984 (Commencement No.3) (England) Order 2023
— Brings into force (as of 1 October 2023) section 33 of the Building Act 1984 which has provisions in relation to testing and sampling in conformity with building regulations.

Building (Amendment) (Wales) Regulations 2025
— Came into force on came into force on 20 December 2025, amending the Building Regulations 2010 as they apply in Wales. Their focus is on reducing fire -safety risks, tightening technical definitions, expanding the scope of combustible- materials prohibitions, lowering the height threshold for certain fire safety requirements, regulating solar shading devices, and introducing detailed transitional provisions. They form part of Wales' wider programme to mitigate external fire spread risks in buildings.

Building etc. (Amendment) (No.2) (Wales) Regulations 2025
— Came into force on came into force on 1 July 2026, these regulations introduce a dutyholders regime for the construction phase of all building work in Wales.

Building (Higher-Risk Buildings Procedures) (England) Regulations 2023
— Sets out Building Control processes that apply to all Higher-Risk Buildings in England.

Building (Higher-Risk Buildings Procedures) (Wales) Regulations 2025
— Coming into force on 1 July 2026, these regulations introduce a building control approval regime for HRB work in Wales.

Building (Public Bodies and Higher-Risk Building Work) (England) Regulations 2023
— Amends the Building Act 1984 making use of powers in section 54A of the Building Act 1984 (inserted by section 47 of the Building Safety Act 2022). Ensures that the BSR is the building control authority for all higher-risk building work carried out on public body buildings.

The Building Regulations 2010
— Made under the Building Act 1984, these regulations replaced the Building Regulations 2000 and set out functional requirements for the design, construction, alteration and extension of buildings in England. Their principal aim is securing the health, safety, welfare and convenience of people in and around buildings, together with furthering energy conservation and water efficiency.

Building Regulations etc. (Amendment) (England) Regulations 2023 (SI 2023/ 911)
— Specifies new dutyholder and competence requirements which apply to all building work, including that undertaken on higher-risk buildings.

Building Regulations etc. (Amendment) (England) Regulations 2025
— These regulations, which came into force on 7 October 2025, amend the Building Regulations 2010 and the Building (Registered Building Control Approvers etc.) (England)(Regulations) 2024 to require that, where a client is unable to provide a statement from the principal or sole contractor and/or the principal or sole designer upon completion, the notice must include a statement from the client explaining why such statements have not been provided.

Building (Restricted Activities and Functions) (England) Regulations 2023
— Sets out the restricted activities that local authorities and RBCAs must carry out through a registered building inspector.

Building Safety Act 2022 Commencement Regulations 2022. (No.1 to No.7) (2022 – 2024)
— Various commencement regulations made under the BSA.

Building Safety Act 2022 (Consequential Amendments etc) Regulations 2023
— Makes amendments consequential to the BSA Part 3 coming into force. Replaces references in primary legislation to deposit of plans with references to applications for building control approval and reflects that the BSA transfers procedures for appeals under the Building Act 1984 from the magistrates' court to the to the First-Tier Tribunal.

Building Safety Act 2022 (Consequential Amendments and Prescribed Functions) and Architects Act 1997 (Amendment) Regulations 2023
— Makes consequential amendments arising from section 9(3) of the BSA which abolishes the Building Regulations Advisory Committee for England.
— Prescribes the function of acting as statutory consultee under the Town and Country Planning Act 1990 and section 54 of the Planning and Compulsory Purchase Act 2004 in relation to higher-risk buildings as a function of the regulator, the Building Safety Regulator and amends Schedule 1 of the Architects Act 1997 to ensure committee members have the appropriate voting rights to fulfil their function.
— NB these regulations were amended by the Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026, to refer to the BSR rather than the HSE.

Building Safety (Description of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023
— Formalises the definition of a higher-risk building in Wales.

Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022
— Provides for the recovery as between landlords of amounts not recoverable under a lease as a result of the leaseholder protections, and requires leaseholders to give prescribed information on their qualifying status, property value and shared ownership status.
— Finally, it provides for applications for remediation orders via the First-Tier Tribunal.

The Building Safety Levy (England) Regulations 2025
— Introduces the building safety levy in England from 1 October 2026.

Building Safety Levy (Scotland) Bill
— A Bill currently before the Scottish Parliament, which would introduce a new devolved tax (the Scottish Building Safety Levy) charged on the construction or conversion of residential property developments in Scotland, subject to certain exemptions. The Bill is enabled by amendments to the Scotland Act 1998 and provides for the levy to be charged at a defined point in the building warrant process. It also sets out who is liable to pay the levy and gives Scottish Ministers powers to determine the rate and detailed operation of the levy. The levy is planned to come into effect on 1 April 2028.

The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026
— Provides for the establishment of a new body, the Building Safety Regulator, and for that body to replace the Health and Safety Executive as the building safety regulator for the purposes of the BSA, with effect from 27 January 2026.

Building Safety (Regulator's Charges) Regulations 2023
— Regulations authorising the BSR to recover its costs in connection with the performance of its functions under the BSA and the Building Act 1984.

Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023
— Concerns the mandatory process of registering HRBs with the BSR, and sets out the information to be submitted. Existing, occupied HRBs were required to be registered by 30 September 2023.

Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023
— Establishes the Responsible Actors Scheme, requiring eligible residential developers to remediate or fund the remediation of serious fire safety defects in buildings they developed, with planning and building control bans imposed on those who refuse to comply with the scheme.

Building (Scotland) Act 2003
— The primary legislation underpinning the building standards system in Scotland. It confers powers on Scottish Ministers to make building regulations and provides for the Technical Handbooks as procedural guidance. It governs the building warrant and completion certificate process, designates local authorities as verifiers responsible for checking compliance, and contains enforcement powers.

Civil Liability (Contribution) Act 1978
— Allows two people who are both liable to a third person for the same damage to recover contribution between themselves if one of them has made a payment to the third party in respect of their liability.

Commonhold and Leasehold Reform Act 2002
— Makes provision about commonhold land, including the right to manage.

Construction Products Regulations 2013
— Enforces standards for the marketing of construction products in the UK, ensuring products placed on the market meet declared performance and safety requirements, with powers for market surveillance and penalties for non-compliance.
— A 'construction product' means any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works, and the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works.

Defective Premises Act 1972
— Imposes duties on those who take on work for or in connection with dwellings to ensure that the work is completed in a workmanlike or professional manner so that the dwelling is fit for habitation. The Building Safety Act 2022 adds increases the limitation period for claims under the DPA, and adds a duty in relation to refurbishment works. Liability under the DPA cannot be limited or excluded.

European Convention on Human Rights
— International treaty designed to protect fundamental human rights and freedoms across Europe and allows individuals to bring claims against states before the European Court of Human Rights where those rights are breached. Enacted in the UK by the Human Rights Act 1998.

The Fire Safety (England) Regulations 2022
— These regulations impose additional requirements onresponsible persons to take fire safety measures in blocks of flats, particularly those blocks over 18 metres in height.

Fire Safety (Residential Evacuation Plans) (England) Regulations 2025
— These regulations, which come into force on 6 April 2026, introduce duties on those responsible for certain higher-risk residential buildings to identify residents who may struggle to evacuate in a fire and to put in place person-centred evacuation planning, including written emergency evacuation statements and information-sharing with fire and rescue services, to improve the safety of disabled and vulnerable residents.

Human Rights Act 1998
— Enacts the European Convention on Human Rights in the UK. This permits infringements on rights under the ECHR to be addressed through litigation in UK courts.
— Section 135(5) of the Building Safety Act 2022 provides that courts must dismiss a claim that would otherwise have been time barred, if allowing it to proceed would breach a defendant's Convention rights.
— Relevant Convention rights include Article 1 of Protocol 1 (the right to peaceful enjoyment of possessions) and Article 6 (the right to a fair trial).

Primary and Secondary Legislation

Housing (Scotland) Act 1988
— Reformed the private rented sector in Scotland by introducing assured and short assured tenancies (replacing the previous system of regulated tenancies). The Act also created Scottish Homes as a national housing agency (since abolished). It sets out the grounds for possession, procedures for rent increases, and the limited security of tenure available to assured tenants. The Act also addresses housing finance, grants, and powers primarily in connection with the functions and financing of Scottish Homes for the management and improvement of housing stock.

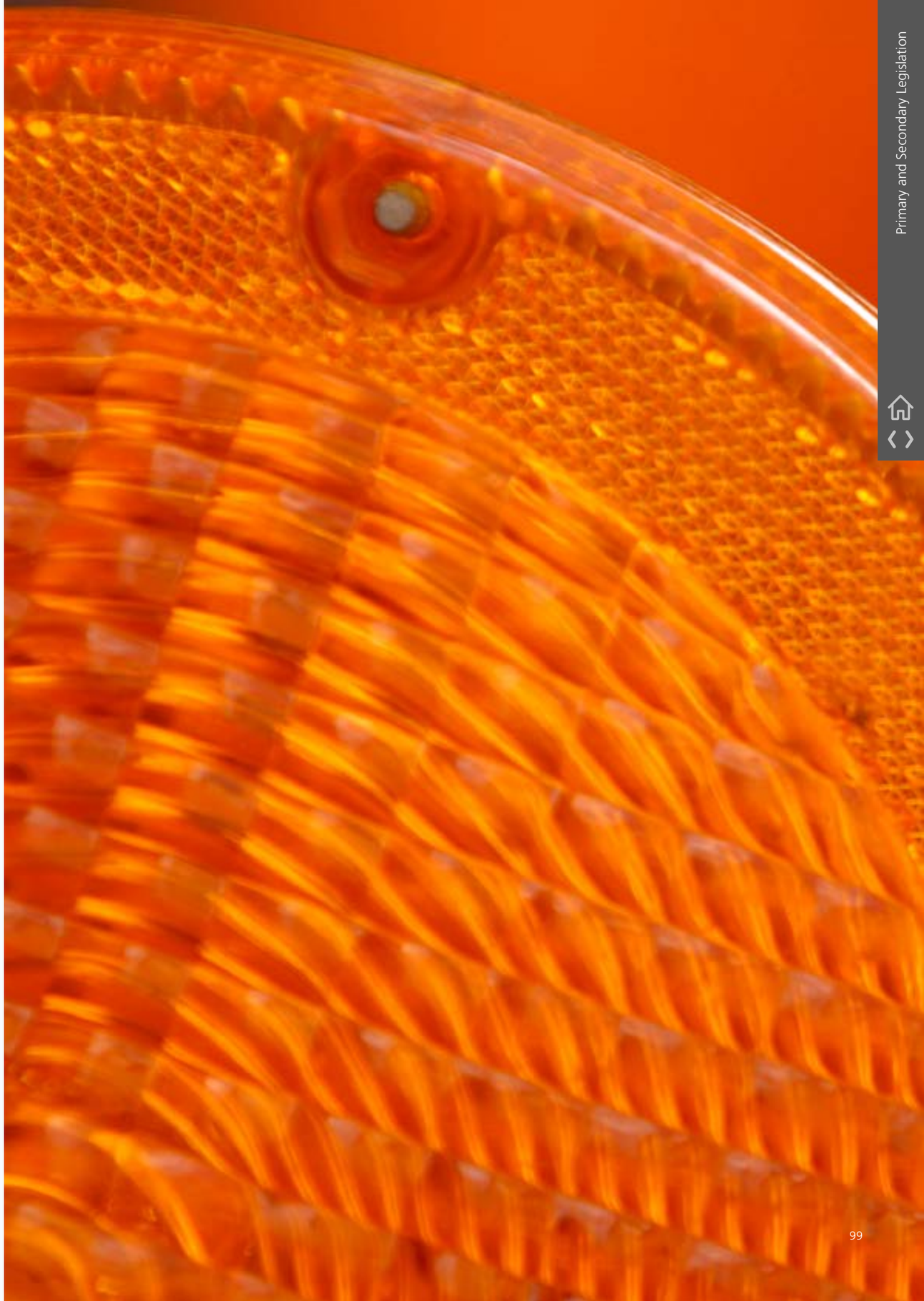
Housing (Scotland) Act 2001
— A wide-ranging statute that significantly reformed housing law in Scotland, with particular emphasis on homelessness duties, social housing allocation and the regulation of registered social landlords. It requires local authorities to prepare homelessness strategies and strengthens their duties to those who are homeless or threatened with homelessness. The Act created the Scottish secure tenancy as the standard form of social housing tenancy, replacing previous secure and assured tenancies in the social rented sector, and introduced a single regulatory framework for both local authority landlords and registered social landlords.

Landlord and Tenant Act 1985
— Consolidates and clarifies the rights and obligations of landlords and tenants in England and Wales, particularly by imposing minimum repair standards and transparency requirements to ensure safe and habitable rented housing.

Prescription and Limitation (Scotland) Act 1973
— Governs the Scottish law on prescription and limitation. Note that it was amended in certain respects by the Prescription (Scotland) Act 2018.

Regulation (EU) 2024/3110 of the European Parliament and of the Council of 27 November 2024 laying down harmonised rules for the marketing of construction products and repealing Regulation (EU) No 305/2011 (Text with EEA relevance)
— Replaces the previous EU construction products regime by laying down harmonised rules for the marketing, safety, sustainability, and performance information of construction products to support a transparent and efficient EU internal market.

Regulatory Reform (Fire Safety) Order 2005
— The main piece of legislation governing fire safety in buildings in England and Wales.
— It applies to virtually all premises, other than single residential dwellings and, with very rare exceptions, to all premises used as a workplace. It also applies to the common parts of blocks of flats and houses in multiple occupation.
— It applies to the building's structure, external walls and any common parts.
— It was amended by the Building Safety Act 2022 to ensure residents have relevant fire safety information that they can understand, co-operation is improved between people with responsibilities under fire safety legislation and that there is a continual record throughout the building's lifespan of fire safety information.



Primary and Secondary Legislation

List of Cases

381 Southwark Park Road RTM Company Ltd v Click St Andrews Ltd [2024] EWHC 3569 (TCC)

On 19 December 2024, the Technology and Construction Court handed down the first decision to consider the 'just and equitable' test for Building Liability Orders under the BSA. The TCC's judgment provides guidance as to the application of this test and some potential limitations on the power to make BLOs.

This is the first case to consider the granting of a BLO and provides guidance as to the application of the 'just and equitable' test. Although mostly consistent with the First Tier Tribunal's decision in *Triathlon Homes LLP v Stratford Village Development Partnership & Another* [2025] EWCA Civ 846, the suggestion that existing contractual relationships may be relevant to the test appears to be at tension with the approach taken in Triathlon v Stratford. In that case, the First Tier Tribunal considered that, '*Parliament did not intend that the availability of other claims or potential claims should either disqualify an applicant from making a claim for a remediation contribution order or delay the making of that claim.*' The Triathlon v Stratford decision has since been appealed, providing further guidance on the 'just and equitable' test, as discussed elsewhere in this review.

Adriatic Land 5 Ltd v Long Leaseholders At Hippersley Point [2025] EWCA Civ 856

If a landlord has already incurred costs and rendered a service charge demand before 28 June 2022 (the commencement date for the relevant BSA provisions), the right to recover those sums is not affected by the BSA. However, from 28 June 2022 onwards, no service charge is payable under a qualifying lease for such costs, regardless of when the underlying costs were incurred, provided the charge had not already been paid. Leave has been given to appeal to the Supreme Court.

Almacantar Centre Point Nominee No.1 Ltd v Penelope de Valk [2025] UKUT 298 (LC)

The case concerns Centre Point House in London and is a significant decision in relation to the interpretation of the leaseholder protections under Schedule 8 of the BSA and whether the proposed works to the façade of CPH fall within the scope of the leaseholder protections in Schedule 8(8) of the BSA.

The Upper Tribunal clarified that tenants of qualifying leases will not be liable to pay for the costs of remediating unsafe cladding. The cladding does not need to amount to a relevant defect for this to be the case. Cladding must be replaced before it deteriorates so as to become 'unsafe', to enable landlords to recover repair costs.

BDW Trading Ltd v Ardmore Construction Ltd [2025] EWHC 434 (TCC)

The Technology and Construction Court considered the circumstances in which information orders can be obtained to assist a claimant in applying for a Building Liability Order. The court's decision narrows the scope for such orders to be made from those envisaged in the Explanatory Notes to the BSA. The decision will be welcome news for developers and large contractor organisations, and may require claimants to consider more carefully whether the benefit to be obtained in bringing historic building safety claims outweighs the time and cost involved in establishing liability and pursuing related parties.

BDW Trading Ltd v Ardmore Construction Ltd [2024] EWHC 3235 (TCC)

The Technology and Construction Court enforced an adjudication decision in relation to fire safety defects given under the new liability regime enacted by the BSA. The adjudication had been brought 20 years after completion of the works in question and the court rejected a number of jurisdictional and natural justice arguments relevant to historical fire safety claims. The court's decision is likely to encourage the pursuit of such claims through adjudication proceedings, giving comfort to claimants that arguments of this nature need not prevent enforcement.

Blue Circle Industries Plc v Ministry of Defence [1998] EWCA Civ 945

This case concerned liability for radioactive contamination under the Nuclear Installations Act 1965. Blue Circle Industries claimed damages after land it owned was contaminated by radioactive material from the Ministry of Defence's adjacent site. The Court of Appeal held that the Act imposed strict liability for physical damage to property caused by radioactive properties, even if the affected area was small and the contamination did not pose a health risk. Damages were not limited to the cost of reinstatement but included consequential losses, such as loss of a sale and diminution in value of the wider estate. The decision clarified that compensation under the Act covers all foreseeable losses directly caused by the contamination, provided they are not too remote, and that stigma affecting property value post-remediation may also be compensable.

Chartres v Taylor [1998] EWCA Civ 102

The Court of Appeal considered the prospect of double recovery under the Defective Premises Act 1972. In this case, reductions to the purchase price were found not to be on account of the defects claimed for under the DPA and double recovery had not, therefore been established.

Clarion Housing Group v Globe View House RTM Company Limited [2025] LON/00BE/BSG/2025/0600

The Globe View House decision highlights a drafting flaw in the BSA: section 75 of the BSA gives no right to challenge the registration of a High Risk Building by a person who has been incorrectly registered as an Accountable Person (AP), in cases where they are not an interested person. Any person who has been incorrectly registered as an AP will need to liaise with the correct APs to have the register corrected. This decision may be of particular interest to freeholders where the right to manage has been exercised.

Clarion Housing Group v Globe View House RTM Company Ltd LON/00BE/BSG/2025/0600

The First Tier Tribunal determined that the head leaseholder of 27 flats within a higher-risk building under a single headlease was not an 'accountable person' (AP) under section 72(1) of the BSA as all the management and repairing obligations concerning the building's common parts had been transferred to a Right to Manage company. However, because it was not an AP, it did not have the right to apply to the FTT for a determination that it was not an AP.

David T Morrison & Co Ltd (t/a Gael Home Interiors) v ICL Plastics Ltd & Ors (Scotland) [2014] UKSC 48

The UK Supreme Court held, interpreting section 11 of the Prescription and Limitation (Scotland) Act 1973 as it stood before the Prescription (Scotland) Act 2018, that the five-year prescriptive period started when the pursuer became aware, or could reasonably have become aware, of having suffered "loss, injury or damage", even if the pursuer was not yet aware of whether the loss was caused by a breach of duty (whether in negligence or otherwise). The effect was that a right of action could prescribe before a pursuer became aware, or could reasonably have become aware, that it had a claim.

Design 5 v Keniston Housing Association Ltd (1986) 34 B.L.R. 92

This case held that the receipt of public funds to carry out remedial works could not be taken as reducing the loss suffered by a claimant, the claim in that case being against an architect.

Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership [2026] UKUT 18 (LC)

The Upper Tribunal upheld the decision of the First Tier Tribunal, finding that:

— The FTT has the power to make a Remediation Contribution Order against 76 respondents on a joint and several basis.

— Although the discretion conferred on the FTT by section 124(1) of the BSA is very wide and each decision will turn on its own particular facts, had Parliament intended to prevent joint and several liability, the RCO mechanism could not work as intended, effectively frustrating the statutory purpose of protecting leaseholders from remediation costs.

***Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40**

This House of Lords decision established that arbitration clauses in commercial contracts should be interpreted broadly to cover all disputes arising from the contractual relationship, including those concerning the validity of the contract, such as allegations of bribery. The court affirmed the principle of separability, meaning the arbitration agreement is treated as distinct and can remain valid even if the main contract is challenged or rescinded, unless the challenge is directed specifically at the arbitration agreement itself. The judgment emphasised that, unless expressly excluded, parties are presumed to intend that all disputes, including those about contract validity, are to be resolved by arbitration rather than by the courts.

***Gordon & Ors (Trustees of the Inter Vivos Trust) v Campbell Riddell Breeze Paterson LLP (Scotland)* [2017] UKSC 75**

The UK Supreme Court held that wasted expenditure could be "loss, injury or damage" under section 11 of the Prescription and Limitation (Scotland) Act 1973, so that the pursuer's mere awareness of having incurred that expenditure could start the prescriptive clock. The court made clear that this would be the case even if the pursuer could not have known, when incurring the expenditure, that the expenditure had been wasted (i.e. because at that time the pursuer was unaware of the negligence or breach). In such cases, even though it would only be with hindsight that the expenditure could be seen to have been wasted, the right to claim may have already prescribed by the time the pursuer gained the benefit of that hindsight.

***Greater Glasgow Health Board v Multiplex & Ors* [2025] CSOH 56**

This decision by the Scottish Commercial Court provides guidance on when the five-year time bar period begins to run for building defect claims under Scots law, and the circumstances in which an employer may postpone or suspend that period. The decision is significant, especially considering that time bar in Scotland is undergoing both legislative and judicial developments.

***Grey GR Limited Partnership v Edgewater (Stevenage) Limited and Others* [2025] CAM/26UH/HYI/2023/0003**

This is a decision of the First-tier Tribunal Property Chamber dated 24 January 2025 concerning Vista Tower in Stevenage, a high-rise residential building converted from offices in 2015/16. Grey GR Limited Partnership (the current landlord) sought remediation contribution orders ('**RCOs**') under section 124 of the Building Safety Act 2022 against the original developer (Edgewater (Stevenage) Limited) and numerous associated corporate entities for fire safety defects discovered in the building following the Grenfell Tower tragedy. The Tribunal found that numerous relevant defects existed, that the applicant's remediation approach was reasonable, and that it was just and equitable to make a joint and several RCO totalling over £13.26 million against the first respondent developer and a significant number of its associated corporate entities, whilst declining to include certain other respondents where independent investors were properly declared or sufficient countervailing factors existed. Note the decision was appealed to the Upper Tribunal, see above.

***Imperial Chemical Industries Ltd v Shatwell* [1965] AC 656**

This case concerned two shotfirer brothers who, in breach of statutory safety regulations and their employer's instructions, tested detonators in an unsafe manner and were injured in the resulting explosion. The House of Lords held that the employer was not vicariously liable, as the brothers had knowingly and voluntarily accepted the risk (volenti non fit injuria) and the employer had taken all reasonable steps to enforce safety. The key legal principle established is that where employees jointly and deliberately breach statutory duties imposed on themselves, and the employer is not at fault, the defence of volenti non fit injuria is a complete bar to recovery. The case also clarified that this defence is available even where the injury results from a breach of statutory duty, provided the employer is not personally in breach.

***Magnohard Ltd v United Kingdom Atomic Energy Authority* [2004] SC 247**

This case concerned landowners near the Dounreay nuclear power station who alleged that radioactive particles from the site had contaminated their property, causing damage and distress. The petitioners sought a declaration that the UK Atomic Energy Authority had breached its statutory duty under section 7 of the Nuclear Installations Act 1965 to prevent occurrences involving nuclear matter from causing property damage. The court held that while the presence of radioactive particles constituted physical damage to property, entitling the landowners to a declarator of breach, section 7 did not impose a clear statutory duty on the UK Atomic Energy Authority to monitor or clean up contamination. Thus, no order for specific performance was granted. The case clarified the scope of statutory duties under the 1965 Act and the threshold for property damage in environmental contamination claims.

***Monier Road Limited v Blomfield* [2025] UKUT 157 (LC)**

The Upper Tribunal found that the First Tier Tribunal had acted unfairly and beyond its role by including items not properly before it and by failing to follow fair procedures. Additionally, it criticised the FTT's commentary on the measurement of higher-risk buildings, being on a matter not within its jurisdiction and which caused concern across the construction industry. The FTT provided in its decision that Government guidance on whether a building is a higher-risk building during the occupation phase should be ignored. The Upper Tribunal undertook its own interpretation of the statute and determined that an enclosed roof top arrangement should be counted as a storey for higher-risk building purposes.

***Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1**

This House of Lords decision addressed when the limitation period begins to run in negligence cases involving latent defects in buildings. Pirelli engaged Oscar Faber & Partners to design a factory chimney, which was negligently constructed in 1969. Cracks developed by April 1970, but the damage was not discovered until November 1977. The key legal issue was whether the limitation period commenced when the damage occurred or when it was discovered (or could reasonably have been discovered). The House of Lords held that the cause of action accrues when the damage first occurs, not when it is discovered. As a result, the claim was statute-barred because the damage had occurred more than six years before the writ was issued. This decision clarified that, in negligence claims for property damage, time runs from the occurrence of damage, not its discovery, unless Parliament legislates otherwise.

***Redrow plc v Secretary of State for Levelling Up, Housing and Communities* [2024] EWCA Civ 651**

This Court of Appeal decision provides valuable commentary on the correct approach to the making of allocations under the Building Safety Fund for the funding of fire-safety remedial work. The developer in question had challenged an allocation made by the government on the basis that insurers of the buildings had accepted liability and that recoveries from insurers should be enforced prior to the making of any allocation under the BSF.

***THE "LONDON CORPORATION"* (1935) 51 Ll L Rep 67**

A steamship was damaged by another vessel. The Court of Appeal held that diminution in value represented by the cost of repairs was recoverable by the steamship owner despite the fact that the steamship was in fact sold for scrap.

***The Health and Safety Executive v Integritas Property Group (IPG) Ltd* [2025] EWHC 2613 (TCC)**

The Technology and Construction Court granted the Health and Safety Executive an interim injunction prohibiting the occupation of a higher-risk building. The HSE under the Building Safety Act 2022 sought to prevent occupation because the property lacked the required building regulations completion certificate.

***Tilbury Douglas Construction Limited v Ove Arup & Partners Scotland Limited* [2024] CSIH 15**

The Outer House of the Court of Session had held that Tilbury Douglas's claim against Arup was not time-barred under the Prescription and Limitation (Scotland) Act 1973. Arup successfully reclaimed (appealed) that decision to the Inner House, which held that the claim was indeed time-barred. The Inner House ruled that neither section 11(3) (postponement of start of prescriptive period) nor section 6(4) (suspension due to fraud or error) of the Act preserved the claim.

Tilbury Douglas subsequently obtained permission to appeal to the Supreme Court, but that appeal has since been withdrawn.

***Triathlon Homes LLP v Stratford Village Development Partnership & Another* [2025] EWCA Civ 846**

The case concerned Remediation Contribution Orders granted by the First Tier Tribunal against a developer and its parent company in respect of costs incurred both before and after section 124 of the Building Safety Act 2022 came into force. Section 124 permits the FTT to make RCOs against developers, landlords and their associates, requiring them to contribute to the costs of remedying relevant defects, where it is '*just and equitable*' to do so.

SVDP appealed the FTT's decision, challenging the FTT's application of the just and equitable test, as well as the ability for RCOs to include costs incurred before section 124 came into force.

The Court of Appeal found that RCOs can be made in respect of costs incurred before section 124 came into force. This ensures that leaseholders who have already paid for remediation works, or management companies left with unrecoverable costs due to the operation of schedule 8, are not left without a remedy. Permission has been given to appeal to the Supreme Court on this retrospectivity point.

***URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21**

The Supreme Court's decision provides welcome clarity on a number of difficult issues raised by the BSA and Defective Premises Act 1972 of relevance to historic building safety claims. The decision will be of direct relevance to a large number of other building safety claims currently before the English courts.

***Wilson & Anor v HB (SWA) Ltd* [2025] EWCA Civ 1360**

The Court of Appeal considered the scope of damages recoverable under the Defective Premises Act 1972 in historic building safety cases where remediation has or will be undertaken by the developer. Whilst many of the claims were struck out as being speculative or too remote, the decision provides interesting comments on the equivalence of damages under the DPA with damages in contract and on issues of double recovery where properties have been gifted or sold prior to remediation. The decision provides helpful guidance as to the bringing of damages claims under the DPA by leaseholders against developers. Claims which are remote, unparticularised or speculative will be struck out. Individual Schedules of Loss should closely follow the agreed pleading framework and should not introduce new heads of claim.

***Zampetti & Ors v Fairhold Athena Limited v Berkeley Group Holdings plc* [2025] LON/00BE/HYI/2023/0013 LON/00BE/BSB/2024/0602**

The First Tier Tribunal found that legal costs incurred in remediation order proceedings could be recovered by a Remediation Contribution Order. Permission to appeal was refused by the Upper Tribunal.

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