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Landlord Liability and Remedies Under the Building Safety Act

Lessons from URS and Triathlon

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Two recent appellate decisions – *URS Corporation Ltd v BDW Trading Ltd* in the Supreme Court and *Triathlon Homes LLP v Stratford Village Development Partnership* in the Court of Appeal, illustrate how liability for historic building safety defects can reach much further than many landlords might expect, and how the Building Safety Act 2022 (BSA) creates new and enhanced opportunities for recovery. Importantly, the scope of the BSA is not limited to fire safety related defects.

The BSA's policy is clear: leaseholders should not bear the cost of historic safety defects, and taxpayer funding is a last resort. Responsibility lies with those with a legal or financial connection to the building, including landlords.

- **Remediation Orders (ROs**) – Under section 123 of the BSA are central to this principle. The First-tier Tribunal (FTT) can require a "relevant landlord" to carry out works to fix safety defects, regardless of whether the landlord caused the defect, complied with past regulations or acquired the building post-completion. This is strict liability by status. As will become apparent from the below this is not the only way landlords can become liable, but it is perhaps the most common.

  When an RO is made or other liability arises that falls upon a landlord, traditional recovery routes available to landlords, such as contractual claims against developers, contractors or designers, may fail due to insolvency, or the absence of effective warranties. Negligence claims can also falter where the landlord did not commission the works, or where the loss is purely economic. Even where common law rights exist, they are often constrained by terms limiting liability. The recent cases highlight how the BSA enhances these traditional routes and introduces new, more powerful tools for recovery.

- **Remediation Contribution Order** (**RCO**) **–** One of the most significant statutory tools is the RCO under section 124 of the BSA. In *Triathlon Homes LLP v Stratford Village Development Partnership,* the Court of Appeal stated clearly that the policy of the BSA was to place primary responsibility on the developer, and it is the developer and not the landlord that sits at the top of the liability hierarchy. This case confirmed that RCOs can be made against developers and their associated companies, even if those associates were uninvolved in the works and even for costs incurred prior to the enactment of the BSA.

- **Building Liability Order** (**BLO**) **–** Similarly where other remedies are sought and the developer group is unreachable due to privity rules, the High Court can grant a BLO under section 130 BSA, which can pierce the corporate veil and extend liability to the wider corporate group companies. This is particularly valuable when the developer does not have the means to meet the claims against it, such as where the developer is a special purpose vehicle or is insolvent.

- **Defective Premises Act 1972 (DPA) –** The *URS Corporation Ltd v BDW Trading Ltd* decision concerned the means available to a developer to hold its design consultants to account for defects it had proactively remedied. However, the judgment is also relevant to landlords wishing to hold developers and designers to account. The starting point for the landlord is usually section 1(1)(b) of the DPA, which provides that anyone with a proprietary interest in the property, whether past or present, can benefit from the DPA's protective provisions even if they do not inhabit the building and were not directly involved in commissioning the works. A breach occurs where the work is not done in a proper and workmanlike (or professional) manner, with proper materials, so that the dwelling is not fit for habitation when completed. Although not finally resolved, many commentators consider this to be an outcome requirement that goes beyond the usual reasonable skill and care standard required in common law. Serious defects posing health risk or making the dwelling unsuitable to live in will generally trigger liability. The BSA enhances the effect of the DPA by among other things extending the limitation period for DPA claims to 30 years retrospectively (for work completed before 28 June 2022) and 15 years prospectively (for work completed after that date) (**Section 135**), reopening many claims that would otherwise be time-barred.

For landlords who acquired the building after completion and have repairing obligations, they too may be liable under section 4 of the DPA. This imposes an ongoing duty to ensure the dwelling is fit for habitation throughout the tenancy. The duty is owed to all who might reasonably be affected, and applies when the landlord knows or ought to know of the defect. *URS Corporation Ltd v BDW Trading Ltd* confirmed that DPA protection and the right to claim, can extend to commercial parties irrespective of whether they themselves also have liability under the DPA for the same defects; this allows liability to be passed downstream to those ultimately responsible. In that way a Landlord's prospective liability for defects under the DPA can form the basis of its own direct DPA claims against developers, contractors, consultants and designers. Further *URS Corporation Ltd v BDW Trading Ltd* confirmed that the 30-year limitation rule under section 135 is not confined to statutory claims under s1 of the DPA, but extends to other claims related to the DPA. For example, URS makes clear that rights in tort founded on a breach of duty to comply with the DPA will benefit from the same extended limitation periods. Other recent cases such as *Vainker v Marbank Construction Limited* [2024] have confirmed that DPA duties cannot be contracted out of, and that any contractual provisions purporting to limit the statutory duty will be ineffective.

- **Building Safety Product Liability –** Finally, Sections 147–151 of the BSA add further scope for potential recovery, imposing liability for defective construction products and materials on manufacturers, distributors and installers, creating direct recovery rights even in the absence of negligence or contract liability.

  For landlords, these statutory powers: ROs, BLOs, RCOs and DPA rights with extended limitation periods, as well as product liability under sections 147–151 revolutionise the recovery landscape. They replace the patchy and fault-dependent nature of traditional warranty and negligence claims with robust statutory liabilities that can be enforced against a much wider set of parties, ensuring that the cost burden of remediation can be moved downstream to those involved in the development, design and construction process.

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