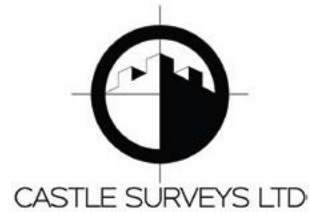


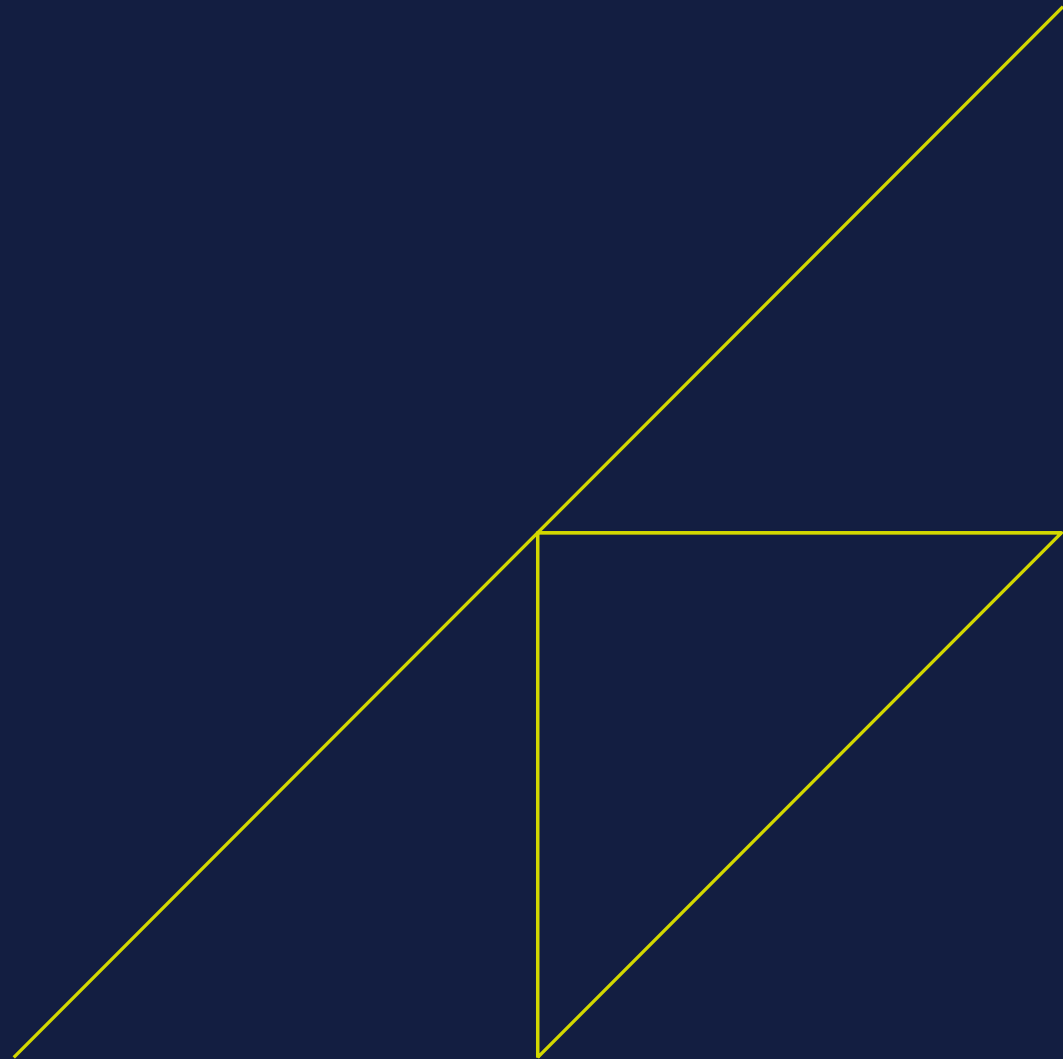
Building Safety Act – Update and Case Studies

25 March 2025



Building Safety Act

25 March
2025



An Overview

What is the Building Safety Act (BSA)?

- The BSA has introduced a raft of measures to address perceived failures in dealing with fire safety prompted by the Grenfell tragedy. It introduced significant changes to the Building Regulations. It also introduced new and expanded ways that claims can be made:
- New cause of action against manufacturers and suppliers for defective construction and cladding products: s.147-151 BSA 2022 (this could well be expanded to other buildings products, the legislation is there but just needs to be activated)
- Expansion of Defective Premises Act 1972 to include right to recover for defective refurbishment or rectification work: s.134 BSA inserting s.2A Defective Premises Act 1972
- Power has been given to amend the regulations to allow the bringing into force s.38 of Building Act 1984 to create a cause of action for damage suffered as a result of a breach of the building regulations but this has not been actioned as yet but is on the “horizon”.

What is the Building Safety Act (BSA)?

- Since **1 October 2023**, the **dutyholder** and **competence** regime has applied to all new "building work" (as defined in the Building Regulations) in England. This means any project that requires building regulations approval, with only limited exceptions for "exempt" work (as detailed at Regulation 9 and Schedule 2 of the Building Regulations) and minor works.
- Whilst certain projects have been exempted from the requirements if they fall within the transitional provisions, these also come to an end on 6 April 2024. The new regime:
 - 1. creates roles for **specified dutyholders** during construction projects;
 - 2. sets out the **duties** that they must comply with;
 - 3. sets out the **competence requirements** for individuals and organisations who may hold those roles; and
 - 4. identifies **an additional 'layer' of duties and roles** that the dutyholders will have on any project involving **HRB work**.

What is the Building Safety Act (BSA)?

- 6 April 2024 will be a pivotal date in the overhaul of the building control regime.
- Clients procuring new 'building work' which does not fall within the transitional arrangements outlined below will need to review their project arrangements and procurement processes to ensure that they are suitable to enable compliance under the new **dutyholder regime**.
- Following **6 April 2024**, the operation of the **new HRB building control regime**, and in particular **Gateway 2 – a 'hard stop' where construction cannot begin until BSR is satisfied that the design meets the functional requirements of the building regulations** – will begin in earnest. A multi-disciplinary team including a **registered building inspector** and other **specialist disciplines** will be stood up to **review each application**.

Changes to the Building Regulations

- Amended Building Regulations 2010 and added new dutyholder and competence requirements under section 2A of the Building Regulations. The new regime in Part 2A:
- creates roles for **specified dutyholders** during construction projects;
- sets out the **duties** that they **must comply** with;
- sets out the **competence requirements for individuals and organisations** who may hold those roles; and
- identifies an **additional 'layer' of duties and roles that the dutyholders** will have on any project involving higher-risk building work (at least 18m in height or have at least seven storeys and contain at least two residential units, including care homes and hospitals during design and construction - the requirement for Wales in one residential unit).

New Dutyholders

- Under the The Building Regulations etc. (Amendment) (England) Regulations 2023 (BRAE) the new dutyholders are as follows:
- **Client** – any person for whom a project is carried out. There is an **exception for 'domestic clients'** (any client for whom a project is being carried out which is not in the course or furtherance of that client's business). In such cases, the **relevant duties are instead imposed upon the principal contractor** (or sole contractor if there is only one contractor) **or the principal designer**. There may be more than one possible client in relation to any given project. If this is the case, the parties may agree in writing which of them will be treated as the 'sole' client for these purposes.
- **Designers** – **any person** (including a client, contractor or other person referred to in Part 2A) who, in the course of business (a) carries out any **design work** or (b) arranges for **or instructs** any person under their control to do any **design work**.
- **Contractors** – **any person** (including a client, but not a domestic client) who, in the course of a business, **carries out, manages** or controls any **building work**.
- **Principal Designer** – a designer with control over the design works who is appointed to the role.
- **Principal Contractor** – a contractor with control over the building work, who is appointed to the role.

New Dutyholders

- **Client:** establishes an environment for Building Regulations compliance.
- make, maintain and review suitable arrangements for planning, managing and monitoring a project to ensure compliance with all relevant requirements;
- provide building information as soon as practicable to every designer and contractor on the project;
- cooperate with any other person working on (or in relation to) the project to enable others to fulfil their duties or functions under the Building Regulations.
- **Principal Designer:** focuses on planning, management and co-ordination of designs and building work to ensure that works carried out in accordance with designs will comply with relevant requirements.
- **Principal contractor:** focuses on planning, management and co-ordination of building work to ensure compliance with relevant requirements.
- **Other designers / contractors:** also have a range of duties focussed on ensuring that building work that is completed to their design, or by them, will comply with relevant requirements

New Duties

- **Planning, managing and monitoring:** to ensure (or in the case of design work, to take all reasonable steps to ensure) that work is in compliance with the relevant requirements.
- **Co-operation:** a duty of co-operation amongst all dutyholders to ensure that building work complies with the relevant requirements.
- **Considerations before making appointments:** Before any person appoints another to carry out building work or design work (or to the role of principal designer or principal contractor), they must take "all reasonable steps" to satisfy themselves that the person being appointed fulfils the competency requirements.
- **'Competence'** is broadly defined as a person:
 - for **individuals**, having the **skills, knowledge and behaviours** necessary;
 - where they are **not an individual**, having the **organisational capability** to carry out their particular role.
- Where a **principal designer** or **principal contractor** is not an individual, it **must designate an individual who manages its functions**. Before appointing the designated individual, the principal designer/principal contractor must **take all reasonable steps to satisfy itself that the individual has the skills, knowledge, experience** and behaviours necessary to manage the function of a principal designer / contractor (as applicable) in such a way as to ensure that they will fulfil their duties.

New Duties (HRBs)

- **The Client** (or person appointing the principal designer or principal contractor) must **ask** whether a '**serious sanction**' has occurred in relation to that person within **five years prior to the date of the appointment** and consider any information available relating to that person's misconduct. This includes keeping a record in writing of steps that it took to **satisfy itself of competence** and consider the additional information required in relation to 'serious sanctions'.
- The Building (Higher Risk Buildings Procedures) (England) Regulations 2023 also require the Client to provide:
- a 'competence declaration' to the BSR as part of its building control approval application, confirming it has complied with the duties to consider past misconduct and taken reasonable steps to satisfy itself as to the competence of appointees.
- a 'construction control plan' as part of the building control approval application and the application for a completion (or partial completion) certificate.
- a 'compliance declaration' by the principal contractor and principal designer as part of the application for a completion (or partial completion) certificate, confirming that they have fulfilled their duties under Part 2A of the Building Regulations.
- Under the HRB Procedures Regulations, the Client is ultimately responsible for satisfying most of the requirements of the new higher-risk building regime.

New Duties (HRBs)

- The Building (Higher Risk Buildings Procedures) (England) Regulations 2023 also requires the Principal Designer and Contractor to adopt additional roles:
- ensuring designs for the building work produced before a building control approval application is submitted are provided to the client so that the client can include them in the 'golden thread'.
- establishing (and then following and maintaining) a mandatory occurrence reporting system for safety occurrences.
- on completion of the building works, they should provide a statement to the local authority (or, for higher-risk buildings, a 'compliance declaration' to the BSR as part of the application for a completion (or partial completion) certificate confirming that they have fulfilled their duties.

Higher Risk Buildings (HRBs)

- Gateway 1 of the BSA is the planning application stage. Gateway 2 requires the developer of the project to obtain “building control approval” from the Building Safety Regulator (BSR) prior to commencing development work.
- There are two types of changes that must be provided by project developers to the BSR:
 - “Major changes”: changes to the proposed use of the building, the layout, and dimensions of the overall HRB. The BSR may require up to six weeks to provide approval.
 - “Notifiable changes”: changes to the fire and emergency file/fire compliance information. The BSR must be notified of either type of change and then has 10 working days to respond.
- Getting approval for changes, including omissions, could result in significant time delays. Developers should therefore aim to progress the design as far as is reasonable, prior to submitting the designs for building control approval. This should be done in the hope of eliminating or, at very least, minimising any major changes that need to be made later during the construction phase.

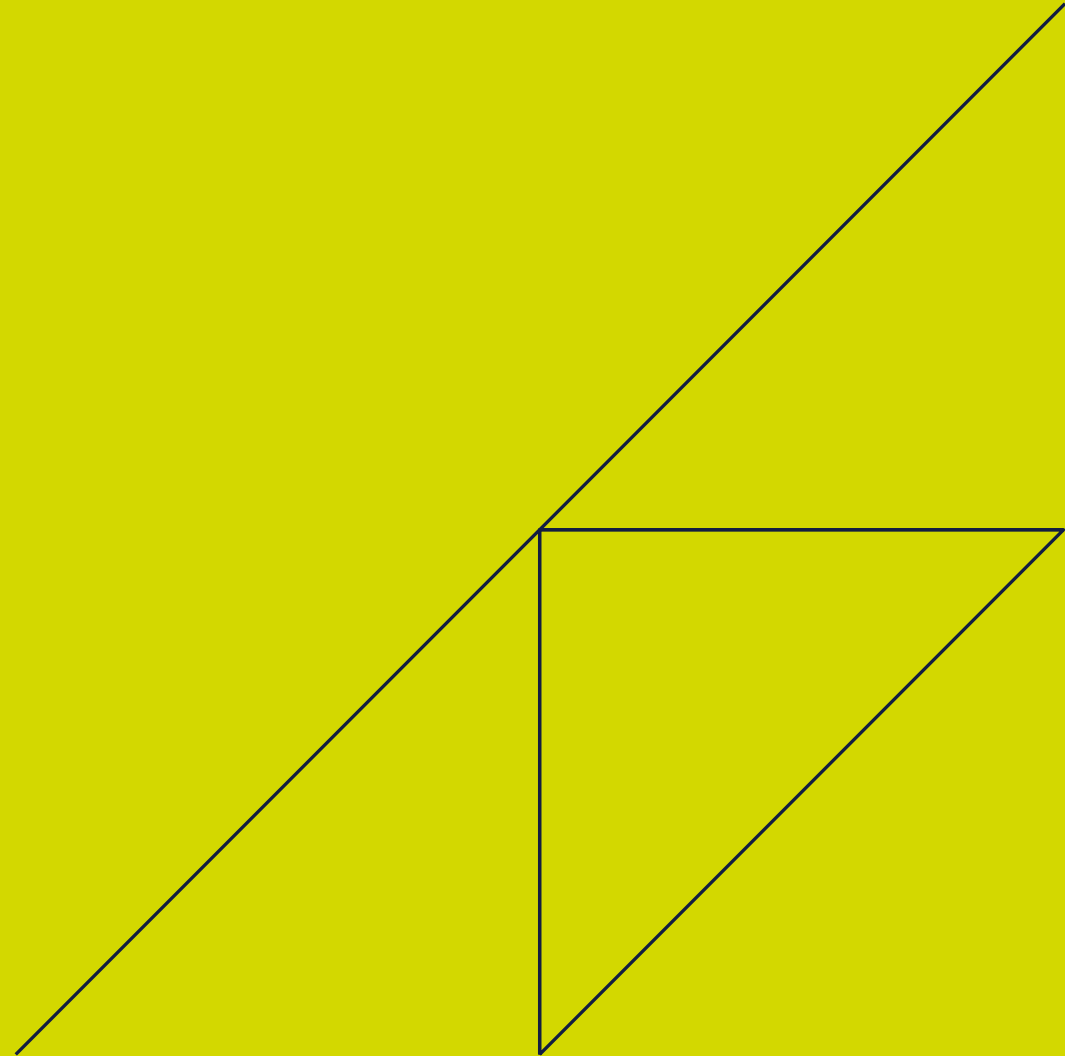
Higher Risk Buildings (HRBs)

- Gateway three – Application for a completion certificate is made. The client must demonstrate that the building has been built to the approved plans. The building cannot be occupied until this is received.
- Ongoing management – focus on ongoing maintenance and management of HRB using Golden Thread Information.
- According to the FOI results, from 1 October 2023 to 16 September 2024, the BSR received **1,018 applications** by developers to its Gateway 2 screening service, where fire safety plans are examined and approved.
- Of these, just **146 applications have been signed off** as compliant, allowing construction to start on site. This equates to 14% of applications approved over nearly a year.
- A total of 25 applications have been rejected, meaning **847 applications have not yet received a decision either way**

Does the BSA apply–Transitional Arrangements

- In relation to Higher Risk Buildings Building (HRBs) they are covered by **transitional arrangements** if:
 1. an initial notice was given and accepted, or full plans deposited with the local authority before 1 October 2023;
 2. works are "sufficiently progressed" by 6 April 2024 (what this means differs depending on whether the works are new build or works to an existing building/change of use);
 3. before 6 April 2024 a notice has been given to the local authority (and the local authority has received the notice) confirming that the works are sufficiently progressed; and
 4. where the initial notice was given by an approved inspector, that approved inspector has become a "registered building control approver" before 6 April 2024 (The BSA has also implemented an overhaul of the building control profession. In particular, it transfers the functions of "approved inspectors" to "registered building control approvers" – with the relevant provisions due to come into force on 6 April 2024.)

Practical Legal Issues?

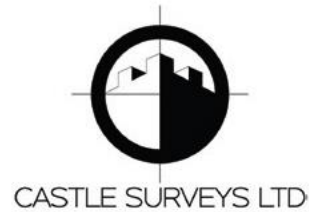


Legal Issues in practice

- The replication of dutyholder tags such as Client, Principal Designer and Principal Contractor is unhelpful and will cause confusion.
- The CDM regime has traditionally relied on smaller specialist Health & Safety advisers who are unlikely to have the competence for BSA/BRAE.
- The consultants and contractors assigned as Principal Designer or Contractor will not have adequate knowledge of the BSA/BRAE requirements.
- The Client will not be aware of its enlarged responsibility for building regulations compliance particularly in relation to HRBs.
- The stakeholders in construction projects will be relying on out-dated / previously agreed terms that do not deal adequately or at all with BSA / BRAE compliance.
- There will be a significant need to adopt additional services to allow the Principal Designer / Designers to be compliant.
- HRBs will need to allow for, document and monitor the Golden Thread generation process and deal with increased BSR queries and this needs to be reflected contractually across the project.
- Obtaining a Gateway 3 Completion Certificate will be far more complex and take far longer to attain than the previous Building Regulations Final Certificate. This is a major problem for defining “Completion” under a construction and dealing with delay.

Building Safety Act – Update and Case Studies

25 March 2025



THE PRINCIPAL
DESIGNERS
PERSPECTIVE...

HAYWARD
architects





Restrictions imposed by the BSA.



- **Clearer accountability for safety throughout a building's lifecycle**
 - **Competency Requirements**
- **The Golden Thread of Information**
 - **Gateway Approvals**



**Operational Differences
We Are Now Seeing in reality.**



- **Stronger Regulatory Oversight**
- **Extended Project Timelines**
 - **Increased Collaboration**
- **More Rigorous Documentation**



Solutions or Concerns...



Solutions

- Early Engagement is Key
- Investing in Competency
- Digital Tools for the Golden Thread

Concerns

- Administrative Burden
- Regulatory Backlogs
- Consistency in Enforcement



**Summing Up the
thoughts of the PD...**



THANK YOU



Lee Ward

Director and Senior Chartered
Architectural Technologist.

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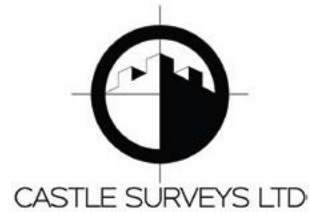
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Building Safety Act – Update and Case Studies

25 March 2025





ProCon Leicestershire Building Safety Act Event - 25 March 2025

Principal Designer

Brief Reminder

B Regs 2010 amended **(all projects)**

The Principal Designer should...

- Be a designer with control over the design work.
- Be Competent.
- Not start work until satisfied the client is aware of their duties.

Sign a declaration **‘The design if built would comply with the building regulations’.**

Unknowns last time

- What is the real world pick up of the new PD role?
- How do we assess Designer's competence?
- How will Building Control engage with design teams?
- Finding the route to compliance on buildings that don't fit guidance?

Principal Contractor

Brief Reminder

B Regs 2010 amended **(all projects)**

The Principal Contractor should ...

- Be the contractor with control over the building work.
- Ensure the building work complies the Building Regulations.
- Be Competent.
- Must not start work until satisfied the client is aware of their duties.

Sign a declaration **‘They have ensured the building work is compliant and has been carried out in accordance with the design’**

Unknowns last time

- What competency framework do we use for our people and managers?
- How do we assess competency of our supply chain for controlled work?
- Do we have different training needs now?
- What do progressive checks are needed now and how should they be documented?
- What does that timeline to Practical Completion actually look like in reality?

Our Contractors

Brief Reminder

B Regs 2010 amended **(all projects)**

The Contractor must...

- Not start work until satisfied the client...
- Ensure the building work they carry out is in compliance.
- Provide each worker with appropriate supervision, instructions and information so as to ensure compliance.
- Report any compliance concerns to the Principal Contractor.
- Evidence the works comply with regs, records.

Unknowns last time

- How do they manage their teams to ensure the work they do is in compliance with the Building Regs?
 - How do they know the standards needed?
 - How should they take instruction?
 - What is appropriate supervision, instructions and information so as to ensure compliance.
- How is their process for engaging individual workers effected?

How we hand over

Collecting the declarations before applying for completion certification.

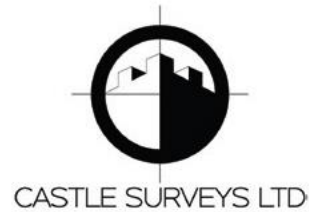
- Client 'The work complies with all applicable requirements of the building regulations'.
- PD 'The design if built would comply with the building regulations'.
- PC 'The building work is compliant and has been carried out in accordance with the design'

How will Building Control Completions actually work now?

- What level of evidence do they want to see?
- What timeline do they actually work to.. Minimum 8 weeks !
- How do I get handover now and how do clients intend to occupy buildings?

Building Safety Act – Update and Case Studies

25 March 2025



Procon seminar March 25

Andrew Wignall, Salus

The Building Regulations

- Regulations date back to 1666 – Great Fire of London
- The Building Regulations are minimum standards for which buildings and construction must meet
- The purpose is primarily to ensure the health and safety of persons in and about buildings
- Changes usually occur following a disaster or re- thinking
- Each Building Regulation requirement is phrased in a manner towards fulfilling a general performance standard
- Technical information is available in Approved Documents
British Standards, Eurocodes, DfE Guidance and Building Bulletins, CIBSE Guides, HTM's and Engineered solutions





Complying with the
guidance may not mean you
have met the regulations!



A photograph of a modern, multi-story office building with a glass facade and balconies. The building is situated in an open area with some construction equipment visible in the foreground. The sky is blue with scattered white clouds.

What is the Role of Building Control Approvers?

Watermead Business Park, Leicester

The Role Of the Register Building Inspector

- Building Regulation Approval is now a restricted practice and only Registered Building Inspectors with correct level of experience can operate on your schemes.

	Category	Floor height restrictions	Purpose Group	Plans Assessment (1)	Inspection (2)
CLASS 2	A	Floor height* less than 7.5m	Dwelling houses (single occupancy)	A1	A2
	B	Floor height* less than 11m	All Dwellings (including flats)	B1	B2
	C	Floor height* 11m or higher, but less than 18m		C1	C2
CLASS 2	D	Floor height* less than 7.5m	All building types other than dwellings	D1	D2
	E	Floor height* 7.5m or higher, but less than 11m		E1	E2
	F	Floor height* 11m or higher, but less than 18m		F1	F2
CLASS 3	G	Any height of building - no upper height limits	All Buildings Other than HRB	G1	G2
	H	No upper height limits	HRB	H1	H2
CLASS 4 Technical Manager	By ticking the box to the right you are indicating that you are competent to act as a technical manager for the scope of work you have identified in Class 2 or 3 above.			TM	

The Role Of the Register Building Inspector

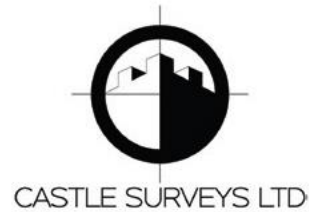
- The role of the RBI is to review, challenge and approve the design and construction for compliance with Building Regulations.
- Ensure the regulations (administrative and functional) are met.
- To consult the fire & water authority as necessary
- **Early engagement with your Building Control is vital, we are still here review the schemes in their development**

The Role Of the Register Building Inspector is NOT to

- Second guess what the designer or contractor are trying to achieve.
- Offer design advice or solutions for compliance.
- Advise how to comply.

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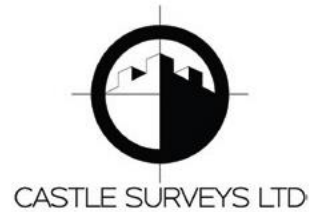


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Q & A

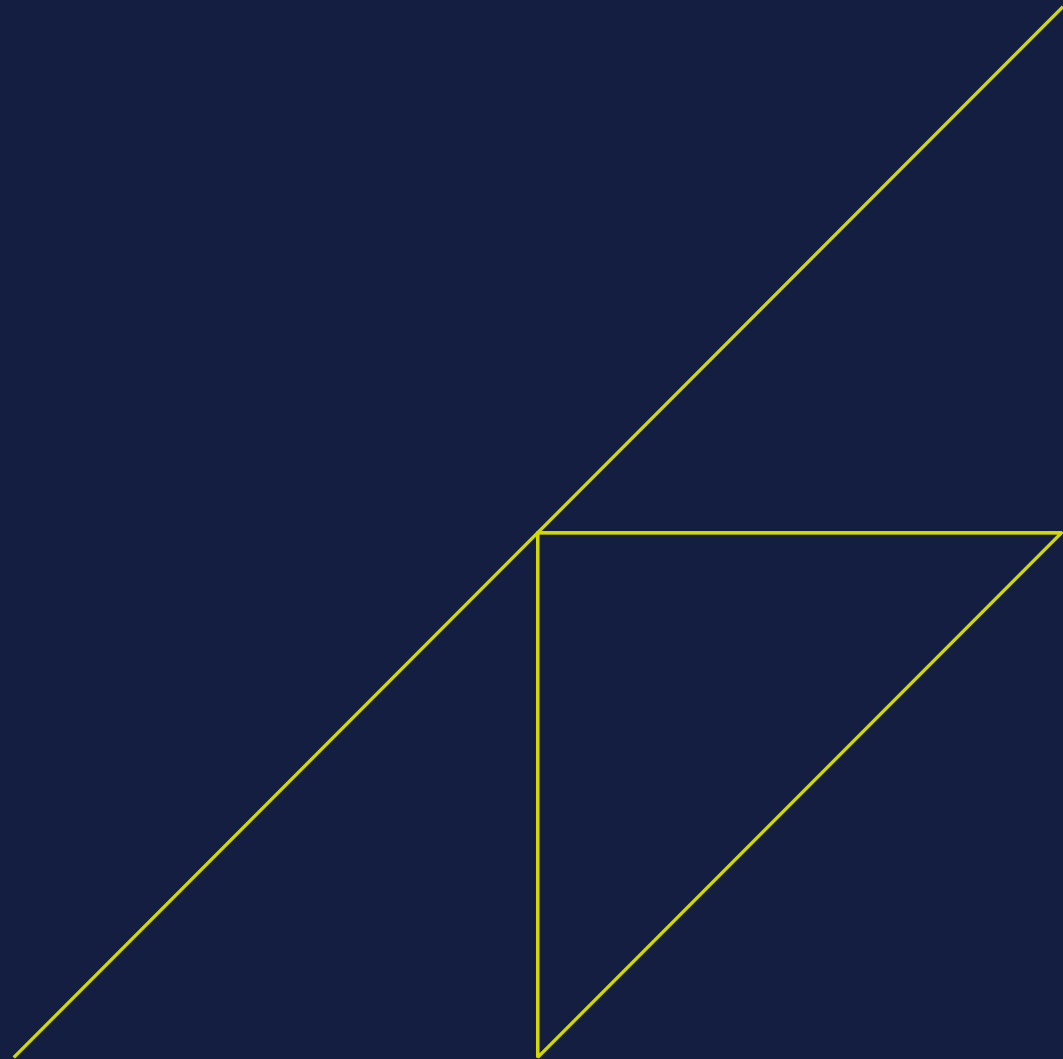
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Building Safety Act

25 March
2025



Claims and Court Decisions

BSA – New Liabilities

1. The BSA has also introduced new ways to make claims.
2. Remediation and Remediation Contribution Orders: s.123-124 BSA applying to self-contained buildings or parts of buildings which are at least 11 metres or 5 storeys tall and contain two or more dwellings
3. Remediation Orders and Remediation Contribution Orders relate to building defects which cause a risk to the safety of people in and around a building arising from the spread of fire or the collapse of the building (referred to as 'relevant defects' in the BSA) including defective cladding or inadequate fire stopping measures. These orders can mandate remediation of buildings by landlords or require contribution to the costs of doing so by landlords, developers and companies associated with them (but not by professional designers or contractors).
4. Remediation Contribution Orders can be issued against:
 - a landlord under the lease of a relevant building,
 - a person who was such landlord on 14 February 2022,
 - the developer of the building, or
 - a person 'associated' with any of the above

BSA – New Liabilities

The BSA has also introduced new ways to make claims .

1. Building Liability Orders: s.130-132 BSA allows the High Court to make a Building Liability Order applying to 'relevant liability' against companies or associated companies.
2. Under the Defective Premises Act 1972 (DPA 1972);
3. Under section 38 of the Building Act 1984 when it is brought into force; or
4. As a result of a "building safety risk".
5. The BSA inserts a new section 2A into the DPA 1972 which expands this to cover claims arising out of "any work undertaken on an existing dwelling, provided that work is done in the course of a business". The duty is owed both to the person for whom the work is done, and "each person who holds or acquires an interest (whether legal or equitable) in a dwelling in the building".
6. it has been relatively common practice in property development for developers to set up 'shell' companies, to carry out particular projects. Once completed, these companies are then wound up. The rationale behind the introduction of Building Liability Orders is to address this issue and prevent developers from escaping liability for safety defects by hiding behind complicated legal structures.

BSA – Increased Limitation Periods

The BSA has also massively increased the limitation periods .

Relevant date for applicable limitation period: 28 June 2022

- Claims under s.1 DPA: prospective to 15 years, retrospective to 30 years
- Claim under s.2A DPA: prospective to 15 years
- Claim under s.38 BA 1984: prospective to 15 years when brought into force
- Claim under s.123-124 BSA: prospective to 15 years, retrospective to 30 years
- Claim under s.148 BSA (defective cladding products): prospective to 15 years
- Claim under s.149 BSA (defective / misleading cladding products): prospective to 15 years, retrospective to 30 years

381 Southwark Park Road RTM Company Ltd & Ors v Click St Andrews Ltd & Anor [2024]

The finding of a "building safety risk", importantly, means that there is a "relevant liability" which will allow the claimants to seek a Building Liability Order (BLO) against the parent company of the rooftop developer's corporate group. The BLO application is to be heard at a subsequent hearing.

This is of historic significance, BLOs will allow the High Court to 'pierce' the corporate veil and hold developers and associated companies to account for building safety defects, in circumstances where the entity responsible for the project (typically a special purpose vehicle (SPV)) has been wound up or is insolvent.

The judge also observed that the BSA "says little about the procedure to be adopted by a party wishing to seek a BLO". She therefore provided some very welcome clarification on procedure, confirming in particular that the BSA "certainly does not require a party to make [its BLO] claim within existing proceedings".

Triathlon Homes LLP v Stratford Village Development Partnership [2024]

Some of the units at the former athlete's village are owned through subsidiaries by the second respondent, Get Living, and some are owned by Triathlon. The repair and maintenance of the structure and common parts of the East Village is the responsibility of the third respondent, East Village Management Ltd (“EVML”), a company owned jointly by Get Living and Triathlon.

Serious fire defects were discovered in November 2020; the current remediation plans are due to be completed in August 2025. The total cost of the work exceeds £24.5 million.

The decision is the first to consider a substantively contested remediation contribution order (“RCO”) under section 124 of the Building Safety Act 2022 (“BSA”).

Triathlon sought a contribution of some £18 million towards the remediation costs from SVDP the developer and its parent company (the “Respondents”). These costs represented Triathlon’s share of the total and included historic costs that had been paid.

In relation to the historic costs, the Respondents argued that a remediation contribution order could not be made in respect of costs incurred before the commencement of the BSA on 28 June 2022. This would reduce the sum claimed by some £1.1 million. The Respondents further argued that the fact costs were incurred before the date of commencement of the BSA was either a sufficient reason, or a contributory reason, as to why it would not be just and equitable for a remediation contribution order to be made against them in relation to those costs.

Triathlon was found to be entitled to a RCO on grounds considered as follows:

Triathlon Homes LLP v Stratford Village Development Partnership [2024]

The Tribunal could only make an RCO if it considered it “just and equitable” to do so. This was a discretion for the Tribunal. On the facts here, relevant issues included:

Interested persons, such as Triathlon, were entitled under the BSA to seek an RCO. Their motivation was, therefore, not relevant.

The ability to make a claim for a remediation contribution order under section 124 was a new and independent remedy, which was essentially non-fault based. It had been created by Parliament as an alternative to other fault-based claims which a party may be entitled to make in relation to relevant defects.

It was relevant that SVDP was the developer. The policy of the 2022 Act was that primary responsibility for the cost of remediation should fall on the original developer, and that others who have a liability to contribute may pass on the costs they incur to the developer.

SVDP was financially dependent on the second defendant, its parent company. It seemed to the Tribunal that the situation of SVDP, with its relatively precarious financial position and its dependence for financial support upon Get Living, its wealthy parent, constituted precisely the sort of circumstances at which the association provisions of the BSA were.

The fact that the works were to be fully funded under the BSA was not relevant. Public funding was “a matter of last resort, and should not be seen as a primary source of funding where other parties, within the scope of section 124, are available as sources of funding”.

Mistry v Wallace Estates Limited: LON/00AH/HYI/2022/0012 re Centrillion Point, 2 Masons Avenue, Croydon, CRO 9WX

The case concerned Centrillion Point, in Croydon, a building comprising 12 storeys and 189 flats. The building had been an office and was converted for residential use in 2008. The principal defect concerning the application for a RO was missing fire compartmentation but also flat entrance doors, internal doors, protected entrance hall, smoke shaft and structural fire protection. Unlike in Waite, in which the applicant tenants relied on a fire safety expert called on behalf of the respondent landlord and did not call an expert of their own, the tenants here relied on the expert evidence of a fire engineer. The respondent relied on the expert evidence of a surveyor, Dr Woods, and on compliance reports.

The Tribunal regarded the RO made in Waite v Kadai, which allowed for variation, as establishing a useful rule of thumb. The Tribunal also concluded that the remediation work was to be completed by 31 May 2025, 18 months from the date of the hearing. That was a date extrapolated from the landlord's evidence, although the landlord had argued for 24 months. The tenants had argued for 12 months. Again, this is a significant point for practitioners.

The appropriate wording of a RO.

Paragraph 21 (emphasis added): '[21] In summary, therefore, we agree with the submission that a remediation order should be sufficiently precise so that the Respondent can know what it must do to remedy the relevant defects and for enforcement purposes before the county court. The 2022 Act is not, however, prescriptive as to what works are necessary to remedy the relevant defect or defects, and the extent of precision will vary from case to case. In this regard, the decision in Blue Manchester Ltd v North West Ground Rents Ltd [2019] EWHC 142 (TCC), although not a case under the 2022 Act, provides a useful illustration. In that case, a general order was made requiring works to be carried out but providing protection for the landlord against any unwarranted application for contempt for non-compliance, by allowing the landlord to make an application for variation of the order.'

Grey GR Limited Partnership v Edgewater (Stevenage) Ltd [2025]

Grey GR Partnership Limited (the “Landlord”) is the landlord of Vista Tower (high-rise residential accommodation that is a relevant building for the purposes of the BSA) which it purchased from Edgewater (Stevenage) Limited (the “Developer”) in 2018.

The Landlord argued that it was entitled to an RCO in relation to (1) the costs already incurred investigating the defects and the remediation of the internal defects; (2) costs in relation to the external wall remediation works; and (3) future unquantified costs in relation to the admitted relevant defects to the compartmentation walls between the flats. The RCO was claimed from the Developer and, by the time of the hearing, from 90 associated companies

The FTT made RCOs against the Developer and 75 of the Associates (in a 133-page decision), holding that the Developer and its Associates were to be regarded as “higher in the hierarchy of liability than...the [Landlord] (let alone the taxpayer or leaseholders”).

Associated companies a. the use the “Edgewater” brand; b. the familial links between the Associates and the extent to which the common directors had day-to-day control (whether or not they delegated to others) over how the Associates were run; and c. the nature of the Associate’s business (i.e. whether it “involved the property, property development and/or building sectors”) – as illustrated by the fact that no RCO was made against a registered charity and a wholesaler of clothing and footwear).

Relevant Defect FTT's determination on s.120(2) “any risk above “low” risk (understood as the ordinary unavoidable fire risks in residential buildings and/or in relation to PAS 9980 as an assessment that fire spread would be within normal expectations) may be a building safety risk. Section 120(5) describes a risk to the safety of people arising from the spread of fire or collapse, not a risk reaching an intolerable or any other particular threshold. We do not think “collapse” indicates the risk must be of catastrophic fire spread, as was suggested. It need only be a risk to the safety of people arising from the spread of fire in a tall residential building”.

Blomfield v Monier Road Limited [2024]

The FTT concluded that a rooftop garden was a ‘storey’ and that the building was therefore a higher risk building under Pt 4, BSA 2022. Block of flats in East London that consisted of commercial premises on the ground floor, five storeys of residential flats above, and a roof terrace containing a roof garden as well as plant and machinery.

In an RO, the FTT does not have power to specify the materials or contractors to be used. A rooftop containing a garden and plant/machinery should be counted as a storey despite not being enclosed. The tribunal found the respondent's proposed limited remediation of just the internal courtyard cladding was insufficient to address the building safety risk from other combustible elements like balconies, walkways, and the roof terrace. The tribunal was concerned that the proposed remediation did not fully account for the building being a higher-risk building under the Building Safety Act based on its height and number of storeys.

The expert evidence relied too heavily on demonstrating Building Regulations compliance rather than a full fire risk assessment as required under the Building Safety Act. The applicant leaseholders had applied for a remediation order against the respondent freeholder under section 123 of the BSA. The parties disagreed on aspects of the proposed works. The issue was raised of the FTT’s own motion as to whether or not the building was a ‘higher risk building’. The Respondent and its experts had proceeded on the basis that it wasn’t, relying on government guidance that a roof is not to be treated as a storey for the purposes of counting storeys or measuring the height of the building. However, the Tribunal disagreed.

whilst the guidance provides that “[o]pen rooftops such as rooftop gardens are not considered storeys”, the tribunal essentially interprets reg.6 of the Regulations (which makes no such reference to roof gardens) as providing an exhaustive list of items which will not constitute a storey. The Tribunal states that if a storey consisting “exclusively [emphasis added] of roof-top machinery or roof-top plant rooms” does not constitute a storey (per the Regulations), it follows by implication that “a useable roof top containing a roof garden together with plant/machinery would count as a storey” (para. 62). It goes on to doubt the status of the guidance, for a variety of reasons including its nature as a “continuously changing resource”, concluding that it does “not constitute a reliable interpretation of law” (paras 72-74)

Thank you

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