Building Safety – recent English case law

Issue 1

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Contents

1 Supreme Court

1.1 URS Corporation Ltd v BDW Trading Ltd (Rev1) [2025] UKSC 21 (21 May 2025)

1.1.1 The four issues before the Supreme Court were:

(i) Whether the fact that BDW had rectified defects without a claim being made against it, i.e. it had done so voluntarily, meant any claim it made against URS fell outside the scope of the tortious duty of care owed by URS. The Supreme Court held that it was possible for BDW to bring a claim where the losses had been incurred voluntarily. This voluntary argument was different to the argument that URS had presented to the Court of Appeal. That had been that BDW's cause of action had not accrued until it became aware of the defects, by which time it no longer had an interest in the buildings. The change meant that the Supreme Court's reasoning did not need to consider the case of Oscar Faber v Pirelli.

(ii) Whether the retrospective extended limitation periods under section 135 of the Building Safety Act 2022 apply to claims, such as BDW's claims against URS in tort which were claims dependent on the Defective Premises Act 1972, rather than being a claim brought under Section 1 of the Defective Premises Act itself. The Supreme Court held that the extended limitation periods apply in relation to claims dependent on the Defective Premises Act. At the Court of Appeal hearing URS phrased this point differently arguing that there was no entitlement to rely on the extended limitation periods introduced by the Building Safety Act where proceedings had already been commenced. This was not pursued in the Supreme Court.

(iii) Whether Section 1(1)(a) of the Defective Premises Act allows developers to bring claims where works are done to their order, or whether the section is restricted to those who acquire an interest in the relevant dwelling. The Supreme Court held that developers can, where works are done to their order, use Section 1(1) to bring a claim.

(iv) Whether BDW was entitled to bring a contribution claim against URS under Section 1 of the Civil Liability (Contribution) Act 1978, even though there had been no judgment or settlement between BDW and any third party (because BDW had voluntarily done the work without any claim being made). The Court held that BDW could bring such a claim.

1.1.2 Mills and Reeve Blog Post**:** Building Safety: Supreme Court decision | Mills & Reeve

2 Court of Appeal

2.1 Triathlon Homes LLP v Stratford Village Development Partnership & Anor [2025] EWCA Civ 846 (08 July 2025)

2.1.1 The most important case so far in relation to remediation contribution orders. Heard at the same time as Adriatic Land5 Limited v Long Leaseholders at Hippersley Point [2025] EWCA Civ 856.

2.1.2 The Triathlon Homes case concerned five buildings constructed as part of the 2012 Olympic Village. The development was undertaken by Stratford Village Development Partnership ("**SVDP**"), a company originally owned by the Olympic Authority but sold to Get Living PLC after the development had been completed. Triathlon Homes ("**Triathlon**") itself is a social housing provider which holds long leases of the 5 buildings, all of which suffered from serious fire safety and cladding defects. The overall costs of remediating the defects were around £27.5 million.

2.1.3 The First-tier Tribunal decided it was just and equitable for a remediation contribution order to be made against both SVDP and Get Living and also that the claim could include costs incurred before the Building Safety Act came into force. Get Living appealed.

2.1.4 The Court of Appeal agreed with the First-tier Tribunal on both points. The overall policy of the Building Safety Act is to make developers liable for remediating defects for which they were responsible. As a general presumption, therefore, it will usually be just and equitable for a developer to be made to pay the costs of remediation under a remediation contribution order.

2.1.5 Availability of public funding does not affect that presumption because public funding should be a matter of last resort.

2.1.6 The change in the beneficial ownership of the developer – from the Olympic Authority to Get Living – also did not affect the justice of making a remediation contribution order. The purpose of the Building Safety Act 2022 provisions is to ensure that defective buildings are remediated. In acquiring SVDP as an investment, Get Living had taken on the company's liabilities as well as its assets. It was therefore fair that a wealthy parent of the developer should be made liable for remediation costs.

2.1.7 The retrospective application of the Building Safety Act 2022 – in this case the provisions protecting tenants from paying certain remediation costs via service charges - was also the issue in Adriatic Land. In line with its decision in Triathlon Homes, the Court of Appeal decided that these provisions operate retrospectively and so also apply to costs incurred **before** the relevant sections of the Building Safety Act 2022 came into force. Service charges which were demanded and paid before that date are not affected by the decision.

2.1.8 Both cases underline the fact that the courts will seek to give effect to the overall policy of the BSA that developers should bear, and that leaseholders should be protected from, the costs of remediation.

2.1.9 **Mills and Reeve Blog Post:** Building Safety: Remediation Contribution Orders: Triathlon Court of Appeal judgment handed down... Adriatic Land 5 Limited also handed down | Mills & Reeve

2.1.10 In both cases permission given to appeal to the Supreme Court on the retrospectivity point, but not on the issue of what is just and equitable.

3 First Instance - Technology and Construction Court

3.1 BDW Trading Ltd v Ardmore Construction Ltd [2024] EWHC 3235 (TCC) (16 December 2024)

3.1.1 On the language of the contract which said: "If any dispute or difference arises under this contract either Party may refer it to adjudication in accordance with clause 39A"

3.1.2 An adjudicator could decide on claims under the Defective Premises Act 1972 (including claims subject to the extended limitation period brought about by the Building Safety Act 2022).

3.1.3 Note: Ardmore Construction Ltd was placed in administration in August 2025.

3.1.4 This case was due (before Ardmore's administration) to be heard by the Court of Appeal on 23 October 2025. The matter appears to have settled. The Court of Appeal has not heard the case.

3.1.5 Mills **and Reeve Blog Post:** Court confirms adjudicators can determine claims under the Defective Premises Act 1972 | Mills & Reeve

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

4.1 381 Southwark Park Road RTM Company Ltd & Ors v Click St Andrews Ltd & Anor [2024] EWHC 3179 (TCC) (11 December 2024)

4.1.1 First, and to date, only Building Liability Order made.

4.1.2 Note there had been an earlier decision in this case where the court decided that certain structural and fires safety issues gave rise a to a building safety risk as defined by section 130 of the Building Safety Act. It also decided that a claim for a building liability order did not need to form part of existing proceedings and could be pursued later, but if it was possible to make an application for a building liability order as part of existing proceedings it would be sensible to do so.

4.2 Willmott Dixon Construction Ltd v Prater & Ors [2024] EWHC 1190 (TCC) (21 March 2024)

4.2.1 Building liability orders can be sought by a defendant against companies associated with another defendant, and the application for a building liability order will not be stayed until the main claim is resolved. It will be heard at the same time as the main claim.

4.2.2 It is not a pre-condition of a building liability order that it can only be made if the company facing the primary claim has failed to pay.

4.2.3 It might well be just and equitable to impose a building liability order on an associated company, even if the primary company has disposed of assets entirely innocently and there has been no asset stripping

4.3 BDW Trading Ltd v Ardmore Construction Ltd & Ors [2025] EWHC 434 (TCC) (27 February 2025)

4.3.1 There was nothing to require a party to have already established a Relevant Liability against the principal defendant before seeking a building liability order against associates.

4.3.2 However so far as Building Liability Information Orders are concerned (i.e. an order requiring a party to disclose details of who it is associated with) on the current drafting of the Building Safety Act, an Information Order can only be made against the principal defendant, not its associates, despite what the explanatory notes to section 132 of the Building Safety Act say.

5 Remediation Contribution Orders (First-tier Tribunal)

5.1 The leading case is Triathlon Homes LLP v Stratford Village Development Partnership & Anor [2025] EWCA Civ 846 (08 July 2025) which has been heard by the Court of Appeal (see above).

5.2 There have been four other cases where orders have been granted. They are listed below in chronological order and referred to by the names that they are commonly known by.

5.2.1 1-9 Planetree Path (10 June 2025) – published 27 August 2025

(i) The fact that a) the building was alleged to have been built to a high standard and fully compliant with all appropriate regulations in force at the time it was constructed and b) that it was alleged that the developer did not generate any profit from the project did not stop it from being just and equitable to make a remediation contribution order.

(ii) A corporate entity associated with the developer by virtue of having the same director as the developer and which was not incorporated until less than four months before the completion of the building and which had, allegedly an unrelated business (it being a maintenance company) did not stop it from being just and equitable to make a remediation contribution order against such entity.

5.2.2 **Empire Square, 34 Long Lane, London** (5 June 2025)

(i) A suspended remediation contribution order was made against Berkeley Group Holdings plc, Berkeley had already agreed to undertake certain works in accordance with the self-remediation contract they had entered into with the Government, but the requirements are different for a remediation contribution order sought, in this case by the freeholder and others. Note the First-tier Tribunal also held that Berkeley was liable for waking watch costs. Permission to appeal has been refused.

5.2.3 **Vista Tower, Stevenage** (24 January 2025)

(i) A joint and several order was made against a number of respondents (there were 96 respondents and a good number of those had orders made against them.

(ii) It confirmed that remediation contribution order is not fault based.

(iii) The fact that the applicant was ‘substantial and sophisticated’ was of no ‘significant weight’.

(iv) The extent of the respondent’s assets is not a significant reason against making a remediation contribution order.

(v) Permission has been given to appeal to the Upper-tier Tribunal.

5.2.4 **9 Sutton Court Road, Surrey** (13 January 2023)

(i) The application was made by the leaseholders on the basis that they had paid service charge payments for the remedying of defects and they were seeking to have those payments returned on the basis that they had qualifying leases under the Building Safety Act and the works related to cladding costs which under the Act they are not required to pay where the landlord is the original developer (which was the case here).

(ii) Inspired Sutton Limited, the landlord, was ordered to pay £194,680.62 distributed between several leaseholders.

(iii) The proceedings had also been brought against two directors personally, but the tribunal was satisfied that no order could be made against individuals under section 124 (2) of the Building Safety Act.

6 Remediation Orders (First-tier Tribunal)- referred to by how they are commonly known

6.1 2 Hillside, London (16 September 2025 – corrected decision).

6.2 **Empire Square** (5 June 2025) Suspended remediation order and remediation contribution order (see above). Permission to appeal has been refused.

6.3 **Blocks A and B Purbeck House, 3 Oxford Road, Bournemouth** (16 May 2025 -corrected decision). First order in relation to student accommodation.

6.4 **Focus Apartments, Carr Street, Ipswich** (4 July 2024)

6.5 **Flats 5, 15 and 29 Thanet Lodge, 10 Mapesbury Road, London** (18 February 2025)

6.6 **The Central, 163-165 Iverson Road, London** (10 January 2025)

6.7 **5 Praed Street, Paddington, London** (12 December 2024)

6.8 Princes Park Apartments (5 December 2024)

6.9 **8 Artillery Row, London** (18 November 2024)

6.10 **Smoke House & Curing House,** 18 Remus Road, London (3 July 2024)

The decision questioned the definition of a higher-risk building.

The decision was appealed to the Upper-tier Tribunal who criticised the First-tier Tribunal including in relation to questioning the definition of a higher-risk building.

6.11 **The Chocolate Box** (14 May 2024)

6.12 **Vista Towers, Stevenage** (29 April 2024). Application made by the Secretary of State.

6.13 **Various flats at 419 High Road,** Space Apartments (28 February 2024)

6.14 **Flats 1, 4, 13, 20, 25 and 34 Spur House, 1 Milner Road**, London (2 April 2024)

6.15 **Centrillion Point** (4 January 2024). Subsequently refusal to grant an extension to comply with a remediation order.

6.16 **Orchard House, 515-517** Stockwood Road, Bristol (12 December 2023)

6.17 2-4 Leigham Court Road, London (9 August 2023)

7 Other First-tier Tribunal relevant decisions

7.1 Accountable Person

7.1.1 Globe View House (28 July 2025)

7.1.2 Block C, 225-238 Monument Court, Stevenage (13 June 2025)

7.1.3 Navigation Court (5 June 2025)

7.1.4 Ovington Court, 197-205 Brompton Road, London (13 March 2024)

7.1.5 Canary Riverside Estate, Westferry Circus, London (21 December 2023)

7.2 Failure to provide documents

7.2.1 91 St Anne's Quay, 126 Quayside, Newcastle Upon Tyne (29 July 2024)

7.2.2 Flat 16 Grove House, 76 Sidmouth Avenue, Isleworth (17 October 2022)

8 Other Upper-tier Tribunal relevant decisions

8.1 Almacantar Centre Point Nominee NO.1 Ltd & Anor v Penelope de Walk & Ors (16 September 2025)

8.1.1 This decision concerns schedule 8 paragraph 8 of the Building Safety Act which states "no service charge is payable under a qualifying lease in respect of cladding remediation".

8.1.2 Schedule 8 paragraph 8 goes on to set out what amounts to cladding remediation i.e. that it forms the outer wall of an external wall system. It is also required to be unsafe.

8.1.3 Paragraph 8 makes no reference to a 'relevant defect'. It is a requirement of a relevant defect that it has occurred in the 30 years ending on 28 June 2022. Almacantar decided that there is no such time restriction in relation to paragraph 8.

8.1.4 The cladding remediation only has to meet the requirement that it is 'unsafe', which is arguably a much lower test than 'a building safety risk'.

8.1.5 There is no definition of cladding in the Building Safety Act, so it is up to the FTT to determine if there is cladding. It was not open to the UTT to interfere with that decision.

8.1.6 Because there is no reference to a relevant defect in paragraph 8, there can be no remediation order or remediation contribution order made in respect of cladding remediation, as a relevant defect is a requirement for both of those orders.

8.1.7 It is worth remembering that paragraph 8 applies only where there is a relevant building and then only in relation to qualifying leaseholders.

9 Defective Premises Act 1972

9.1 Mallas v Persimmon Homes Limited and Others [2025] EWHC 2581

9.2 Vainker & Anor v Marbank Construction Ltd

9.2.1 **Mills and Reeve Blog Post:** Strict liability under the Defective Premises Act 1972? Vainker v Marbank | Mills & Reeve

10 Other court decisions

10.1 It was reported (on 15 October 2025) by Deka Chambers that the Building Safety Regulator has obtained an injunction prohibiting a developer or anyone associated with it from seeking to sell or let a development for occupation before obtaining a building completion certificate (gateway 3).

10.2 The case is the Health and Safety Executive v Integritas Property Group (IPG) Ltd. The judgment can now be found here

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