

Fire Law Claims in Construction & Property: Impact of the Building Safety Act 2022 and the Fire Safety Act 2021



Chaired by:
Kate Grange QC

Presented by:
Shaman Kapoor
David Sawtell
Samantha Jones
Scarlett Milligan
Daniel Laking

39 Essex Chambers Fire Law Group

The Building Safety Act 2022

Amendments to the Defective Premises Act 1972

Samantha Jones

19 July 2022

New Rights to Redress

Amendments to the Defective Premises Act 1972:

- Scope – s.134 of the BSA 2022
- Limitation – s.135 of the BSA 2022

In force as of: **28 June 2022**



Scope

- Section 2A of the Defective Premises Act 1972:

“2A Duties relating to work to dwellings etc

(1) This section applies where a person, in the course of a business, takes on work in relation to any part of a relevant building.

(2) In this section "relevant building" means a building consisting of or containing one or more dwellings.

(3) The person owes a duty to—

(a) the person for whom the work is done, and

(b) each person who holds or acquires an interest (whether legal or equitable) in a dwelling in the building, to see that the work is done in a workmanlike or (as the case may be) professional manner, with proper materials and so that as regards the work the dwelling is fit for habitation when the work is completed.

(4) The duty under this section does not apply in relation to a dwelling if—

(a) the work taken on is work for or in connection with the provision of the dwelling (as to which see section 1), or

(b) it is expected that, on completion of the work, it will have ceased to be a dwelling or will otherwise have ceased to exist...”

Limitation

- Section 1 of the DPA:
 - For works completed before 28 June 2022 - limitation extended retrospectively to 30 years from the date of the completed work.
 - For works completed after 28 June 2022 – limitation prospective - 15 years.

S.135(4) of the BSA 2022 - For claims relating to work completed between 29 June 1992 to 28 June 1993 – 1 year to bring a claim

- Section 2A of the DPA:
 - Limitation period – 15 years from completion of the work



Building liability orders and associated persons

David Sawtell



The mischief and their genesis

- Independent Review of Building Regulations and Fire Safety (the Hackitt Report)
- The Building Safety Bill and the Defective Premises Act 1972
- House of Lords amendments



The test for a building liability order: section 130 BSA 2022

- ‘Just and equitable’
- Any relevant liability of a body corporate (‘original body’) relating to a specified body is also:
 - a liability of a specified body corporate, or
 - a joint and several liability of two or more specified bodies corporate.
- Relevant liability:
 - DPA 1972, s38 Building Act 1984
 - Building safety risk

The test for a building liability order: section 130 BSA 2022

- “(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.”
- Can be made in respect of dissolved companies
- Definitions: ‘associate’: see section 131

What is an ‘associate’? Section 131 BSA 2022

“(1) For the purposes of section 130, a body corporate (A) is associated with another body corporate (B) if—

- (a) one of them controls the other, or
- (b) a third body corporate controls both of them.

Subsections (2) to (4) set out the cases in which a body corporate is regarded as controlling another body corporate.”

What is an ‘associate’? Section 131 BSA 2022

- Subsections (2) to (4) set out the different case
- (2) – limited companies
- (3) – LLPs
- (4) – “*A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X’s wishes.*”
 - Comparable to, but not the same as, subsection 1162(4) of the Companies Act 2006

What is an ‘associate’? Section 131 BSA 2022

- **Nominees**: “...X is treated as possessing—
 - (a) any rights and powers possessed by a person as nominee for it, and
 - (b) any rights and powers possessed by a body corporate which it controls”
- **Trusts**: “(7) For the purposes of section 130 as it applies in relation to a building, where a person’s interest in the building is held on trust, a body corporate which is a beneficiary of the trust is to be regarded as associated with the person.”

Orders for information: section 132 BSA 2022

“(3) An information order may be made only if it appears to the court—
(a) that the body corporate is subject to a relevant liability (within the meaning of section 130), and
(b) that it is appropriate to require the information or documents to be provided for the purpose of enabling the applicant (or the applicant and others) to make, or consider whether to make, an application for a building liability order.”



Orders for information: section 132 BSA 2022

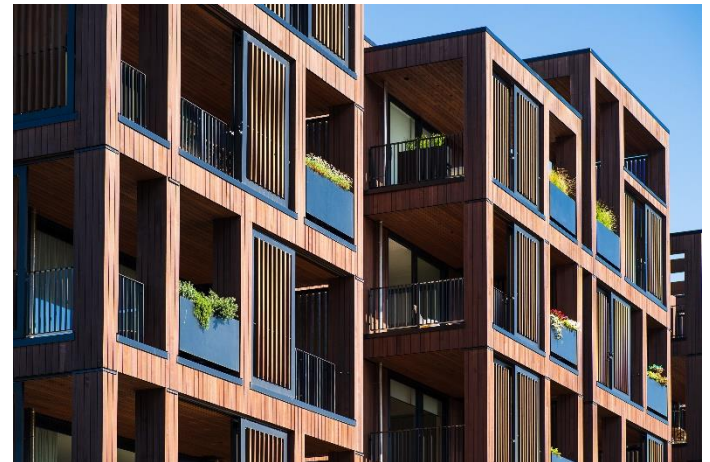
Building Safety (Leaseholder Protections) (England) Regulations 2022:

“12. For the purposes of section 132 of the Act, any person making, or intending to make, an application for a building liability order under section 130 of the Act may apply to the High Court for an information order.”



Conclusion

- Number of uncertain tests in the legislation
- Comparisons (and differences) with other legislative provisions
- Await the first decisions



Managing Building Safety Risks: The Golden Thread of Information

Daniel Laking



What's the Background?

- Hackitt Interim Report - Dec 2017
- Hackitt Final Report – May 2018
- Building Regulations Advisory Committee: Golden thread report – July 2021
- Building Safety Act 2022

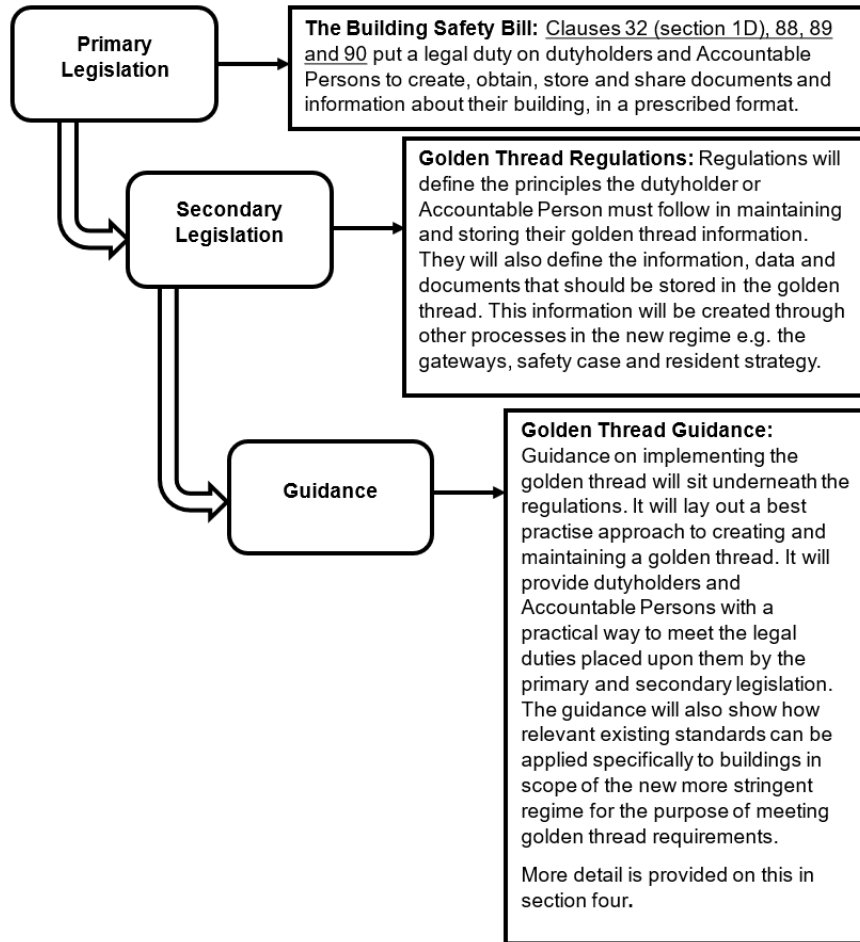
Building a Safer Future

Independent Review of Building Regulations and Fire Safety:
Final Report

May 2018
Dame Judith Hackitt DBE FREng

Cm 9607

What is the Golden Thread?

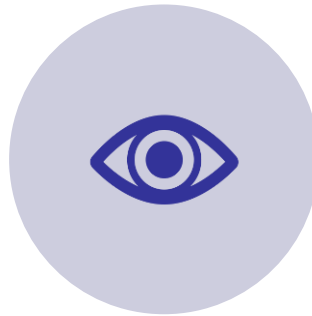


- *“The golden thread is both the information that allows you to understand a building and the steps needed to keep both the building and people safe, now and in the future.” (BRAC Report July 2021)*
- Applicable to range of clients at all stages of construction

What Can I Tell My Clients?



**PREPARE
NOW**



**WATCH THIS
SPACE**



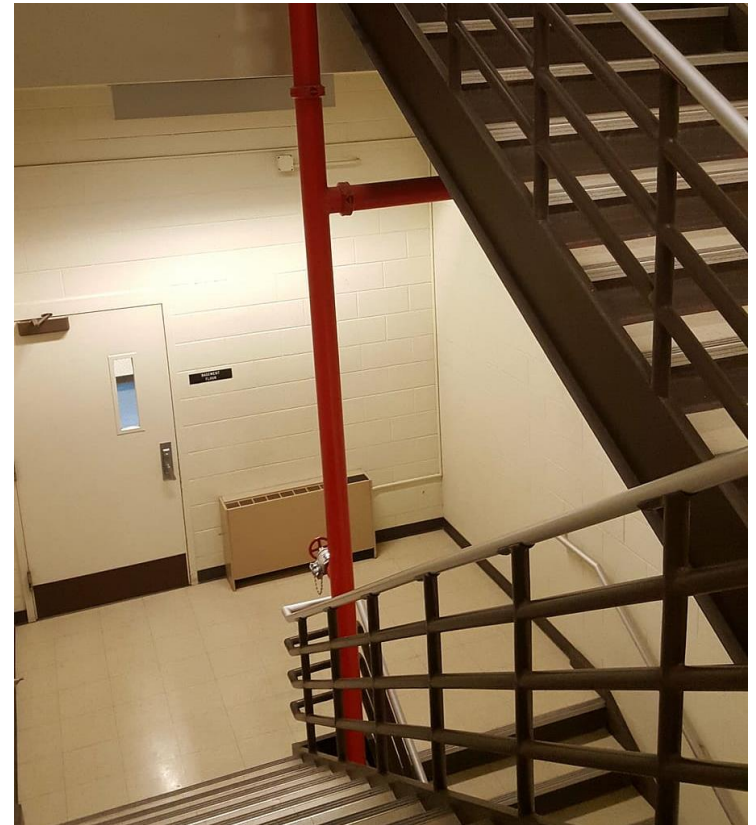
DON'T PANIC!

The impact of the Fire Safety Act 2021 and the Fire Safety (England) Regulations 2022 for responsible persons

Scarlett Milligan

The Regulatory Reform (Fire Safety) Order 2005

- Fire safety responsibilities for the majority of premises in England and Wales
- The RRO does not apply to domestic premises (Art. 6(1)(a)), defined as a “private dwelling” (Art.2)
- The RRO does apply to communal parts of residential properties



Responsible Persons

Art.3 RRO:

“In this Order “responsible person” means—

(a) in relation to a workplace, the employer, if the workplace is to any extent under his control;

(b) in relation to any premises not falling within paragraph (a)—

(i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or

(ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.”

RRO Fire Safety Responsibilities

Part 2 of the RRO (Art.8-24), including:

- A duty to take “general fire precautions” (A8)
- Fire risk assessments (A9)
- Make “appropriate” fire safety arrangements (A11)
- Maintenance of premises, equipment (including firefighting equipment), and emergency exits (A14; A17; A38)
- Appointing one or more “competent persons” to assist with preventive and protective measures (A18)

Fire Safety Act 2021

- Royal assent: 29 April 2021; fully commenced 16 May 2022

s.1: amends A6 RRO (the RRO's application) to insert:

"(1A) Where a building contains two or more sets of domestic premises, the things to which this order applies include—

- (a) the building's structure and external walls and any common parts;
- (b) all doors between the domestic premises and common parts (so far as not falling within sub-paragraph (a)).

(1B) The reference to external walls includes—

- (a) doors or windows in those walls, and
- (b) anything attached to the exterior of those walls (including balconies).";
- (c) in paragraph (2), for "paragraph" substitute "provisions".

Fire Safety (England) Regulations 2022

- Laid before Parliament: 18 May 2022
 - Coming into force: 23 January 2023
 - Subject to the made negative procedure – will become law in the absence of an objection
 - Objection period ends: 6 July 2022
-
- Purpose: “...to improve fire safety in high-rise residential buildings and other multi-occupied residential buildings by implementing recommendations made by the Grenfell Tower Inquiry in its Phase 1 report in a practical and proportionate way...”

Fire Safety (England) Regulations 2022

- Many regulations apply to high rise residential buildings: 18 metres above ground OR 7 or more storeys (Reg. 3)
- Provision of secure information box containing, inter alia, floor plans and a building plan (Regs 4 and 6)
- A record of the design of the external walls (Reg 5)
- Electronic provision of floor plans, building plan, and external wall information to the local fire and rescue authority (Reg 11)
- Monthly checks of lifts and essential firefighting equipment (Reg 7)
- Provision of clear wayfinding signage (Reg 8), fire safety instructions to residents (Reg 9), and information on fire doors (Reg 10)
- Quarterly and annual checks of fire doors (Reg 10)

Personal Emergency Evacuation Plans (PEEPs)

Grenfell Ph1 recommendations:

- “That the owner and manager of every high-rise residential building be required by law to prepare personal emergency evacuation plans (PEEPs) for all residents whose ability to self-evacuate may be compromised (such as persons with reduced mobility or cognition)” and
- “That the owner and manager of every high-rise residential building be required by law to include up-to-date information about persons with reduced mobility and their associated PEEPs in the premises information box”

Personal Emergency Evacuation Plans (PEEPs)

Government consultation response in May 2022:

“It is clear from the quantitative analysis that a large majority of respondents support the proposal to require the Responsible Person (RP) to prepare a PEEP for every resident who self-identifies to them as unable to self-evacuate... However, it is evident from the consultation responses, workshops and meetings that where individuals and organisations were able to elaborate on their responses, they highlighted significant concerns over the proportionality, the practicality, and the fire safety case for PEEPs in all high-rise residential buildings.”

The Building Safety Act 2022

- s.156 of the Building Safety Act 2022 amends the RRO
- That section (and therefore the amends) not yet in force
- Art. 9A: fire risk assessor competency
- Art. 21A: provision of fire safety information to residents of domestic premises
- Art. 22A: transfer of fire safety information from an outgoing responsible person to a new responsible person
- Art. 22B: co-operation with accountable person

Costs in large party claims

Shaman Kapoor

19 July 2022

Retainers

➤ Conventional retainer

➤ CFA

➤ DCFA

➤ CFA-Lite

➤ DBA

▶ There are three basic types of retainers:

▶ Hawley Retainers

▶ Vacuum (Essix) Retainers

▶ Permanent Retainers



Key Concepts

- Remember the basics?
- Common v Individual costs
- Solicitor/Client v Party/Party



Other thoughts

➤ Litigation Funding

➤ Budgets



Conclusion



"I think I'll shoot first
and ask questions later."

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