



Construction and Building Safety Insight

A Brief Overview Vol.4

Welcome to the fourth edition of the Construction Special Interest Group's (SIG) Brief Overview series, providing a round-up of recent legal, regulatory and market developments affecting the construction and building safety sectors.

Construction Product Claims Under 'The Building Safety Act'

Mulalley & Co. Ltd v Sto Ltd & Anor [2026] EWHC 1552 (TCC)

We mentioned in Vol. 2 that it was only a matter of time before the courts turned their attention to construction products, a key component of the Building Safety Act 2022 ("BSA") through the creation of new statutory causes of action under sections 148 and 149. The Technology and Construction Court recently handed down judgment in *Mulalley & Co Ltd v Sto Ltd & Anor* [2026] EWHC 1552 (TCC), one of the first reported decisions concerning the construction products provisions contained within the BSA.

➤ [BSA details](#)

➤ [Read Mulalley judgment here](#)

Our Product Liability SIG has recently commented on the decision in a more detailed article:

➤ [Read the full article here](#)

This decision is significant for a number of reasons. It is the first reported judgment concerning section 149 of the BSA and provides an early indication of how the construction products regime may operate in practice.

The case is also notable because it demonstrates the interaction between the construction products provisions and the Building Liability Order ("BLO") regime. While the substantive allegations concerned defective construction products, recovery was ultimately pursued against an associated group company following the supplier's insolvency through the use of a BLO.

More broadly, the decision forms part of an emerging trend in the post-BSA authorities. Alongside recent decisions concerning adjudication, contribution claims and BLOs, claimants are increasingly utilising the enhanced remedies introduced by the BSA to assist earlier crystallisation of liability and improve recovery prospects against those ultimately responsible for building safety defects.

For insurers, manufacturers, contractors and construction professionals alike, the decision is a further reminder that the courts appear willing to give practical effect to the BSA's objective of ensuring that responsibility for building safety defects is borne by those responsible for them. We expect claimants to continue testing the scope of these remedies as the body of BSA case law develops.

Landlord and Tenant Covenants – A Wider Scope of "Good Condition"

Essendi UK Hotels 2 Ltd v London Property Company Ltd [2026] EWHC 1354 (TCC)

➤ [Read judgment here](#)

The TCC's decision in *Essendi UK Hotels 2 Ltd v London Property Company Ltd* [2026] EWHC 1354 (TCC) is noteworthy because the court demonstrated a willingness to interpret contractual obligations through a building safety lens, even where the property in question was a hotel falling outside the scope of the BSA.

Although the decision is noteworthy, the outcome turned upon the specific wording of the lease, particularly the covenant to keep the property in "good and substantial repair and condition". As ever, the precise wording of the relevant lease term in question will remain critical.

At first glance, this appears to be a conventional landlord and tenant dispute. However, the decision is likely to be of much wider interest to local authorities, building owners and insurers. The court found that a landlord's covenant to keep a hotel in "good and substantial repair and condition" extended to an obligation to remove and replace combustible ACM cladding. Traditionally, repair obligations have been associated with physical deterioration and, despite finding no such damage, the court concluded that the obligation to keep the building in "good condition" extended to the remediation of a significant fire safety risk. In reaching that conclusion, the court placed considerable emphasis upon the post-Grenfell context.

The court also found that the landlord had breached its obligations by failing to comply with the Regulatory Reform (Fire Safety) Order 2005. In effect, the landlord's covenant incorporated relevant statutory fire safety obligations, rendering them contractually enforceable between landlord and tenant.

The decision illustrates the continuing influence of post-Grenfell building safety principles beyond the confines of the BSA. Landlords, tenants and insurers should give careful consideration to the scope of repairing and compliance covenants and the extent to which insurance policies may respond to claims arising from fire and building safety defects, even where the building itself falls outside the BSA regime.

Awaab's Law: Phase 2 confirmed

The Government has published Phase 2 guidance for social landlords in England, with Phase 2 due to commence from 30 November 2026, once the amending regulations come into force.

Phase 2 will extend strict repair obligations for social landlords to further hazards, including electrical hazards, falls, fire and explosion, excess cold, excess heat, structural collapse and falling elements, and domestic hygiene, pests and refuse.

The law requires serious hazards to be investigated promptly, with written updates provided to tenants. Urgent safety works must be carried out without delay, and, in certain circumstances, hazards must be made safe within 24 hours.

The increased compliance burden may drive greater claims activity where social landlords seek recovery from those involved in the original design, construction, maintenance or refurbishment of housing stock. The issue is unlikely to be limited to damp and mould. Phase 2 brings a range of building-related hazards into focus, including fire risk, structural safety, excess cold and falls. These are all areas where claims against contractors, consultants, surveyors and housing professionals may follow.

Further guidance is available from the Ministry of Housing, Communities and Local Government.

[Read the Phase 2 Guidance here](#)

BLO Enforcement Remains a Live Issue

Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd (in administration) & Others [2026] EWHC 789 (TCC).

[Read the judgment here](#)

We reported on this decision in Vol. 3, where the TCC handed down what remains the most detailed and authoritative judgment to date on BLOs under sections 130-131 of the BSA.

[Read volume 3 here](#)

Since then, the TCC has refused Ardmore permission to appeal and declined to stay enforcement of the BLO pending appeal. Ardmore subsequently obtained permission to appeal from the Court of Appeal, and, at the time of writing, an appeal hearing is listed for December 2026, although recent insolvency developments within the Ardmore group may affect the appeal's progress. The position therefore remains one to watch.

The court also confirmed that interest on the judgment sum ran from the date of the adjudicator's decision, rather than from the date the BLO was made.

Overall, the latest developments reinforce the practical effectiveness of BLOs as a claimant recovery tool and demonstrate the court's continued willingness

to interpret and apply the BSA in a manner which gives the legislation real effect. Viewed alongside recent authorities such as *URS v BDW* and *Mulalley v Sto*, it forms part of a growing line of cases supporting Parliament's intention of holding to account those ultimately responsible for building safety defects.

In practical terms, parties facing a BLO may find it difficult to delay or avoid enforcement pending appeal, particularly where there is insufficient evidence to support a stay application. The absence of evidence from the ultimate beneficial owner was a significant factor in the court's decision to refuse a stay.

For insurers, the decision is another reminder that BLOs are no longer a theoretical risk. Where a building safety claim arises, it will be important to investigate at an early stage whether there is potential exposure arising from associated companies, adjudication enforcement, insolvency issues or a possible BLO application. These issues may have significant implications for coverage, reserving and overall claims strategy.

Members of the Construction Special Interest Group regularly advise insurers, contractors, developers, consultants and other construction industry stakeholders on a wide range of construction, insurance and building safety issues, including those discussed above.

Should you require any assistance or wish to discuss the issues raised in this update, please get in touch.



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