

Building Safety Act 2022

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01

A (brief!) overview of the Building Safety Act 2022

Jack Barber



Origins and rationale



Building Safety Act 2022

2022 CHAPTER 30

An Act to make provision about the safety of people in or about buildings and the standard of buildings, to amend the Architects Act 1997, and to amend provision about complaints made to a housing ombudsman. [28th April 2022]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

“The objectives of the Act are to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety... This will be achieved by ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety”

– Explanatory Notes, p.8

See also: **Adriatic Land 5 Limited v Long Leaseholders at Hippersley Point & Anor** [2025] EWCA Civ 856, [27]-[30];
URS Corporation Ltd (Appellant) v BDW Trading Ltd (Respondent) [2025] UKSC 21, [78]-[87]



Key concepts



- More rights to residents and homeowners so that homes are safer
- Protections for qualifying residents from costs associated with remediating historical building safety defects
- Three new bodies:
 - The Building Safety Regulator
 - The National Regulator of Construction Products
 - The New Homes Ombudsman

Part 1
Overview

Part 2
**The
regulator &
functions**

Part 3
BA 1984

Part 4
**Higher-risk
buildings**

Part 5
**Safety/
standards**

Part 6
General

Building Safety Regulator

Three core functions:

- (1) Implementing the new, more stringent regulatory regime for higher-risk buildings.
- (2) Overseeing the safety and performance of all buildings.
- (3) Assisting and encouraging competence among the built environment industry and registered building inspectors.

BSR responsible for:

- i) Setting standards on design and construction of higher risk buildings ([link](#))
- ii) Helping accountable persons / principal accountable persons manage high-risk residential buildings ([link](#))
- iii) Overseeing registration of building control bodies ([link](#))

See also BSR Enforcement Policy Statement ([link](#))



Part 4: Higher risk buildings

Key concepts

01

Building safety risk, s.62

“**building safety risk**” means a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—

- (a) the spread of fire;
- (b) structural failure;
- (c) any other prescribed matter

02

Higher risk building, s.65

Meaning of “higher risk” building

“**Higher-risk building**” means a building in **England** that—

- (a) is at least 18 metres in height or has at least 7 storeys, and
- (b) Contains at least 2 residential units.

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“occupied” higher risk building

Where there are residents of more than one residential unit in the building.

Part 4: Higher risk buildings – key concepts continued

Accountable person, s.72

(1) In this Part an “accountable person” for a higher-risk building is—

- (a) a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or
- (b) a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts.

This subsection is subject to subsection (5) (special rule for commonhold land).

Principal accountable person, s.73

(1) In this Part the “principal accountable person” for a higher-risk building is—

- (a) in relation to a building with one accountable person, that person;
- (b) in relation to a building with more than one accountable person, the accountable person who—
 - (i) holds a legal estate in possession in the relevant parts of the structure and exterior of the building, or
 - (ii) is within section 72(1)(b) because of a relevant repairing obligation

Determinations by the First-tier Tribunal, s.75

**the person
or persons who are
the accountable
persons for the
building**

**the person
who is the
principal
accountable
person**

**the part
of the building for
which any
accountable
person for the
building is
responsible**

Duties relating to building safety risks

s.83
Assessment
of building
safety risks

s.84
Management
of building
safety risks

s.85
Preparation
of a safety
case report

s.86
Notification
and provision
of report

Enforcement, s.98-101

- Regulator has a duty to enforce Part 4
- Can issue compliance notices where there appears to be a contravention
 - Notices can specify steps relating to remedying/avoiding the contravention
- Can issue “urgent action notices”: s.99(4)
- Contravention of a notice is an offence:
 - Summary conviction, up to six months or a fine or both
 - Conviction on indictment, up to two years, a fine or both
 - PLUS a further fine for each day the default continues after the initial conviction



Principle accountable person

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AP and PAP

**Accountable
Person
s.72**

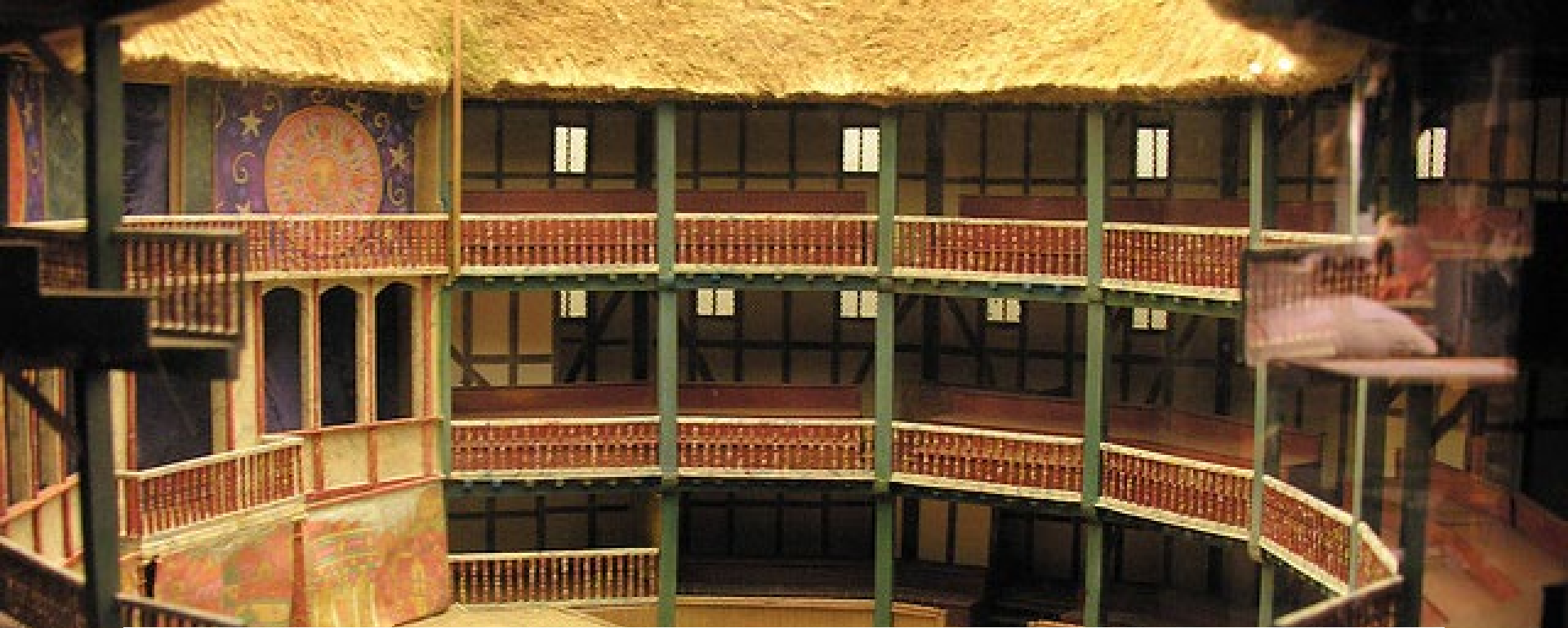
**Principal
Accountable
Person
s.73**

Where there is more than one PAP?

- Explanatory notes to section 75(1)(b):

“there should be a clearly defined duty holder during occupation who can be held to account and will have a statutory obligation to maintain the fire and structural safety of the building”: para. 649.
- Guidance “Safety in High Rise Residential Buildings: Accountable Persons”:

“each building must have one clearly identifiable accountable person, known as the ‘Principal Accountable Person’”.
- Section 73 refers to the duty holder roles in singular form.
- Apply to the tribunal under under section 75(1)(b).



Who can apply?

**Globe View House, 27 Pocock Street, London, SE1 0FU:
LON/00BE/BSG/2025/0600.**

Agreement as to PAP?

Ovington Court, 197-205 Brompton Road, London, SW3 1LB:
LON/00AW/BSG/2024/0001

Judge Sheftel at [15]:

“...it is said that no provision is made for the parties to agree between themselves who is the principal accountable person for a higher risk building without reference to the tribunal. I express no finding on this, save to note that where a party ...has already been registered as the principal accountable person and there is no dispute that they should be principal accountable person, it is not obviously apparent that a determination by the tribunal is also required. Nevertheless, the tribunal will of course proceed to determine the present application, as an interested person is entitled to seek the tribunal’s determination under section 75(1)(b) of the 2022 Act ... and there may be advantages to the parties in having certainty and/or being bound by their agreement, both of which a determination will provide”.





Remediation Orders

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Remediation orders

Part 5 of the Building Safety Act 2022 provides a remedy for a specified class of person to apply to the FtT for an order requiring a “**relevant landlord**” to remedy defects.

- Sections 117 to 121 define “**relevant building**”, “**qualifying lease**”, “**the qualifying time**”, “**relevant defect**” and “**associate**”.
- Section 123 makes provision about remediation orders, under which a landlord in a relevant building is required to remedy certain relevant defects.
- Section 123(2) of the BSA, explains that a “remediation order” is an order, made by the FtT on the application of an **interested person**, requiring a **relevant landlord** to do one or both of the following by a specified time: remedy specified **relevant defects** in a specified **relevant building**; and/or take specified **relevant steps** in relation to a specified **relevant defect** in a specified **relevant building**.



The FtT's power

Regulation 2(2) of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022/859 (as amended) (“the Leaseholder Regulations”).

“The First-tier Tribunal may, on an application made by an interested person, make a remediation order under section 123 of the Act”





May(king) a remediation order

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*The Secretary of State for
Levelling Up Housing and
Communities v Grey GR
Limited Partnership*

CAM/26UH/HYI/2024/0004

Vista Tower, Stevenage SG1
1AR

02

*The Secretary of State for
Levelling Up Housing and
Communities v Grey GR
Limited Partnership**

CHI/00HN/HYI/2023/0008(1)

Chocolate Box, 8-10
Christchurch Road,
Bournemouth BH1 3NA

03

*Di Bari v Avon
Ground Rents Limited*

LON/00AP/HYI/2022/0017)

04

*Blomfield v Monier Road
Limited**

LON/00BG/HYI/2023/0024

Recent tribunal decisions

Monier Road Limited v Blomfield and other leaseholders [2025] UKUT 157 (LC), 4 June 2025:

- Freeholder successfully appealed against a remediation order made by the FtT.
- The Upper Tribunal held that the FtT's decision was **procedurally irregular** and **unfair**.
- The FtT had included various additional items in the remediation order.
- **Only the courtyard cladding and combustible insulation should have been included in the remediation order.**
- The order was set aside.
- The UT also provided guidance on the extent to which the FtT can raise points which are not part of either party's case, and how it should proceed if it chooses to do so.

Recent tribunal decisions

- So far, all applications for RO -> order, save for one case (*Thanet Lodge*), where FTT dismissed application because R was not a 'relevant landlord' (s.123(3))
- **Empire Square** (5 June 2025, application for RO and RCO) – first time FTT had to decide whether to make a remediation order where a developer was positively asserting that it was going to remediate the building in question. Decision on making RO is “unfettered” so long as achieves remediation and within range of reasonable decisions (i.e., **outcome-based**); and FTT has jurisdiction to order that both RO and RCO be suspended on terms
- **Other recent e.g.:** *2 Hillside, London, NW10 8GE: LON/OOAE/BSA/2024/0503* (16 September 2025)



Remediation Contribution Orders

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Jurisdiction of the FtT

S124(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”



Some of the cases

***Triathlon
Homes LLP v
SVDP & Others***

**GREY GR LIMITED
PARTNERSHIP V
EDGEWATER
(STEVENAGE) LTD
AND OTHERS
[2025]**

Empire Square



What's been happening in the Higher Courts?

Jack Barber





Building Safety in the Supreme Court

URS Corporation Ltd (Appellant) v BDW Trading Ltd (Respondent) [2025] UKSC 21 (Judgment 21.05.25)

- **First UKSC appeal** to consider interpretation / application of key provisions in Building Safety Act 2022
- Complex factual background
- Lengthy procedural history (it's gone to the Supreme Court, after all)
- **Landmark** judgment on key provisions paves way for further claims
- Repair costs **recoverable** even if voluntarily incurred
- **Retrospective** effect re: historical building safety defects provisions
- URS **owed duty** to BDW under s.1 Defective Premises Act 1972
- Claims under Civil Liability (Contribution) Act 1972 **don't require existing claim** against claimant





Building Safety in the Court of Appeal

Adriatic Land 5 Limited v Long Leaseholders of Hippersley Point [2025] EWCA Civ 856 (Judgment: 08.07.2025)



Background

- **Building:** Hippersley Point, Abbey Wood, London.
- 10 storeys, >18m high, built c.2015. Commercial unit + 32 long-leasehold flats.
- **Ownership:** Freehold acquired by **Adriatic Land 5 Ltd** in April 2017.
- **Defects:** In late 2020, serious **external fire safety defects** and other risks were identified, requiring major remedial and interim fire safety works.
- **FTT Decision:** Adriatic applied for and was granted **dispensation from consultation requirements** due to the building's unsafe condition.
- FTT made dispensation **conditional on Adriatic not being entitled to recover costs** of the dispensation application from tenants.

Hippersley Point - proceedings

Upper Tribunal

- Adriatic sought PTA from UT; Deputy President granted permission but pointed out that issue arose as to possible application of Sch. 8, para. 9 BSA.
- UT held FTT's costs condition could not be upheld but concluded that Sch. 8, para. 9 BSA applied.
- Result: Adriatic could not recover any of the costs of its dispensation application from tenants with "qualifying leases" within the meaning of s.119 BSA.

Court of Appeal

- **Main point:** Whether BSA prevents Appellant (Adriatic) from recovering service charges from tenants in respect of costs which Adriatic had incurred before Sch. 8 BSA came into force.
- **Sch. 8, para. 9:** *(1) No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect.*
- Wider implications because other paragraphs in Sch. 8 depend on similar language).

Issues

- i) Are costs of the dispensation application within the scope of paragraph 9? **["The Scope Issue"]**
- ii) To what extent, if any, does paragraph 9, correctly construed, apply in relation to costs which were incurred before it came into force? **["The Retrospective Construction Issue"]**
- iii) If and in so far as paragraph 9 would otherwise have retrospective effect, should words be "read into" it in order to render it compatible with Article 1 of Protocol 1 to the European Convention on Human Rights ("A1P1")? **["The A1P1 Issue"]**

Hippersley Point - EWCA's decision

Court of Appeal: Leaseholder Protections Are Retrospective

- **By majority**, Court of Appeal holds that **leaseholder protections in the Building Safety Act 2022 (BSA)** operate **retrospectively**.
- **Scope (unanimous):** Dispensation application costs fall **within paragraph 9 BSA** — legal/professional costs relating to relevant defects cannot be passed to leaseholders.
- **Retrospective Construction (Split):** Majority: From **28 June 2022**, **no further service charges** of the relevant type are payable, **even if** the underlying costs or service charge demands **pre-date** that date.
- **A1P1 (Unanimous):** Retrospective effect is a **control of use**, not a **deprivation** of property. S.3 HRA 1998 does **not** require reading in limiting words,. **Retrospectivity compatible** with Article 1 of Protocol 1 (A1P1).

Practical implications

- **Pre-BSA payments stand:** Service charges **paid before 28 June 2022** remain valid and **are not affected**.
- **Post-BSA protection applies:** From **28 June 2022**, **no further service charges** of the relevant type can be demanded - **even for costs incurred or invoiced earlier**.
- **Future dispensation applications:** **Qualifying leaseholders** cannot be charged for the **professional/legal costs** of such applications.
- **Costs condition:** **No general rule** requiring tribunals to impose a **costs condition** when granting dispensation.
- PTA sought.



Triathlon Homes Ltd v Stratford Village Development Partnership & Ors [2025] EWCA Civ 846

Triathlon Homes Ltd v Stratford Village Development Partnership & Ors [2025] EWCA Civ 846 (Judgment: 08.07.2025)

- Appeal to CA against decision of FTT decision considering applications for remediation contribution order (RCO) under s.124 BSA.
- **Facts:** Applications concerned cost of rectifying fire safety defects in five tower blocks in former Olympic Village. Blocks developed by SVDP. Get Living ultimately owned SVDP, but did not own at time of development. GL also owned long leases on all private rented housing.
- **Ground 1:** the FTT erred in concluding that it was just and equitable to make RCOs against SVDP and Get Living.
- **Ground 2:** the FTT were wrong to conclude that an RCO could be made in respect of costs incurred before s.124 came into force on 28 June 2022



Triathlon Homes – Key points

Ground 1 – Just and Equitable

- Guidance on the “*just and equitable*” test.
- BSA places primary responsibility for building safety defects on developers.
- Not a rigid formula; a broad, discretionary standard.
- The existence of grant funding does not preclude the making of.
- Remedies available under the BSA operate independently of pre-existing contractual arrangements.
- Applicant’s motivation irrelevant

Ground 2 - Retrospectivity

- FTT right to conclude that an RCO could be made in respect of costs incurred before s.124 came into force.
- URS v BDW at [84]-[87]; [273/4] (see [149])
- Consonant with purposes of BSA to interpret s.124 as providing the statutory mechanism for leaseholders who have already paid service charges for costs that would now be caught by Sch. 8 to seek to pass on those costs that had already been incurred: [151]
- A retrospective construction makes the BSA work as a whole: [154].



Thanks!

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