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Building Safety F(ACT)s

Spring 2026

Welcome to the spring edition of our Building Safety F(ACT)s newsletter, where we provide you with bite-sized updates on fire and building safety issues.

This spring edition includes:

Please feel free to share with your contacts – we welcome feedback and suggestions for other topics that you would like to see covered in future editions.

OPSS Enforcement Actions for Construction Products Between 1 April 2025 and 30 September 2025

The Office for Product Safety and Standards (OPSS) has published a list of enforcement actions taken between April and September 2025 in response to noncompliant construction products or construction products with a safety risk (OPSS Enforcement Report). The OPSS is the national regulator for construction products, and its enforcement action supplements the series of reforms introduced under the Building Safety Act 2022 (BSA 2022) which intends to "provide a stronger and clearer framework for national oversight of construction products", for which we considered the implications for the construction sector, in our last Building Safety F(ACT)s newsletter.

In this update, we explore the nature of the action taken by the OPSS in relation to noncompliant construction products, and what it might entail for businesses operating in the construction sector. Notably, the OPSS issued prohibition notices to manufacturers of glass, including ballistic and bullet-resistant safety glass and thermally toughened glass, and timber-based plywood. It is perhaps not surprising, given the policy intentions of the BSA 2022, that the majority of action taken by the OPSS seems to relate to products that are widely used in building and civil engineering works and are intended to have enhanced safety features, such as toughened glass.

In each case, the OPSS issued the prohibition notice under the existing legislation governing construction products, namely the Construction Products Regulations 2013, and the prohibition notice prohibited the supply of the specified product. A common failing was that the manufacturer was unable to provide a declaration of performance (DoP) in relation to the product and that the product was not manufactured in accordance with the correct factory production control tests, as described in the designated standard for the product.

It is interesting to note that, when comparing the OPSS Enforcement Report against the previous report covering October 2024 to March 2025, in which only one prohibition notice was served in respect of a construction product, there appears to be a trend of the OPSS taking increased enforcement action against construction products, although it is possible that these actions are a result of a specific enforcement campaign or intelligence relating to failings of these types of product.

The OPSS Enforcement Report serves as a reminder to businesses involved in manufacturing, importing, distributing or selling construction products that they should ensure they:

- Retain DoP records for the products they supply
- Check that DoPs are in the format required under the relevant EU regulation
- Have procedures in place to ensure that they can produce the copy DoPs upon request from the OPSS
- Familiarise themselves with the requirements of the relevant designated standard(s)

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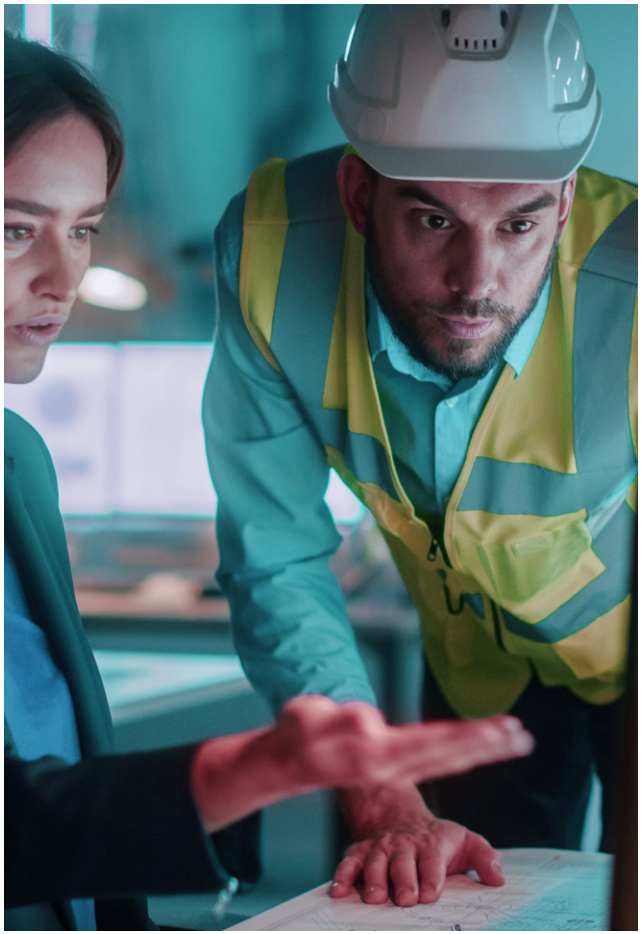

Updates on Flat Entrance Fire Doors and the Residential Evacuation Plans Regulations

In light of government concerns regarding a misunderstanding on when fire doors require replacement under the Fire Safety (England) Regulations 2022 (the Regulations), the government has updated its fire door guidance.

The Regulations apply to high-rise residential buildings (at least 18 metres above ground level or at least seven storeys); however, the provisions relating to fire door checks apply more broadly to include any building that contains two or more sets of domestic premises and is above 11 metres in height. Checks must be undertaken annually for entrances to domestic premises, and every three months for communal doors.

The government was concerned that the scope and intent of the Regulations had been misinterpreted with regard to these fire door checks, such that leaseholders were incorrectly being advised to replace flat entrance doors that were not manufactured and certificated in accordance with current standards for new fire-resisting doors.

The guidance clarifies that, in most circumstances, a door that satisfied the standards for a flat entrance fire door at the time the block was built, or that the door was manufactured, continues to be appropriate provided the door is undamaged and that there are no excessive gaps between the door and the frame. It states that the "absence of intumescent strips and smoke seals, and the absence of any form of certification for the door, does not imply that the door is unfit for purpose."

In addition to the physical risk-reduction measures that are needed in relation to high-rise residential buildings, the upcoming Fire Safety (Residential Evacuation Plans) (England) Regulations 2025 (REP Regulations) create several new express duties, including to conduct person-centred risk assessments of, and create evacuation plans for, individual residents who would have difficulty evacuating a building without assistance in the event of a fire "as a result of a cognitive or physical impairment or condition" (Relevant Residents).

The REP Regulations came into force on 6 April 2026 and apply to buildings that contain two or more sets of domestic premises and are at least 18 metres in height above ground level, or have at least seven storeys, or are more than 11 metres in height above ground level and have a simultaneous evacuation strategy (Specified Residential Buildings).

Before the REP Regulations, there was no express legal duty regarding risk assessment of, and evacuation measures for, individuals, and some may recall that the PAS 79-2 (housing fire risk assessment) standard (now superseded by BS 9792:2025) was withdrawn in 2021 over criticisms about its content relating to personal emergency evacuation plans (PEEPs) for disabled residents.

The REP Regulations mark a firm return to the use of such plans in Specified Residential Buildings, in accordance with the recommendations of Phase 2 of the Grenfell Tower Inquiry.

The REP Regulations impose new duties on responsible persons (Responsible Persons) to:

- Use reasonable endeavours to identify Relevant Residents
- Offer a person-centred fire risk assessment to each Relevant Resident, and if consented to, ensure the risk assessment is undertaken and keep them under review
- Implement reasonable and proportionate mitigating measures on the basis that the costs of any such measures are borne by the responsible person and/or by the residents of the building (or both)
- Create an emergency evacuation statement setting out what the Relevant Resident should do in the event of a fire (if agreed to)
- Create a building emergency evacuation plan and review it annually
- Provide to the Fire and Rescue Authority the building emergency evacuation plan and information on the location and level of assistance required (where that information has been explicitly consented to being shared)

Responsible Persons should familiarise themselves with the REP Regulations and may find it helpful to utilise Responsible Persons toolkit and PEEPs Guidance to support compliance.

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Consultation on the General Safety Requirement for Construction Products

The Ministry of Housing, Communities and Local Government has launched a consultation on the General Safety Requirement (**"GSR"**) for Construction Products (the **"Consultation"**). The Consultation follows the Construction Products Reform Green Paper, which we discussed in our newsletter, and is intended to operate alongside broader reforms set out in the Construction Products Reform White Paper; forming part of the wider programme of reform to the construction products regulatory regime.

The Consultation seeks stakeholders' views on the introduction of a GSR for construction products that are not already covered by a designated standard or technical assessment. The aim of the reform is to ensure that construction products placed on the UK market are safe.

Key proposals of the Consultation include:

- **Mandatory risk assessments** for all relevant products, covering intended and reasonably foreseeable conditions of use.
- **Strengthened product information requirements** that include information on the product's intended use, technical data, installation instructions, safety warnings and restrictions.
- **Enhanced labelling and traceability,** including unique product identifiers, manufacturer and (where applicable) importer details and digital information access; this is to ensure traceability of products, which is key for effective product recall.
- **Record keeping,** including the retention of risk assessments, product documentation, and safety incident records for 10 years.
- **Responsibility in the supply chain** to ensure that construction products are stored and transported in ways that maintain their safety and integrity.
- **Obligations for importers and distributors** (including merchants) to verify compliance, maintain records, and implement controls to prevent unsafe products from entering the market.
- **Enhanced powers** for the national regulator (and local authority trading standards) to include market surveillance, investigatory powers, and the ability to issue suspension notices, recalls, and civil penalties.

The Consultation runs from 25 February 2026 to 20 May 2026. Stakeholders are invited to respond via Citizen Space or by emailing their response to ConstructionProducts@communities.gov.uk. The Government aims to introduce the timescales as to when the bill will become law, but it is expected it will be very soon, given the proposed timescales set for remediation of all defective buildings in England.

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Building Safety Act (BSA) Block on Unsafe Occupation

A First of Its Kind and Unlikely the Last

The recent case of *Health and Safety Executive v Integritas Property Group (IPG) Ltd* [2025] EWHC 2613 (TCC) establishes a precedent that interim injunctions without notice by the Health and Safety Executive (HSE) may be granted in respect of Higher Risk Buildings (HRB) deemed to be unsafe.

The Facts

The HSE brought interim injunctive proceedings in the High Court against the defendants *Integritas Property Group* (IPG) to prevent the occupation of a 244-room student accommodation development in Newcastle-under-Lyme known as "Deacon's Yard". Notice of this application was served on IPG with less than 24 hours' notice pursuant to the proposed risk of IPG immediately permitting occupation.

Building control was first granted to IPG in November 2015, and fire safety defects were first discovered in September 2022. Building consents then formally raised concerns regarding fire safety defects during a meeting with IPG in October 2022. Additional concerns regarding the condition of the building and the standard of workmanship resulted in a contravention notice being served to IPG in March 2024.

In May 2024, it was deemed that despite ongoing construction the contravention notice had not been rectified, and that issues such as inadequacy of cavity barriers and fixing of brickwork remained unresolved. Subsequently, building control was revoked, and a cancellation notice was served on 11 July 2024. Shortly after, evidence surfaced that construction works were ongoing and a stop notice was also served.

In June 2025, concerns were raised regarding a series of advertisements online listing Deacon's Yard as ready for occupation in August 2025. Despite a director of IPG being interviewed under caution, confirming their understanding that occupation of Deacon's Yard without a completion certificate would be a criminal offence in line with Section 35 of the Building Act 1984 and sections 76 to 77 of the BSA. Deacon's Yard continued to be advertised to students for the 2025-2026 academic year.

Grounds for Interim Injunctive Relief

In determining the appropriateness of interim injunctive proceedings, the High Court considered the principles found in *American Cyanamid*[1] those being, (i) if there is a serious issue to be tried, (ii) the balance of convenience between both parties (iii) if damages would otherwise be an adequate remedy, (iv) the status quo and (v) merits of the case. The High Court found that the imminent risk of occupation at Deacon's Yard satisfied the serious issue requirement.

1 *American Cyanamid Co v Ethicon Ltd* [1975] A.C.396 [1975] 2 W.L.R.316

The High Court also concluded that on balance, the injustice of potentially interfering with IPG's rental arrangements was outweighed by the need to protect occupants and visitors, which were believed to imminently occupy Deacon's Yard. As such, the balance of convenience test was also satisfied. Similarly, health and safety concerns provided that damages could not be an adequate remedy in place of safety. As Deacon's Yard was unoccupied at the time of this hearing, the High Court also stated that the status quo should remain the same. Considering all of the above factors, alongside the commercial reality that an injunction post occupation would be more difficult, the American Cyanamid test was seemingly met.

Despite the court setting an urgent return date, no cross undertaking for damages was required by the HSE following the Supreme Court precedent of *The Financial Services Authority v Sinaloa Gold PLC*.[2] More notably, the High Court also permitted the HSE to bring interim injunctive proceedings, as lead regulator, in place of the local authority who are ordinarily responsible for injunction applications in accordance with the Local Government Act 1972.

A Sign of Things to Come? Key Takeaways

- The High Court granting permission for the HSE to bring interim injunctions in this manner is a genuine first.
- Avoiding the requirement for a cross-undertaking in damages significantly lowers the risk threshold for the HSE in bringing future claims.
- In the wake of the Grenfell Tower tragedy, the stricter management of unsafe buildings is still reverberating through the courts, and this is likely to continue doing so.
- The Grenfell Tragedy remains a poignant reminder of the importance of buildings, following which, there has been a clear direction of travel towards early intervention from the HSE in its regulatory capacity.
- The BSA and Building Safety (Wales) Bill, alongside the incoming Building Safety Levy and the Construction Products (Amendment) Regulations 2025 suggest that wider regulation is at the forefront of Parliament's policy and approach. As this theme has survived changes in government, it may be the case that more stringent regulation is the new normal for the construction sector.
- Particularly considering the commercial, reputational and potentially criminal sanctions for breaching the BSA, prevention is better than cure.

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2 *Financial Services Authority v Sinaloa Gold Plc* [2013] UKSC 11 [2013] 2 W.L.R.678.

Poor Pleadings Imperil Payment – How Inadequate and Unparticularised Heads of Loss Can Lead to Strike Out *Wilson and another v HB (SWA) Ltd*

One would be entitled to assume that when cases reach the Court of Appeal, lawyers are necessarily wrangling over complex and esoteric points of law. Alas, we occasionally have a case reach the Court of Appeal that requires the confirmation of common sense. In the latest edition of "was that not obvious before?", the case of *Wilson and another v HB (SWA) Ltd [2025]* dealt with the chin scratching issue of whether particularised heads of loss were so inadequate that they can be struck out by the court.

The Original Claim

Defects were discovered at the Celestia Development in Cardiff, following its construction from 2004-2007. Redrow Homes (South Wales) Limited were the developers, with Laing O'Rourke as the design and build contractors. By the time of the claim, Redrow's rights and liabilities were vested in the defendant (HB (SWA) Ltd, "HB").

The claimant (the Wilsons), one of 41 leaseholders, and the management company (CMCL) as the 42nd claimant, were suing for damages for breach of contract (regarding the breach of implied terms in the leases) and breach of the duty owed under s.1 Defective Premises Act 1972 (DPA).

That work had been agreed to be done, but had yet been completed and accordingly, there was no reason to submit a claim for rectification costs since these works were already due to be carried out and therefore no claim existed.

The Wilsons owned two of the flats, which they had gifted to their children in November 2024, after the defects had been discovered.

The Wilsons' schedule of loss, prepared by themselves, was dramatically out of line with all the other claimants' schedules.

In an up-and-down journey befitting of the nautical nursery rhyme that their document was presumably inspired by, the claimants eventually landed on a re-re-re-amended (RRRA) particulars of claim, which set out the following heads of loss at paragraph 25 of the pleading:

- Diminution in the value of the flats, and that the claimants would suffer such diminution notwithstanding the remedy of the defective works
- Loss of rental income
- Damage to the claimants' health by reason of the development of mould and damp within the flats
- Inconvenience and distress
- Decanting costs (including the costs of alternative accommodation and storage); if the claimants had to be decanted from the buildings during the remedial works

But staying true to their name, Mr and Mrs Wilson cast away this framework and instead advanced nine heads of loss in their schedule of loss:

- Total capital losses
- Investment loss
- Reinvestment loss
- Service charge loss
- Rental income loss
- Secured borrowing loss
- Interest loss
- Indemnity
- Taxation

The defendant applied to strike out most of this schedule of loss (bar the service charge loss and the interest loss), arguing the alleged losses were not pleaded in the particulars of claim, or alternatively that they were "clearly unrecoverable or purely speculative or imaginary losses", and pleaded "so vaguely and unclearly that they could not support an amendment, even if (as is not the case) an amendment were sought".

The judge in the Technology and Construction Court took the view that, though it is not the court's place to make a decision on where the probabilities lie when there are disputed questions of fact, the court is entitled to reject a case "even on a summary basis", where it is "clear that a factual case is self-contradictory or inherently incredible or where it is contradicted by the contemporaneous documents".

Furthermore, in a pithy rebuke to the argument that the court should consider that further evidence may come to light in disclosure, the judge commented that "the court will not be dissuaded from giving judgment by mere Micawberism, the unsubstantiated hope that 'something might turn up'".

The judge noted that the principle was that even if a loss were in principle a valid head of claim, the claimant should have particularised it and sought permission to amend and also considered that there was no significant difference between damages for breach of contract and damages recoverable for breach of the DPA (but not that this would always be the case).

Seven heads of the Wilsons' heads of loss were therefore struck out namely:

- Total capital losses
- Investment loss
- Reinvestment loss
- Rental income loss
- Secured borrowing loss
- Indemnity for tenants reclaiming rent
- Taxation/inheritance tax loss

The seven heads struck out were the additional, unpleaded or speculative items, but service charge loss and interest loss were explicitly not among them.

In the schedule of loss table reproduced in the judgment, "service charge loss" was listed as a separate head with figures for both flats:

- £8,989.11 for 339 Vega House
- £14,032.05 for 354 Vega House

This head of loss was properly pleaded within the existing framework of the RRRA particulars of claim. It was not challenged in the strike-out application. The defendants accepted it in principle.

The Wilsons duly appealed this to the Court of Appeal.

The Court of Appeal's Verdict

The appeal concerned whether the judge was right to strike out the Wilsons' schedule of loss, in particular the seven highly unconventional and the unpleaded heads of loss:

1. Total capital losses
2. Investment loss
3. Reinvestment loss
4. Rental income loss
5. Secured borrowing loss
6. Indemnity for tenants reclaiming rent
7. Taxation/inheritance tax loss

The Court of Appeal held that the judge was correct to strike out all seven.

The Court of Appeal noted at the outset that the schedule of loss was drafted by Mr Wilson himself, and "even though Mr Wilson is a solicitor, the court cannot expect him to produce the same sort of document that a barrister would". However, the judge went on to comment that "it must have been apparent to Mr Wilson that his schedule of loss was overcomplicated, unclear and lacking in even the basic information necessary to identify and support the disputed heads of loss".

It was highlighted by the Court of Appeal initially that in paragraph six of the Wilsons' introductory preamble, it was noted that the Wilsons gifted the two flats to their two daughters, and that "no consequences, let alone any loss, are alleged in the schedule to arise from that event".

The other facts noted by the Court of Appeal, which they took into account in determining the validity of the pleadings included:

- Paragraphs 12-19, regarding the "Capital Values" loss, which simply contained general information about residential property values in the Cardiff Bay area
- Paragraph 16, which said that the Wilsons' flats became unmortgageable by early 2016
- Paragraph 17, which argued that discovery of 2019 defects had further impact on the flats' sale price
- Paragraph 18, which said that the defects found in 2024 "can only have a further negative impact"
- It referred to an expert valuer, but then said that evidence would be provided once directions were given
- Paragraph 20-22, which dealt with the flats' rental values
- It identified the rate for the two flats only in July/October 2014 (the time of the purchases) and November 2024
- Paragraph 21, which gave general information about the growth in rental values in Cardiff
- Paragraph 22, which dealt with "tax impacts", and suggested the sale of flats at an earlier date would have allowed the Wilsons to gift the proceeds to their children to buy homes, and lessened risk of the gifts being subject to inheritance tax

Of the heads of loss outlined in the Wilsons' schedule of loss, only five had a figure given to them at all (the others identified no claim figure attributable to the head). And of those five, the Court of Appeal noted that none were "broken down or explained in any way".

The primary aspect of the Wilson's appeal was that they should have been allowed to amend their Schedule of Loss by way of amendment. They cited *Kim v Park [2011]*, however the judge distinguished the present case from this as the appellants had not provided any proposed amendments, so it was therefore difficult to conclude that "there is a reason to believe that the claimant would be in a position to put the defect right", if no proposed amendment was actually provided.

The judge also held that the position on damages for defective work generally is that:

- A claimant is entitled to claim the amount by which the work is worth less by reason of the defects (as is the case in a traditional diminution in value claim)
- This is usually best measured by reference to the reasonable cost of reinstatement works
- This claim accrues whether the asset in question is subsequently sold or destroyed

However, if the original contractor is able to return to carry out the works, the owners cannot claim the costs of these as they will not have incurred the costs or liability for them, but this does not mean that the owner will not suffer residual diminution in value even after works have been completed (a "blight" claim), and "a claimant will normally be able to recover (subject to proof) loss of any rental income and other damages that are not too remote, and which can be properly identified as flowing from the breaches".

The judge initially held that the seven heads of loss that were struck out were all indeed unpleaded claims as they did not conform to the pleaded framework of the RRRA particulars of claim. He stated that "it is impermissible for damages to be claimed in a schedule of loss where the basis of the claim is not explained, or even referred to in the statement of claim", and that this is "at the very least a recipe for muddle and confusion".

When going on to review the legal points considered, it is worth looking specifically at the Court of Appeal's approach to the heads of loss:

Disputed Head One

The argument being advanced in the appeal was that the original judge was wrong to say that the Wilsons were not entitled to recover these losses because they did not sell the flats on the dates when the defects manifested themselves. The Wilsons argued that a claim for diminution in value accrues whether or not the asset in question is sold or repaired, citing *The London Corporation [1935]*, and that there was a valid claim because they had gifted the flats to their daughters (which were worth less than they would have been had there been no defects) and they should be treated the same as if they had sold them at that point. However, the judge noted that, upon questioning, it became apparent that this line of argument was wholly different to what was set out in the schedule of loss.

The judge surmised that, though it is correct to say that whether the flats were sold or retained is irrelevant to the existence of such a claim, this was not relevant to whether it was correct to strike out the head of loss. In respect of this, the judge held that:

- This represented a "blight" claim, and the Wilsons' assertion that it was more than this was contradicted by the particulars (making the claim illegitimate even if it were valid in principle). Furthermore, a conventional diminution in value claim is usually measured by the cost of remedial works, which could not be claimed for here
  - The claim would need amending, and no such application had been made
- None of the essentials of this new claim were even pleaded in the schedule of loss
- The pleading of this new claim ("that the Wilsons suffered loss when they gifted these flats to their daughters, notwithstanding what we know to be an imminent and comprehensive package of remedial works") was "a novel claim in law" – the Wilsons had sought to rely on *The London Corporation [1935]* and *Manchikalapati v Zurich Insurance Plc (t/a Zurich Building Guarantee and Zurich Municipal) [2019]*, however the judge distinguished these from the facts in this case as there was no evidence here that the defendant was trying to take advantage of other events to avoid paying for the damage, but rather "instead it is carrying out the remedial works at no cost to the owners"

Therefore "the complexity of the new case, and the unhappy history of the Wilsons' claims so far, mean that there is currently no reason to believe that the Wilsons would be in a position to plead their putative new claim convincingly", particularly as there was no guarantee that they would be given permission to amend even if they did make such an application.

As a result, the Court of Appeal held that the first instance judge was not saying the flats had to have been sold for a traditional diminution in value claim, just that he was responding to the arguments advanced by the Wilsons and saying they were "irrelevant to any assessment of damage in circumstances where remedial works are now going to be carried out by the defendant". He added "that all the claimants in this case, including the Wilsons, were entitled in principle to claim residual diminution in value (blight). But that is not what is being asserted here…this claim has nothing to do with the residual consequences of the remedial works that will be carried out".

The Court of Appeal therefore held that this head of loss was properly struck out.

Head Two: Investment Loss — Struck Out

- This claimed the difference between actual returns and hypothetical returns on the Cardiff properties generally.
- The court held this was irrelevant, speculative and duplicative of any diminution in value argument.

Head Three: Reinvestment Loss — Struck Out

- This was based on lost hypothetical returns had they invested in London property instead.
- It was deemed to be even more speculative and unfounded than Head Two, and not a recoverable legal loss.

Head Four: Rental Income Loss — Struck Out, But Potentially Salvageable

- In principle, loss of rent was a valid category (and was pleaded in the main particulars). However, their schedule provided no figures, no particulars and no explanation, just hypothetical statements. The first instance judge was entitled to strike it out until a proper pleading was provided. However, none had been.

Head Five: Secured Borrowing Loss — Struck Out

- The Wilsons suggested they could have raised capital by remortgaging, but could not do so, due to the defects. However, there were no facts pleaded showing they ever tried, intended to or were refused borrowing.
- This was deemed opportunistic, remote and unarguable.

Head Six: Indemnity — Abandoned

- This claim related to tenants reclaiming rent under the Renting Homes (Wales) Act 2016.
- It was abandoned due to an intervening decision of the Divisional Court.

Head 7: Taxation/Inheritance Tax — Struck Out

- This claim was that the defects prevented the Wilsons from gifting earlier, which meant there was higher inheritance tax (IHT) exposure.
- The Court held this head was:
  - Not pleaded
  - Too remote
  - Conceptually incoherent
  - Based on personal tax planning choices, for which a developer cannot be liable

The Court of Appeal held that these were all also properly struck out, however the judgment in respect of these heads affirmed for the most part the first instance judge's decisions, and did not deal with any particularly noteworthy points of law. The original judge was right:

- Each disputed head was unarguable, speculative or unpleaded
- The schedule of loss was fundamentally defective
- No proposed amendments were offered, making cure impossible

All three Lords Justices agreed and the appeal was dismissed.

Key Takeaways

In keeping with the general common-sense nature of the decision, there are a few key principles dealt with by the Court of Appeal, which can be observed:

- Firstly, any losses pleaded should not be speculative, and should be properly quantified
- Secondly, these losses should also not be too remote or unparticularised – badly or vaguely pleaded schedules of loss will be stopped in their tracks pretty swiftly
- Finally, there is no significant difference in recoverable losses between claims for breach of contract and claims for breach of the DPA (however, this will not always be the case and will turn on the facts)

In a nutshell:

A schedule of loss must fit the pleaded case.

Damages cannot be built on:

- Hypothetical investments
- Tax planning
- Unpleaded factual scenarios
- Losses with no evidence

Where remedial works will be performed free of charge, conventional diminution in value claims may be limited, leaving only:

- Residual "blight"
- Proven rental losses
- Service charge contributions
- Distress/inconvenience

Parties should therefore not forget these basic principles, and get the pleading and loss framework right, first time including the particularised legal basis and causation, proof and with real claimable loss pleaded.

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BSA – Building Liability Orders in the Context of Nonresidential Buildings?

Section 130 of the Building Safety Act 2022 (BSA) introduced the concept of a building liability order (BLO), which is best explained by reference to paragraphs 1072 and 1073 of the explanatory notes to the BSA, which state:

"A practice used in property development is where a subsidiary company (which may be thinly capitalised) is set up to own and manage a development on the behalf of the corporate group it is a part of. The subsidiary company is often wound up once the development has been completed. A consequence of this practice is that the corporate group has no long-term liability for its developments."

"Building liability orders have been designed to address the consequence described above, given the context of the wider building safety issues which have been discovered within medium and high-rise buildings."

In short, a BLO may be granted by the High Court and pierce the corporate veil where there are liabilities in respect of any building under the Defective Premise Act 1972 (DPA), Section 38 of the Building Act 1984 (if brought into force) or in respect of a building safety risk making an associated entity jointly and severally liable.

Much has been written about the application of BLOs in the context of high-rise residential buildings in relation to safety defects. BLOs do however have a potentially far wider application to the construction sector, and industry stakeholders should be aware of this and the potential implications on their projects and their approach to risk allocation and business moving forward.

BLOs in the Commercial and Industrial Sectors?

It is important to appreciate the following:

- Section 130(3) of the BSA states that a "relevant liability", upon which a BLO attaches, means "a liability (whether arising before or after commencement) that is incurred—
  - under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
  - as a result of a building safety risk."
- Section 130(6) of the BSA states that a "'building safety risk', in relation to a building, means a risk to the safety of people in or about the building arising from the spread of fire or structural failure".
- Section 130 of the BSA does not specify the type of building to which a BLO may relate, and importantly, the definition of "building safety risk" does not stipulate a particular building type either.

- The explanatory notes to the BSA at Paragraph 1065 confirm this as it states "[a]part from under the Defective Premises Act 1972, which relates to the provision and refurbishment of dwellings, there is no constraint on the types of buildings a relevant liability can be incurred in relation to and therefore no constraint on the types of buildings for which a building liability order may be requested."[1]
- Despite the suggestion in the above guidance note as to the limited scope of the DPA, Section 4(1) of the DPA provides that where premises are let under a tenancy that puts on the landlord an obligation to the tenant for the maintenance or repair of the premises, the landlord owes, to all persons who might reasonably be expected to be affected by defects in the state of the premises, a duty to take such care as is reasonable in all circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect. There is no restriction providing that this section only applies to residential tenancies.

  The above indicates that the application of BLOs is not restricted to purely residential or mixed-use buildings. We can therefore foresee scenarios whereby BLOs will be granted in the context of a purely commercial or industrial building assuming a relevant liability is present. For example, if a structural issue is present that may cause a health and safety risk to occupiers or tenants.

What Are the Practical Consequences?

The potential implications of the BSA for the commercial and industrial sectors, and the construction industry more broadly, could be colossal.

Any commercial or industrial developer, relevant landlords or a contractor, subcontractor, designer, architect, engineer or other construction professional undertaking works on commercial or industrial projects could find themselves responsible for a relevant liability and in turn their associated entities (for example, a group or parent company) subject to a BLO. This is particularly important given the court's willingness to grant anticipatory BLOs and BLOs off the back of adjudication decisions.[2]

It is therefore imperative that advice is sought to identify and manage potential exposure and liabilities alongside avoiding any unintended consequences associated with future restructuring or acquisitions.

We have an expert team of BSA lawyers who are available to assist with any queries so please do not hesitate to contact us.

[1] Noting the comments of Mr Justice Edwin Johnson in Edgewater (Stevenage) Limited & Ors v. Grey GR Limited Partnership (Vista Tower) [2026] UKUT 18 (LC) where he stated that the explanatory notes to the BSA do "at best, play only a secondary role in the process of construction. They may cast light on the meaning of a particular statutory provision."

[2] Crest Nicholson Regeneration Ltd & Ors v Ardmore Construction Ltd (In Administration) & Ors [2026] EWHC 789 (TCC). We recently discussed this case here.

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In It Together: Lessons From the Edgewater RCO Decision

The recent decision of the Upper Tribunal (UT) in *Edgewater (Stevenage) Limited and Others v. Grey GR Limited Partnership* [2026] UKUT 18 (LC) provides important clarity on the application of Section 124 of the Building Safety Act 2022 (Act). The UT confirmed that a remediation contribution order (RCO) can be imposed on a joint and several liability basis. In doing so, it rejected arguments that such orders are not "just and equitable" where certain respondents had no direct involvement in, or financial stake in, the underlying development. The decision underscores the UT's willingness to adopt a broad and purposive approach to liability under the Act.

Background

This case involved the development of a building, Vista Tower, the freehold of which was sold by Edgewater (Stevenage) Limited (Edgewater) to Grey GR Limited Partnership (Grey Partnership) in 2018. Investigations revealed significant fire safety defects in the building's external walls, which required remediation. Given Grey Partnership was now the current freeholder, the secretary of state for levelling up, housing and communities issued a remediation order requiring Grey Partnership to remedy the relevant defects.

To offset its position, Grey Partnership made an application to the First Tier Tribunal (FTT) and obtained an RCO in the sum of approximately £13.2 million, against Edgewater and 76 of its associated corporate entities, rendering them jointly and severally liable for the total sum of the remediation costs. Edgewater and associated appellants appealed the decision of the FTT.

Decision

1. Joint and Several Liability

The argument put forward by Edgewater was that Section 124(2) of the Act refers to "a specified body corporate or partnership" and from the point of interpretation, this should be read in the singular. Therefore, the FTT was wrong to make an RCO against multiple parties, making them jointly liable for the same sum. However, the UT rejected this narrow interpretation by applying the basic presumption in Section 6 of the Interpretation Act 1978, to the effect that in a statutory provision, words expressed in the singular should include the plural.

In the UT, Mr. Justice Edwin Johnson (the President) rejected Edgewater's argument, which was held to be at odds with what the remediation provisions in Section 124 of the Act intended to achieve, and held that "if the FTT does not have the ability to impose joint and several liability but must, as the Appellants contend, apportion out the sum to be paid, with no overlap in liability as between multiple respondents, it seems to me that Section 124 cannot work as it was intended to work. Effectively, the statutory purpose is frustrated."

The FTT's power to make an RCO on a joint and several basis avoids a situation where an applicant is prevented from obtaining necessary funds, which would go against the very essence and purpose of the Act.

Importantly this position will not be the starting point for cases involving multiple respondents. The UT confirmed that it is important to keep in mind that even if the FTT has the ability to impose joint and several liability, it is not obliged to do so. The FTT will consider what the most appropriate just and equitable outcome is on a case-by-case basis.

2. The "Just and Equitable" Test

Section 124 (1) of the Act provides that the FTT may make an RCO where it considers it "just and equitable" to do so.

In considering whether it was just and equitable to impose liability on multiple associated entities, the UT endorsed the approach taken in *Triathlon Homes LLP v. Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846. The UT confirmed that there is no fixed threshold of participation or benefit required before an entity can be subject to an RCO. The UT confirmed that it is for the FTT to decide such matters on the facts of any given case, and the question of what is just and equitable is to be considered widely, given Section 124(1) of the Act does not limit or list any factors to be considered.

Having considered the wider corporate structure of Edgewater and the associated companies, which was described as "a fluid, disorganised and blurred network or structure", the UT confirmed that the decision made by FTT was correct, and that it was in fact just and equitable to make an RCO against Edgewater and the 76 associated corporate entities, holding them jointly and severally responsible. This highlights that where respondents cannot provide a detailed explanation of their wider group structure, to show independence in terms of financial involvement or decision making, the FTT will not hesitate to award an RCO on a joint and several basis if it deems it appropriate.

3. Definition of "Building Safety Risk"

A further issue considered by the UT was the meaning of "building safety risk". In order for an RCO to be made, the relevant defect must give rise to a building safety risk.

In relation to the meaning of "building safety risk" within the Act, it was decided that there was no qualifying wording within Section 120(5) in relation to level of risk required, not even the requirement of "low" level risk, which was considered by the FTT in the first instance.

Here, the President stated that "the reference to 'a risk' does not refer to any particular level of risk and is not gradated. It refers to any risk." Therefore, if a relevant defect creates any level of risk (without a minimum threshold), no matter the severity, the definition of a building safety risk will be engaged.

4. The Reasonableness of Remedial Costs

The FTT included the costs of removing combustible insulation from the building's walls as part of the remediation works. At appeal, Edgewater argued that some of the costs under the RCO were disproportionate (including the cost of removing the insulation from the walls). The UT upheld the findings and conclusions of the FTT that the inclusion of those specific costs was in fact reasonable.

Despite the experts agreeing that, from "a purely technical perspective", these remedial works were not proportionate, the UT held that there were a number of factors outside of the technical expertise that the FTT were entitled to rely on. Importantly, Grey Partnership was under pressure to implement the remedial works urgently, in order to address the unsafe conditions and ultimately reduce the ongoing risk posed to residents.

Takeaways

- The judgement is of particular interest to developers, investors and associated entities across the real estate sector.
- The UT confirmed that RCOs can be imposed on a joint and several liability basis. "Associated companies" under the Act is given a broad interpretation, and the FTT will not hesitate to impose an RCO on a joint and several basis, even if there was no direct involvement in the original development or financial benefit.
- It is imperative that corporate groups provide clear records and updated information in relation to financial arrangements to demonstrate independence and isolation from the wider structure if seeking to challenge joint and several liability.
- There is now also further confirmation of the definition and interpretation of risk under the Act, which cannot be disregarded as merely "low" or "tolerable". Any risk appears to engage the definition of a building safety risk.

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Thanks to Zohaib Malik, trainee solicitor in the Real Estate Litigation team in our Birmingham office, for his contribution to this article.

Expert Corner: Fire Safety Cases: The Expert You Need Might Not Be the One You Expect

Squire Patton Boggs (**SPB**) are pleased to have Ridge and Partners LLP (**Ridge**) as guest editor to contribute to our newsletter. In this article, Ridge provide their views on topical issues on building and fire safety expert issues. The views expressed in this article should be not be construed as forming any advice or opinion (legal or otherwise) provided or endorsed by SPB.

Fire safety disputes naturally lead many to assume that a fire engineering expert witness is needed. In a theoretical world, yes. Performance-based fire modelling, complex smoke movement calculations and forensic fire-origin analysis all sit firmly within the fire engineer's domain.

But the reality of litigation, particularly post-Building Safety Act, is that specialist fire engineers are not always available. Often, however, availability is not (or should not be) the issue. This does not mean that the claim must stall. In many cases, an experienced architecture expert witness can step in and provide the court with precisely the evidence it needs.

Architects have knowledge of fire safety too. Architects design escape routes, specify compartmentation, coordinate fire-stopping details. Their role is to translate a building's fire strategy (whether prescriptive or specialist-authored) into coordinated, buildable information. Many of the fire safety failures now coming before the courts stem not from inadequate specialist engineering calculations, but from misapplying or ignoring the guidance in documents such as Approved Document B and British Standard 9991.

Where an issue stems from a failure to follow guidance, or the designers have failed to justify what they built, an architecture expert witness can apply their fire safety knowledge. This is not theoretical; architectural expert witnesses are increasingly recognised for their ability to give reliable evidence on fire safety matters where those matters fall within the architectural scope. Mrs. Justice Jefford's ruling on the architect, Mr. Ferguson, patently having relevant fire safety expertise can be seen at Paragraph 185 of the approved judgement for *381 Southwark Park Road RTM Company Ltd & Ors v. Click St Andrews Ltd & Anor* [2024] EWHC 3179 (TCC) (11 December 2024).

Where fire safety issues relate to design coordination, clarity of information or failures in detailing, a fire engineer might not have the broader construction experience that is needed. In those circumstances, an architecture expert witness is often the most appropriate person to assist. Producing construction details and converting fire strategy into practice are activities that are carried out by the project architect rather than the project fire engineer. Central to many (if not all) fire safety cases will be the matter of whether the architect exercised reasonable skill and care, whether design and construction information was coordinated, whether reviews of contractor proposals were sufficient, or if any deviations were properly picked up. In these matters, an architecture expert is normally best placed to provide an opinion.

In cases that deal with compliance with regulations where guidance was not followed, the court benefits from an expert who understands not just the functional requirements but the realities of design development, and on-site decision making.

Similarly, when it comes to the building's mechanical and electrical fire safety systems, it is the mechanical, electrical and plumbing (MEP) consultant, and various subcontractors and specialist installers, who translate a building's fire strategy into practice. Such systems include fire and smoke dampers to maintain fire compartmentation, smoke ventilation, sprinklers, fire alarm, fire-fighting lifts and so on to support the building's fire evacuation strategy. It therefore follows that an MEP engineering expert is best placed to consider whether the building's fire safety systems achieve compliance (and if not, why not).

However, where an expert fire engineer is essential is when a design requires a bespoke strategy. For example, to design a suitable means of escape from a building as tall as The Shard, the project fire engineer will use their specialist knowledge to create a fire-engineered solution. This could involve enhanced protection over and above what the guidance recommends, or mitigation measures to address unavoidable issues. If such a project resulted in a dispute, an expert fire engineer would be crucial in determining whether or not the strategy was compliant with the functional requirements of the Building Regulations.

As one example of how these professionals come together, consider a building with a central, open-to-air atrium. An expert architect can opine on whether the fire strategy followed applicable guidance, whether the architect correctly translated that guidance into the design, and whether the contractor constructed to that design. If the fire strategy did not clearly follow guidance, an expert fire engineer can opine on whether the fire strategy suitably addressed the increased complexity of an atrium so that the building met the functional requirements. Where the system failed to perform, an expert MEP engineer can opine on whether the smoke ventilation system was designed in accordance with the requirements, and whether the contractor fulfilled its duties in relation to installation, testing and commissioning of the system.

With so many parties involved in a building's fire safety design, construction and maintenance, the root cause of building fire safety issues is not always obvious. As the architect on a project typically has the widest responsibility and the largest insurance cover, they become the obvious starting point for many claims that have moved beyond the developer and contractor.

So, each of the parties might have the expertise to assess how a building's design complied with the guidance and the quality of workmanship.

When you need advice on general matters of procurement and design coordination, an architect is probably best placed. However, a fire engineer is the best choice when you need to address more specialist questions, such as:

- Determining the likely rate of fire spread
- Carrying out a PAS 9980 assessment
- Commenting on fire test data
- Assessing the fire strategy of any building that falls outside the typical building scenarios covered by the guidance

The key is proportionality. If the case concerns fire and smoke modelling, such as using computational fluid dynamics (CFD), evacuation modelling, justification for extended travel distance, or building separation calculations, a fire engineer is indispensable. If the case concerns a specialist fire engineered approach, a fire engineer is required to comment. However, where the question is, "Was the building designed in accordance with the guidance?", then most architecture experts can answer. If the questions go further into "Were the details correct?" or "Was the architect's coordination adequate?", then an architecture expert witness is not just a stand-in; they are the right expert.

That being said, as with all expert appointments, it is crucial that the expert employed has the right experience to provide an opinion. Not all expert architects can comment on complex fire strategies. Not all expert fire engineers have experience of CFD or evacuation modelling, and not all expert MEP engineers have experience of various project-specific fire safety systems for different building types.

In conclusion, when fire engineers are unavailable, the courts do not need to pause. Depending on the nature of the dispute, a competent architectural expert can provide the clarity, context and professional opinion required to move the matter forward, until a fire engineer is required if/when the questions crystalise to fire-engineering approaches and judgements.

At Ridge, our experts are available for an initial conversation to help legal professionals determine which advice is most appropriate for their client's case.

This article has been written by Niralee Casson with contributions from Steven Manchester and Natalie Ford, Ridge Technical Expert Witnesses, Ridge and Partners LLP.

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The Building Safety Act 2022 (BSA)

Does the BSA Apply to Hotels?

The BSA introduced a rigorous regime focusing closely on "higher-risk buildings" (HRBs), defined as:

- Being at least 18 metres in height or having at least seven storeys
- Containing at least two residential units

Hotels are currently excluded from the definition of an HRB. However, this exclusion only applies where the building is being used solely and entirely as a hotel. This means that, if you own a hotel, the BSA could apply to your building if:

- The accommodation provided is serviced apartments.
- The building provides short term lets.
- The hotel forms part of a mixed-use development/is located within a building that includes residential units.

Who Is Responsible for Compliance With the BSA?

The person or entity that is responsible for the repair and maintenance of the relevant parts of the structure and exterior of the building will be referred to as the "accountable person". This will usually be:

- A person who holds a legal estate in possession in any part of the common parts – where the property has been let, the person responsible for the repair works under the relevant lease(s) will be the person responsible for compliance with the BSA.
- A person who does not hold a legal estate in any part of the building but who is responsible for the repair/maintenance of any part of the common parts (for example, a managing company).

Key Responsibilities of the Accountable Person Under the BSA

- Regularly assess the potential risks that could arise from the building as a result of structural failure or the spread of fire to part of the building
- Take reasonable steps to prevent a building safety risk from materialising, or to reduce the severity of any incident that could occur
- Prepare, update and maintain a safety case report for the building and provide a copy of the report to the building safety regulator if required to do so
- Establish a system for reporting any significant incidents or risks to the building (known as a "mandatory occurrence")
- Provide information to residents, as required, and implement a strategy for promoting participation of any residents/property owners in building safety decisions
- Keep and maintain the information required under the BSA and associated regulations

Breach of Duties Under the BSA

Failure to comply with the BSA can result in:

- The regulator issuing a compliance notice (a notice that requires the accountable person to do something)
- An unlimited fine
- Criminal prosecution

Construction Considerations

During the construction and development phase, the BSA imposes key obligations and responsibilities on those who are appointed as "duty holders" who will be held responsible and accountable for the safety of the building during the construction phase. This can include:

- The developer(s)
- The person/entity commissioning the work
- The contractor(s)
- The designer(s)

The general responsibilities for each duty holder include ensuring:

- The building work complies with the BSA
- Information related to the works is shared and held securely
- Where necessary, the relevant applications have been made to the building safety regulator and the relevant approvals obtained
- All parties appointed to the project are competent and have the necessary skills, knowledge, experience and behaviours to carry the work they are instructed to do

Combustible Materials Ban

Hotels in England are now banned from using combustible materials in external walls of buildings that are more than 18 metres in height.

Electronic Communications Code 2017 (Code)

Who Are Operators?

Certain companies that have been authorised by Ofcom to exercise rights under the Code. A list of authorised operators can be accessed on the Ofcom website.

Who Are Occupiers?

- Landowners (freeholders)
- Tenants under a lease (leaseholders)
- Occupiers under a licence or other agreement (e.g. a farm business tenancy)

Note that some nonoccupiers may still be bound by an operator's code rights.

Operator Rights

Operators have numerous rights under the Code, but these are the rights we see exercised and disputed most often in relation to HRBs:

- Granting of temporary or permanent rights for occupation or access over land
- Having utilities installed over land
- Granting of a lease, licence and ancillary rights to:
  - Install apparatus on, under or over land and buildings (usually on rooftops of HRBs and hotels)
  - Inspect, maintain, adjust, alter, repair, upgrade or operate apparatus
  - Carry out works on land or buildings for or in connection with the installation, maintenance, adjustment, alteration, repair, upgrading or operation of the apparatus on land or buildings

Occupier Rights

Occupiers can serve statutory notices to:

- Remove an operator situated on their land or building(s) only in limited circumstances, the most common of which are:
  - An occupier intends to redevelop its land or building(s)
  - An operator has persistently failed to make payments under a Code agreement
  - An operator has committed other breaches of a Code agreement
- Force an operator to remove its equipment where its permission to access/remain on land or buildings has come to an end
- Seek compensation under the Code where an agreement is imposed or where agreements under the Code provide for the same

Impact of Operator's Rights on Hotels and HRBs

The presence of telecommunications equipment on a building can present many issues for occupiers, such as:

- Operational constraints, such as restricting any commercial development that the business may wish to carry out and adding complexity to necessary repairs and maintenance, particularly as to rooftop works.
- Health and safety issues. While operators have responsibility for the health and safety of their sites and equipment, occupiers will retain responsibility under the BSA for buildings as a whole and are responsible for holding "the golden thread of information", which may necessitate procuring information from any operators present on a building.
- Competing interests for rooftop space and/or works thereon where space is required for air conditioning and other equipment servicing buildings, particularly where multiple operators are present on one building.
- Given how consideration is determined through Paragraph 24 of the Code, the level of rent that can be obtained from operators for placing equipment on land or buildings is limited.

Overview and Key Contacts

BSA 2022:

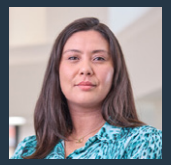
- It is crucial that hotel owners, operators and developers are aware of who holds the responsibility for the various requirements set out within the BSA. These include legal duties, reviewing compliance processes, taking reasonable measures to ensure the competence of all duty holders, ensuring the relevant gateway certificates are obtained and that all important safety information is secured in line with "golden thread".
- Hotels should therefore seek professional legal advice on the implications of the BSA, in order to act decisively with regard to all legal requirements and to demonstrate to investors, guests, employees and customers that building safety is a key priority for the business.

Electronics Communications Code:

- Given the implications of the Code and the extensive rights that are granted to operators, it is crucial that hotels are able to seek legal advice in relation to their rights and when negotiating agreements to provide them with sufficient protections in relation to their building safety and business operations.

Key Contacts

Should you have any queries on any of the issues above, please do contact:



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