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Building Safety Remedies: Getting to the money

13 March 2025

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Introduction – it's all about the money

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- Remediation contribution orders (BSA, s.124)
- Building liability orders (BSA, s.130)
- Piercing the corporate veil to overcome the risks of:
  - penniless shell companies
  - cash being moved around corporate structures
- But only if it is "just and equitable"

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Remediation Contribution Orders

Remediation Contribution Orders

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124 Remediation contribution orders

(1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so.

(2) "Remediation contribution order", in relation to a relevant building, means an order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building.

(3) A body corporate or partnership may be specified only if it is -

(a) a landlord under a lease of the relevant building or any part of it,

(b) a person who was such a landlord at the qualifying time,

(c) a developer in relation to the relevant building, or

(d) a person associated with a person within any of paragraphs (a) to (c).

s.120:

(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and

(b) causes a building safety risk

s.124(5):

Secretary of State, the regulator, local authority, fire and rescue authority, legal or equitable interest in the Property

s.119(2)(d):

14 February 2022

s.121:

Trusts and beneficiaries, partners and partnerships, directors and companies, companies and controlling interests

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First Tier Tribunal (4 years ago)

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"It is far from informal, much more formal and unjust than courts. Judges don't have respect or take litigants in person seriously. They are extremely unfair and unreasonable and rude..."

"...they are unresponsive, no legal assistance and will not reply to emails or any form of communication. The building since major works were completed made the building and accommodation worse. It is dangerous and non-compliant with many regulations..."

First Tier Tribunal (this year)

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"*Judge [X] horrendous to avoid at all costs...unable to fulfil job role...needs to be struck off...Mrs [X] rude unpleasant horror of a human being extremely sly and treacherous devious horrific experience...one asks where do you find these people?*"

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Triathlon Homes [2024] UKFTT 26 (PC)

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- SVDP was Developer (and subsidiaries still hold freehold on trust for it)
- Get Living Plc (now) owns SVDP and owns the private housing
- Triathlon holds long leases of affordable housing
- EVML owned jointly by Get Living and Triathlon, responsible for repair

Statutory Interpretation?

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Triathlon argued for a presumption:

- Leaseholder protections in LPI Regs
- Ministerial Statements
- Explanatory Notes

"This is intended to ensure fairness in proceedings while giving the Tribunal a wide decision making remit which it is expected will allow it to take all appropriate factors into account when determining whether an order should be made, including the wider public interest in securing the safety of buildings, as well as the rights and interests of the individual against whom the order might be made". (para 1019)

Remediation Orders?

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- No ‘just and equitable’ wording
- But in *DLUHC v Grey* (FTT 29.4.24) decided FTT had power *and* discretion
- But RCOs focus on “polluter”
- No mention in Triathlon

Other discretions?

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- Costs protection under s.20C Landlord and Tenant Act 1985
- Para 5A(2) of Schedule 11 Commonhold and Leasehold Reform Act 2022
- Section 20ZA(1) CaLRA 'reasonable'; Deajan v Benson [2013] UKSC 14:
  - *"...would be inappropriate to interpret it as imposing any fetter on the LVT's exercise of the jurisdiction beyond that which can be gathered from the 1985 Act itself and other relevant admissible material. Further, the circumstances in which a section 20ZA(1) application is made could be almost infinitely various, so any principles that can derived should not be regarded as representing rigid rules"*

“Context” only

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- Role of ‘Parties’ in the development
- Triathlon’s motives
- Relevance of other remedies
- Others could have made applications
- This SVDP is not that SVDP
- Investment value to Get Living
- Relevance of individual leaseholder evidence

“More Important” Stuff

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- SVDP was the developer (and relevance of LPI remedy)
- Relevance of work being done and funded regardless
- The “public purse point”
- Cascade of liability:
  - *“...it is difficult to see how it could ever be just and equitable for a party falling within the terms of section 124(3) and well able to fund the relevant remediation works to be able to claim that the works should instead be funded by the public purse”.*

Get Living

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"The obvious purpose behind the association provisions is to ensure that where a development has been carried out by a thinly capitalized or insolvent development company, a wealthy parent company or other wealthy entity which is caught by the association provisions cannot evade responsibility for meeting the cost of remedying the relevant defects by hiding behind the separate personality of the development company. It seems to us that the situation of SVDP, with its relatively precarious financial position and its dependence for financial support upon Get Living, its wealthy parent, constitutes precisely the sort of circumstances at which these association provisions are targeted".

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What else has the FTT said about RCOs?

Grey GR v Edgewater

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- Now known as Vista Tower was built in the early 1960s for Stevenage Development Corporation and was used as offices
- Converted into flats in 2014 - 49.5 metres high with 16 storeys
- In June 2018, the Applicant purchased the freehold from R1 for £587,650 as part of portfolio of ground rent investments
- In September 2020 it was concluded that there were combustible materials in the external walls and cavity barriers/fire stopping issues

What does it add to *Triathlon*?

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Relevant Defect

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- Confirms a Relevant Defect is NOT confined to a breach of Building Regulations
- See above *"anything done or not done, used or not used"*
- Any Relevant Defect that passes (what seemed to be) the three-stage test:
  - Is there a defect?
  - Does it cause a fire safety issue (Building Regs breach an indication only)?
  - Is/was the remedial work reasonable/reasonably required?
- In concert with the introduction of PAS9980

Scope of remedial works

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- Reasonable to remediate any risks that are above *"low"*
- Risks do not need to be intolerable before they are remediated
- Costs falling within a reasonable range – *"the range is relatively wide"*
- Where the remedial works have been carried out already – a *Siemens v Supersheild* type analysis?
- Testing PAS9980 report against BSF grant of funding process right sort of thing …

Just and Equitable

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- No automatic presumption that *"any associate must be made liable unless they can show good reasons why they should not have to pay, particularly where they are associated only by common directorship … Ultimately, these cases will be very fact-sensitive and this is a matter for our discretion"* [357]
- Linkage is non-fault [358] and that includes the proper approach for *"looking for the money"* i.e. there is no call for something *"akin to a tracing exercise"*
- Impecuniosity is not relevant as to whether you would make the order [352]

Is it really (or entirely) "*no fault*"?

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- Association with the Property is relevant and whether any profit or benefit was taken
- Un-associated associates, wrong director wrong time and *"innocent"* investors
- The commonality of beneficial owners is part of what *"indicates a wider corporate structure or connection such that a very substantial RCO may be just and equitable"* [360]

Is it really (or entirely) "*no fault*"?

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- No real *further* guidance on what the hierarchy is or how it should be applied
- But agreed that *"the developer is a key target, at the top of the hierarchy of liability*"
- Rejected the argument that the Applicant should not be entitled to any costs which could have been recovered from non-qualifying leaseholders through the service charge.
- Even if those leaseholders don't have the protection of Schedule 8 – they are *"lower in the hierarchy of liability"* and the purpose of BSA is to protect leaseholders.

Joint and Several Orders – will they be the norm?

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- Given the complex, not very well documented web of companies – unclear where the money actually is
- 96 Respondents - there can be clear cases where it is appropriate to make a global order against all Rs and then leave it to them to sort out who pays
- Unfair and impractical to require applicant to keep coming back to make good on the order
- *"The RCO needs to be as simple as possible"*

Side Note on the Explanatory Note

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- ***BDW v Ardmore*** [2025] EWHC 434 (TCC) – application for Building Information Order
- EN of limited relevance insofar as it *"cannot override the statute"* and *"it cannot be assumed [to] correctly state the effect of the statute"* because not drafted by Parliament but rather the Government dept responsible for the legislation.
- Judge decided the Explanatory Note does not reflect the correct interpretation of the statute
- "the body corporate mentioned in s132(2)(a) can only be the body corporate mentioned in s132(2). It follows that an order for information can only be made against a corporate body that 'is subject to a relevant liability'
- However, s130(2) provides that "any relevant liability … of a body corporate ("the original body") relating to a specified building ***is also*** – (a) a liability of a specified body corporate, or (b) a joint and several liability of two or more specified bodies corporate"
- What if the original company is dissolved?

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Building Liability Orders

Building Liability Orders – s.130 BSA

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s.130(3)
(a)under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
(b)as a result of a building safety risk.
Whether arising before or after BSA

130 Building liability orders

(1) The High Court may make a building liability order if it considers it just and equitable to do so.

(2) A "building liability order" is an order providing that any relevant liability (or any relevant liability of a specified description) of a body corporate ("the original body") relating to a specified building is also—

(a) a liability of a specified body corporate, or

(b) a joint and several liability of two or more specified bodies corporate.

...(4) A body corporate may be specified only if it is, or has at any time in the relevant period been, associated with the original body.

s.130(6)
"Specified" in the BLO

s.130(6)
(a) beginning with the beginning of the carrying out of the works in relation to which the relevant liability was incurred, and
(b) ending with the making of the order

s.131
(a) one of them controls the other, or
(b) a third body corporate controls both of them.
"Control" is essentially majority shareholder or "power, directly or indirectly, to ensure controlled's affairs are conducted in accordance with controller's wishes

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1. Relevant Liability, BSA s.130(3)

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Defective Premises Act 1972, s.1 or 2A	**Duty: work done in workmanlike / prof manner with proper materials, so fit for habitation**	**s.1 - new build dwellings s.2A – refurbs after 28/6/22**
Building Act 1984, s.38	**Actions for breach of duty imposed by building regulations, causing damage**	**Not yet in force and not clear when / if it will be**
"building safety risk", BSA s.130(6)	***"risk to the safety of people in or about the building arising from the spread of fire or structural failure"***	***381 Southwark v Click* – fire/structural defects – breach of FPA and lease**

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2. Associated Companies in the Relevant Period

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Relevant Period: from the beginning of the carrying out of the works to the making of the order. BSA s.130(6)

Associates

BSA s.131(1)

X & Y are associated if:

(a) one controls the other, or

(b) a third controls both.

X will control Y if X possess or is entitled to acquire:

- **50%+ of Y's issued share capital.**
- **rights that would entitle X to exercise 50%+ of exercisable votes in Y's general meetings.**
- **share capital that would entitle X to 50% of Y's income if it were distributed.**
- **50%+ of Y's distributed assets if Y was wound up.**

X controls Y if X, directly or indirectly, has the power to secure that Y's affairs are conducted in accordance with X's wishes.

Information Order, BSA, s.132

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3. Just & Equitable

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Willmott Dixon v Prater and *381 Southwark v Click (x2)*

- Deliberately wide so money can be found
- The court has a lot of discretion
- Depends on the facts / all circumstances, e.g.
  - If main D is insolvent / has sufficient cash
  - If the main D has disposed of its assets – internally or externally
  - If the parent company was involved in the development, e.g. as guarantor
  - If the parent company profited from the development

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  - Whether the associate can have a fair trial
  - Extent of damages sought

4. When do you apply?

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Start?

Finish?

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4. When do you apply? Anytime.

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***BDW v Ardmore* [2025] EWHC 434 (TCC)**

- BLO can be made on an indemnifying /contingency basis,
- i.e. granted on the basis it will apply **IF** it is established that the main defendant has a relevant liability.

***Willmott Dixon v. Prater* [2024] EWHC 1190 (TCC)**

- BLO claim included in the main action.
- Defendant's application to stay it until liability was decided rejected.
- BLO defendants do not need to be party to the main proceedings, but it may be sensible and efficient to progress both at once.

***381 Southwark v Click St Andrews (in Liquidation) and Click Group Holdings* [2024] EWHC 3179 / 3569 (TCC)**

- December 2024: "Relevant liability" found, so Claimants could go on to apply for a BLO against the guarantor (and others) later.
- January 2025: BLO made against the guarantor and another associate

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Thank you. Questions?

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