
Building Safety – recent English case Law

Issue 2

June 2026



Contents

1	Supreme Court	1
2	Court of Appeal	2
3	First Instance – Technology and Construction Court (other than building liability orders (BLOs) – for BLOs see section 4 below).....	3
4	Building Liability Orders (BLOs) (Technology and Construction Court).....	5
5	Remediation Contribution Orders (First-tier Tribunal (FTT)).....	6
6	Remediation Contribution Orders (Upper Tribunal).....	8
7	Remediation Orders (First-tier Tribunal- (FTT)) – referred to by how they are commonly known.....	9
8	Other – First-tier Tribunal (FTT) relevant decisions.....	13

1 Supreme Court

- 1.1 Stratford Village Development Partnership and Get Living PLC v Triathlon Homes LLP and East Village Management Limited (see the first issue of '[Building Safety – recent English case law](#)') for details of the Court of Appeal decision). Permission granted to appeal to the Supreme Court but only on the issue of whether a remediation contribution order can be made in relation to costs incurred before such orders were brought into force by the Building Safety Act 2022 (**BSA**).
- 1.2 Adriatic Land 5 v Long Leaseholders at Hippersley Point (see the first issue of '[Building Safety – recent English case law](#)') for details of the Court of Appeal decision). Permission granted to appeal to the Supreme Court but only on whether paragraph nine of Schedule 8 of the BSA precludes the recovery of legal or professional costs by way of service charge from leaseholders holding a qualifying lease where those costs were incurred before the BSA came into force.
- 1.3 Supreme Court hearing scheduled for 18 November 2026.

2 Court of Appeal

- 2.1 Almacantar Centre Point Nominee No.1 Ltd & Anor v Penelope de Walk & Ors (see first issue of [*'Building Safety – recent English case law'*](#)) for details of the Upper Tribunal decision.
- 2.2 Permission granted to appeal to Court of Appeal. Hearing scheduled in the Court of Appeal for 15 October 2026.
- 2.3 Crest Nicholson v Ardmore and others (see below)
- 2.4 Permission granted to appeal to Court of Appeal. Hearing scheduled in the Court of Appeal. In light of the Ardmore Group being placed in administration or applying for a moratorium it is not clear whether this will proceed.

3 First Instance – Technology and Construction Court (other than building liability orders (BLOs) – for BLOs see section 4 below)

3.1 [Essendi UK Hotels 2 Ltd v London Property Co Ltd | Westlaw Edge UK](#)

- 3.1.1 This is important because it relates to a hotel and looks at the Regulatory Reform (Fire Safety) Order 2005.
- 3.1.2 While specific to its facts, which included that there was no service charge payable, the Court held that as well as being in breach of the good condition covenant to rectify defective cladding.
- 3.1.3 The landlord was also liable under the Regulatory Reform (Fire Safety) Order 2005 in that:
 - (i) The landlord was a responsible person under the order who had control of the premises
 - (ii) Relevant persons (i.e. any person lawfully on the premises or who is in the immediate vicinity of the premises who is at risk from a fire on the premises) included hotel guests, hotel employees working at the hotel, anyone else visiting the hotel and anyone living or working at or visiting any adjacent properties who “objectively, could be regarded as being at risk from a fire on the external parts”.
- 3.1.4 It also held that cladding is a dangerous substance under Article 2 of the order. This imposes duties under Articles 9 and 12. Under Article 12 (2) the responsible person must, so far as is reasonably practicable, replace a dangerous substance, or the use of a dangerous substance, with a substance or process which either eliminates or reduces the risk to relevant persons.
- 3.1.5 The hotel operator was entitled to an order for specific performance to remove the cladding within six months and replace with suitable alternative external cladding within 18 months. It was also successful in its claim for the losses it had suffered as a result of having to close the hotel in mid-2025.

3.2 [Into Nominee One Ltd & Anor v Study Group UK Ltd & Anor](#)

- 3.2.1 Into Nominee sought summary judgment against Study Group for unpaid rent.
- 3.2.2 The lease relates to a purpose-built residential training school, consisting of two separate buildings, linked by a glazed corridor. One building is a five-storey building used for the purposes of teaching. The other is a four-storey building used for residential accommodation. Both are under 18 metres.
- 3.2.3 Study Group argued frustration of the lease by reason of cladding defects and/or by legislation passed following the Grenfell Tower disaster.

3.2.4 The court accepted that there were serious and extensive fire safety defects. It was forecast that the works would take between 120 to 132 working weeks.

3.2.5 It held that the lease was not frustrated, and summary judgment was granted.

3.3 [GS Woodland Court GP 1 Ltd v Anor v RGCM & Others.](#)

3.3.1 The dispute concerned alleged fire safety defects in student accommodation in Islington. The owner, Woodland, brought proceedings against seven defendants involved in its construction seeking damages arising from its allegedly defective design and construction.

3.3.2 As the development is a Higher-risk Building (**HRB**), Woodland had to obtain approval from the Building Safety Regulator (**BSR**) before commencing any remedial works.

3.3.3 By early March 2025, Woodland had set out a fire safety remediation scheme. Woodland submitted the scheme to the BSR on 30 June 2025, and the BSR took four months to reject the scheme. In the meantime, the trial was listed to start on 8 June 2026.

3.3.4 Woodland applied to adjourn the trial. Some of the Defendants opposed the application, arguing that the trial should proceed as listed.

3.3.5 The court determined that, whilst it would be unfair to insist that Woodland proceed to trial in respect of quantum, the issue of liability could be tried separately, without the need for the BSR to approve the remedial works. The court therefore rejected Woodland's application to adjourn the trial in full and ordered that the trial on liability proceed in the existing trial window, commencing on 8 June 2026, with quantum to be determined in a second trial following BSR acceptance and subject to the judgment on liability. See [Mills & Reeve article](#) by [Ben Hardiman](#) and [Faye Sanderson](#).

3.4 [Health and Safety Executive v Integritas Property Group Limited.](#)

3.4.1 In the first issue of '[Building Safety – recent English case law](#)' reference was made to the fact that it was being reported that the BSR had obtained an injunction prohibiting a developer from seeking to sell or let a development for occupation before obtaining a building completion certificate (gateway 3). That case is now reported as the Health and Safety Executive v Integritas Property Group Limited.

4 Building Liability Orders (BLOs) (Technology and Construction Court)

- 4.1 Crest Nicholson Regeneration Limited and Others v Ardmore Construction Limited (in administration) and others. [First judgment](#) and Second judgment.
- 4.2 The first judgment dealt with the following:
- 4.2.1 Anticipatory BLOs can be made.
 - 4.2.2 Adjudicator's decisions can amount to "relevant liabilities". It is a requirement that there is a relevant liability in order for a BLO to be made. There is no need for adjudication enforcement proceedings to have first been commenced before seeking a BLO.
 - 4.2.3 Confirmed BDW Trading Ltd v Ardmore Construction Limited (see first issue of '[Building Safety – recent English case law](#)') that an adjudicator can decide a claim brought under the Defective Premises Act 1972 (where limitation can be extended for up to 30 years (looking backwards)); and
 - 4.2.4 See Mills & Reeve article [Welcome clarification on Building Liability Orders – Analysis of Crest Nicholson Regeneration Limited v Ardmore Construction Ltd & Ors](#) – [Neusha Mazaher](#) and [Alison Garrett](#).
- 4.3 The second judgment:
- 4.3.1 Refused permission to appeal to the Court of Appeal.
 - 4.3.2 Refused a stay of enforcement of the adjudicator's decision; and
 - (i) Made mention of an individual being "the common denominator across the Group."
- 4.4 However, Ardmore was granted permission to appeal by the Court of Appeal on 9 June 2026. Hearing is due before 1 October 2027. However subsequent to the 9 June 2026 Ardmore group companies have either entered into administration or applied for a moratorium. The status of the appeal is not currently clear.

5 Remediation Contribution Orders (First-tier Tribunal (FTT))

5.1 Pieris House, High Street, Feltham (A2 Dominion South Limited v BDW Trading Limited) (2 April 2026).

- 5.1.1 The issue was whether a four-storey building, under 11 metres high, with commercial units on the ground floor and flats in the three storeys above was in fact part of a relevant building due to it being structurally attached (or not structurally detached) to, and not capable of vertical division from, a building which was a relevant building because it met the requirement of being over 11 metres or five storeys with two or more residential units. The definition of a relevant building as set out at section 117 of the BSA requires, among other things, that the building be self-contained.
- 5.1.2 The two buildings shared a common entrance at ground floor level and also shared services to such an extent that it was not possible to separate them without significant interruption.
- 5.1.3 It was held that they could not be structurally detached and that the four-storey building was not self-contained. Both parts were therefore a relevant building.
- 5.1.4 As a reminder, a relevant building is subject to many of the tenant protections set out at schedule 8 of the BSA, remediation orders and remediation contribution orders can also be made in relation to such buildings.
- 5.1.5 A separate point, which has been confirmed in other cases as well, is in relation to the explanatory notes to the BSA. Where such notes accompany a bill through Parliament, they can shed light on what Parliament intended. If such notes did not exist when the statute was passed, there is less reason to regard them as a guide to Parliament's intention, although they may be of persuasive authority; they are comparable with academic writings.

5.2 Hallings Wharf Studios, Channel Sea Road, - Secretary of state for Housing, Communities & Local Government v EDR Builders Limited and Hollybrook (UK) Limited.

- 5.2.1 The Secretary of State had provided funding to the RTM company to rectify defects.
- 5.2.2 By the time of the hearing, remedial works had been undertaken, and the cost was about £3.6 million. The first respondent, who was the developer, was in liquidation. The second respondent was 'associated' with the first respondent.
- 5.2.3 The second respondent objected to the making of a remediation contribution order on the basis that the remedial works were over-engineered and it was not therefore 'just and equitable' to make an order.
- 5.2.4 It was held that the fact that the remediation could have been done more cheaply does not mean that it should be. Unless the works can be branded as unreasonable, it does not matter that an

alternative scheme might have satisfactorily addressed the fire safety risk at a lower cost. A remediation contribution order was made.

- 5.2.5 The FTT, however, refused to include the litigation costs (the cost the Secretary of State had incurred in the FTT proceedings), which were in excess of £1 million. The FTT cast doubt on whether it could award such costs.

6 Remediation Contribution Orders (Upper Tribunal)

6.1 [Vista Tower, Stevenage \(27 January 2026\)](#) – (see the FTT decision in the first issue of '[Building Safety – recent English case law](#)'). This was an appeal from the FTT decision.

6.1.1 The appeal was based on four grounds:

- (i) Whether the FTT had jurisdiction to make respondents jointly and severally liable for a total sum.
- (ii) Whether the FTT wrongly imposed liability without proving each respondent participated in or benefitted from the developer.
- (iii) Whether a “building safety risk” must be an “intolerable risk” rather than any risk. This has been an issue in other cases. In the FTT it was held that the risk had to be a low risk. The Upper Tribunal held it was any risk. See cases remediation order cases below– Somerville Court and Canary Riverside, which have also concluded this; and
- (iv) Whether it was wrong to include the full costs of replacing the Type 1 external system.

6.1.2 All grounds were rejected.

6.1.3 See Mills & Reeve article [Building Safety: Vista Tower appeal dismissed: Key guidance on remediation contributions orders | Mills & Reeve](#) by [Amy Johnson](#).

6.1.4 Permission has been granted to appeal to the Court of Appeal. Hearing listed to be before 8 March 2027.

7 Remediation Orders (First-tier Tribunal- (FTT)) – referred to by how they are commonly known.

- 7.1 [Somerville Court, St Albans](#) (9 April 2026). Remediation order made. Reached the same conclusion as the Upper Tribunal in Vista Tower (and the FTT in Canary Riverside – see below) that any risk is sufficient to amount to a building safety risk, a requirement for a relevant defect (which itself is a requirement for a remediation order) as referred to at section 120 of the BSA provided it is a risk to the safety of people in or about the building arising from the spread of fire or the collapse of the building or part of it. As an aside in this case the relevant landlord was ordered to provide monthly reports to leaseholders.
- 7.2 [2-4 Leigham Court Road](#) (8 April 2026). Variation of a remediation order made on 9 August 2023. The variation was allowed to extend completion of remediation works by nearly two years – from 19 September 2025 to 29 July 2027. This was due to delays in obtaining building control approval from the Building Safety Regulator. It is also notable for its discussion of deemed rejection by the Building Safety Regulator under Section 55 of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023.
- 7.3 [Canary Riverside](#) (27 January 2026). The applicant was the Secretary of State, and the respondents included Canary Riverside Estate Management Limited. For a Remediation Order to be made, there must be a “relevant defect,” the definition of which includes a requirement for a building safety risk. The issue was what is a building safety risk. It held that any risk of fire spread or structural collapse, however low is a building safety risk. They also said that historic compliance is not a defence. Defects must be assessed using current knowledge and as assessed at the date of the hearing rather than the Building Regulations in force at the time of construction. The Upper Tribunal in Vista Tower and the FTT in Somerville Court (see above) subsequently agreed as to what can amount to a risk. Click [here](#) for a blog by [Lauren Michaelides](#).
- 7.4 [Bracken House, Manchester](#) (13 June 2024 – but only published January 2026). The applicant was the Secretary of State. The buildings had fire safety defects. The landlord was prepared to agree to a remediation order but: a) wanted specified dates for compliance to be subject to extensions of time granted under the construction contracts or for another reason, up to a maximum extension of six months, and b) the orders to provide that the landlord could remedy defects by procuring its design and build contractor to carry out and complete agreed specification of works. The FTT did not agree to a) instead giving a date for compliance which incorporated a reasonable margin beyond the anticipated completion dates, following the Chocolate Box case (referred to in the first issue of *‘Building Safety – recent English case law’*). In relation to b) it stated that the only party against whom an order can be made is the relevant landlord. No order could be made against the contractor.
- 7.5 [Millroyd Mill, Huddersfield Road, Brighouse, West Yorkshire](#) (4 November 2024 – but only published 13 January 2026). In this case remedial works had started. The landlord initially focussed on the motivation of the applicants in seeking a remediation order, although its counsel conceded that that was not a determinant factor and focussed on fact that the landlord was doing all they could to remediate the defects. The FTT said that the landlord was still responsible for the defects and repeated that the test is not one of necessity, pointing out that the FTT had on several occasions in the past said that it was appropriate to

make a remediation order to provide reassurance to leaseholders that works will be done within reasonable timescales. A remediation order was therefore made which the FTT felt gave a generous period of time for the works to be completed. It did say an application for further time could be sought if needed.

7.6 There are two reported decisions on Cypress Point.

7.6.1 The first Cypress Point decision dealt with the following:

- (i) A remediation order **and** a remediation contribution order both made on 29 July 2024 but only reported on 12 January 2026.
- (ii) There were fire safety issues in the building namely:
 - (A) Defective external timber cladding;
 - (B) Individual balconies; and
 - (C) Certain timber issues in communal areas.
- (iii) Grant funding was applied for and granted for the defective external timber cladding but not for the other defects.
- (iv) Works to the cladding and the individual balconies (but not the timber in the communal areas) went ahead.
- (v) For the works to the individual balconies, a service charge on the leaseholders of the flats was levied.
- (vi) The work was undertaken prior to the Building Safety Act coming into force in June 2022.

Remediation Order

- (A) The remediation order was sought in relation to the timber issues in the communal areas. By the time of the hearing funding had become available for this and contractors and consultants had been selected for the work, but there was no start date. The landlord was unwilling to self-fund and opposed the grant of a remediation order because it did not know when full grant funding would be available and did not have the means to remedy without funding.
- (B) The FTT stated, "*the policy underlying the BSA is clear: the costs of remediating relevant defects should fall primarily on those who are responsible for them.*" Responsibility is not synonymous with fault.

- (C) The landlord also said a remediation order was not necessary as grant funding would be available. The FTT said the test was not one of necessity and that on previous occasions remediation orders had been made to provide reassurance to leaseholders that work would be done within reasonable timescales.
- (D) An order was made which included provision that either party could apply to extend time for compliance.

Remediation Contribution Order

- (A) In relation to the application for a remediation contribution order, this was sought by the leaseholders in relation to monies paid by them by way of a service charge for work to the individual balconies.
- (B) Flat leases were drafted to include the balconies which meant the leaseholders, not the landlord covenanted to repair and maintain the balconies. Nevertheless, the FTT decided that a remediation contribution order could still be made and held that these were costs incurred in remedying a relevant defect and that it was just and equitable to do so (despite the covenant and the fact that no grant funding was available and also despite the service charge having being paid over before the BSA came into force).

7.6.2 The second [Cypress decision](#) was decided in October 2025 (but not reported until January 2026) and relates to the variation of the remediation order referred to above, to extend time for compliance (by just under 18 months). Defects had been required to be remedied by 31 July 2025. On 5 June 2025, the landlord lodged an application to extend the completion date citing the practical realities of design, tendering and contractor preparation. The leaseholders objected. A variation of the original order was allowed – the FTT seeming to accept that its original order had been overly optimistic, citing among other things the Gateway 2 BSR delays, to extend time to 31 December 2026. This extension was made subject to conditions - there is an express requirement for regular, clear update dates to the leaseholders. See our blog on this. Link [here](#) by [Lauren Michaelides](#).

7.7 [Block P, Wotton court, London](#). Decision 19 December 2025 (published 6 January 2026).

7.7.1 This case is about structural issues rather than fire.

7.7.2 A reminder that a “*relevant defect*” is a defect which causes a building safety risk. A building safety risk is not just a risk to the safety of people in or about a building arising from the spread of fire but can also be such a risk from the collapse of the building or any part of it.

7.7.3 On Saturday 10 May 2025 the occupants of Block P had to vacate at short notice. It was said that the supporting pillars at the south facing elevation had cracks as well as the balcony above.

7.7.4 As part of the temporary solution, steels needed to be installed. FirstPort said they had not been able to obtain licences from two flat occupiers which meant they could not undertake the temporary solution. The occupiers were concerned how the works would be carried out. Although FirstPort claimed that they were entitled to go into the flats and carry out the works anyway under the terms of the leases, FirstPort asked for the relevant leaseholders to be joined into the proceedings. The FTT said that they had no power to make an order against leaseholders of the flats and could not require them to give access. Nor could they require them to complete or force them to enter into any agreement or licence re rights to access. The FTT was clear that such a matter was for the county court, not the FTT. FirstPort's concern was that without such an order, any remediation order against it would require it to do something it could not do. However, the FTT held that under the terms of section 123 of the BSA it should make a remediation order. It made the point that the order was that the defects should be remedied, not how they were to be remedied. The remediation order required the works to be remedied by 30 September 2026 (i.e. they were given nine months).

7.8 [Ridley House](#) (November 2025 – reissued 12 January 2026). Remediation order terms agreed There remained a question over whether there were defects in the outer calcium silicate boarding. The remediation order provided for further inspections and reports and for the parties to be able to return to the FTT for a further order, if necessary.

8 Other – First-tier Tribunal (FTT) relevant decisions

8.1 Stratford Village Property Holdings Limited and another v East Village Management Limited (29 January 2026).

- 8.1.1 This is the first judgment directly examining regulation 3 (“Regulation 3”) of the snappily named Building Safety (Leaseholder Protections) (Information) etc Regulations 2022.
- 8.1.2 The case concerned Regulation 3 notices served by East Village Management Ltd (“EVM”) on Stratford Village Property Holdings No.1 Ltd and No.2 Ltd (“SVPH”). The Tribunal was asked to decide a number of specific issues relating to (i) its jurisdiction to determine the validity of the notices; (ii) the interrelation between Regulation 3 and the recoverability of remediation costs from leaseholders; and (iii) the recoverability of costs incurred before Regulation 3 came into force on 21 July 2022 and of future or contingent costs.
- 8.1.3 The Tribunal held that it did have jurisdiction to deal with questions of validity. It had to be able to decide “all matters” necessary to determine liability under Regulation 3 to give effect to the policy of the BSA. Requiring parties to issue separate County Court proceedings would contradict the statutory objective of the BSA - speed and simplicity. The short 30-day appeal period for Regulation 3 also reinforced Parliament’s intention for all issues to be resolved under one roof.
- 8.1.4 EVML was in receipt of Building Safety Fund funding under which it had agreed not to seek to recover the remediation costs from leaseholders. SVPH argued that because this meant that EVML could not recover costs from leaseholders solely because of the BSA Schedule 8 protections, Regulation 3 was not engaged. Probably unsurprisingly, the Tribunal did not agree. The relevant test requires consideration only of Schedule 8, and not of separate arrangements. The simple question is whether, without Schedule 8, the costs would have been recoverable under the lease as a service charge.
- 8.1.5 Finally, the Tribunal held that retrospective pre-July 2022 costs were recoverable but contingent / future costs were not. The recovery of pre-July 2022 costs goes to the very purpose of the BSA, which is aimed at addressing historic building safety defects that have only come to light in recent years.
- 8.1.6 Permission to appeal has been given in relation to the Schedule 8 point and retrospectivity and it will be interesting to see whether the Upper Tribunal takes a different view.



Alison Garrett

Senior Legal Advisor
for Mills & Reeve LLP

+441223222207

alison.garrett@mills-reeve.com

Mills & Reeve LLP is a limited liability partnership authorised and regulated by the Solicitors Regulation Authority (SRA authorisation number 464604) and registered in England and Wales with registered number OC326165. Its registered office is at 7th & 8th floors, 24 King William Street, London, EC4R 9AT, which is the London office of Mills & Reeve LLP. A list of members may be inspected at any of the LLP's offices. The term "partner" is used to refer to a member of Mills & Reeve LLP. The contents of this document are copyright © Mills & Reeve LLP. All rights reserved. This document contains general advice and comments only and therefore specific legal advice should be taken before reliance is placed upon it in any particular circumstances. Where hyperlinks are provided to third party websites, Mills & Reeve LLP is not responsible for the content of such sites.

Mills & Reeve LLP will process your personal data in accordance with data protection and privacy laws applicable to the firm (including, as applicable: the Data Protection Act 2018, the UK GDPR and the EU GDPR), and you can find out more about our processing of your data, including in relation to marketing communications, at [Information and Privacy | Mills & Reeve](#). You can unsubscribe from marketing communications by emailing preferences@mills-reeve.com T +44(0)344 880 2666
