

A Bright Line on Building Safety: Can Cladding Remediation Costs Be Passed to Leaseholders Under the Building Safety Act 2022?

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The recent decision of the *Upper Tribunal (UT) in Almacantar Centre Point Nominee No.1 Ltd & Anor v Penelope de Valk & Others [2025] UKUT 298 (LC)* offers clarity on how courts will interpret the recovery of cladding remediation cost through service charges under the Building Safety Act 2022 (BSA 2022).

The Facts

Almacantar Centre Point Nominees No.1 Limited and Almacantar Centre Point Nominee No.2 Limited (Almacantar) are the freehold owners of Centre Point House, 15A St Giles High Street London WC2H 8LW (CPH). Around 1987 a substantial part of CPH, which was constructed in the 1960s, was converted into residential leasehold flats and it currently comprises 36 duplex flats.

CPH has a hardwood timber-framed window façade, which has deteriorated over several years. Almacantar proposed a scheme to address the deterioration of the façade and sought a determination from the First Tier Tribunal (FTT), as to liability for the costs of the proposed works to remedy the defective façade.

The FTT held that the proposed works did fall within the landlord's repairing obligations, and the leaseholders would be liable under the service charge provision to contribute to the remediation costs. However, the FTT found that several of the leaseholders, who held qualifying leases, were entitled to rely on the "leaseholder protections" under the BSA 2022 and were not required to pay any part of the service charge attributable to "cladding remediation".

Almacantar appealed the decision.

Upper Tribunal Decision

Relevant Defect

A central issue for the UT was whether paragraph 8 of Schedule 8 of the BSA 2022, which exempts qualifying leaseholders from paying service charges for cladding remediation should be interpreted independently of sections 116 and 122 of the BSA 2022. These sections provide that only certain service charges linked to "relevant defects" are not payable; "relevant defects" would include works carried out in a 30-year period from when the provision came into force, so from 28 June 1992.

The UT held that Paragraph 8 is clear and unambiguous, it protects qualifying leaseholders from payment of the cost of remediation of unsafe cladding. Paragraph 8 was not limited by reference to "relevant defect", and no additional qualification should be read into it.

The UT held that although other parts of the BSA 2022 provide a structured package of leaseholder protections to the 30-year limit, paragraph 8 operates separately and does not fall within that package of remediation. It was held that Paragraph 8 mitigates against the time-limit in respect of unsafe cladding.

Cladding System or Not?

Almacantar raised a technical argument that the façade of CPH is not separate cladding, which could form part of any "cladding system" under Paragraph 8 of Schedule 8 BSA 2022. They argued that the façade at CPH is not an outer skin, instead it forms the exterior of the building itself. Accordingly, the proposed works would not constitute cladding remediation works.

The UT held that the question of whether a building includes cladding is one of fact. The requirement under Paragraph 8 that cladding remediation involves the "outer wall of an external wall system" does not require two separate systems. It was held that the FTT correctly classified CPH's cladding as a cladding system.

Meaning of Unsafe

The definition of cladding remediation under Paragraph 8 of Schedule 8 of the BSA 2022 includes the removal or replacement of any part of a cladding system that is "unsafe". Almacantar argued that the term "unsafe" should be narrowly interpreted to mean inherently unsafe cladding, primarily posing a fire risk and should not cover cladding becoming unsafe over time through degradation or structural decay over time. A broader interpretation, they said would have sweeping consequences, capturing many older buildings, which they claimed Parliament could not have intended.

The UT held that the use of the term "unsafe" is broader than a limitation to fire risk, they agreed with the FTT that unsafe means something more than simply out of repair and encompasses a range of threats to building safety, residents and the public. In this case evidence showed serious degradation at CPH, including loose panels, failing timber and compromised external seals which created a real safety risk.

Qualifying Leases

The status of the leases was initially uncertain, however, the FTT relied on the presumption outlined in paragraph 13 of Schedule 8 BSA 2022 and determined that the leaseholders held "qualifying leases" as defined in section 119 of the BSA 2022. As a result, they were entitled to the protections afforded to qualifying leaseholders. Almacantar argued that the FTT had wrongly made an unqualified factual finding about which leaseholders held qualifying leases, instead of merely applying the presumption. On this point, the UT held that the FTT's application of the presumption stands.

Almacanter did not take any action to challenge this presumption, such as requesting a “leaseholder deed of certificate” from the tenants in accordance with the Building Safety (Leaseholder Protections) (Information etc) (England) Regulations 2022.

Takeaways

- The UT has confirmed that leaseholder protections under the BSA 2022 stretch further than many expected, meaning cladding remediation costs may be more likely to sit with landlords.
- Paragraph 8 of Schedule 8 BSA 2022 is a clear standalone shield, meaning that qualifying leaseholders cannot be charged for cladding remediation costs irrespective of the defect’s age.
- Early due diligence and legal input are critical. Landlords should review lease terms now, request the “leaseholder deed of certificate” early and challenge qualifying lease status where possible to limit future exposure.
- Permission to appeal to the Court of Appeal has been granted, which will provide landlords with further certainty on the position.

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