In the FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal Case reference	:	**LON/00AE/BSA/2024/0007 LON/00AE/BSA/2024/0500 LON/00AE/BSA/2024/0502**
Property	:	**Thanet Lodge, 10 Mapesbury Road, London NW2 4JA**
Applicants	:	**(1) Mr Arun Mirchandani (2) Ms Chiara Levrini (3) Mr Samuel Proposch**
Representative	:	**All in person**
Respondent	:	**Java Properties International Ltd**
Representative	:	**Mr Ashraf (also known as Achraf) Borghol (Director)**
Interested Party	:	**Thanet Lodge (Mapesbury Road) RTM Company Limited**
Representative	:	**Mr Doriano Chiarparin**
Type of application	:	**Application for Remediation Order section 123 Building Safety Act 2022**
Tribunal	:	**Deputy Regional Judge Nikki Carr Mr Andy Gee RIBA**
Date of decision	:	**18 February 2025**

PRELIMINARY ISSUE DETERMINATION

Decision

The applications LON/00AE/BSA/2024/0007, LON/00AE/BSA/2024/500 and LON/00AE/BSA/2024/502 are dismissed, as the Respondent is not a relevant Landlord as defined in section 123(3) Building Safety Act 2022.

Reasons

1. Is a landlord who has been absolved or prohibited by statute from undertaking its repairing obligations under a lease of premises a 'relevant landlord', against whom a Remediation Order may be made under section 123 of the Building Safety Act 2022 ('the Act)?

Background

2. By applications dated 5 April 2024 (Mr Mirchandani) and 21 July 2024 (Ms Levrini and Mr Proposch) respectively, the Applicants seek a remediation order against the Respondent, Java Properties International Limited. The applications concern Thanet Lodge ('the Building'), a 1950s building onto which a fifth floor, comprising 4 Penthouses, was added in around 2006 by the Respondent. We added Thanet Lodge (Mapesbury Road) RTM Company Limited ('the RTMco') as an interested party in the proceedings after inviting them to the CMH that took place on 10 October 2024, and directed its submissions on the preliminary issue, as it plainly has an interest in the outcome.

3. A report dated 6 January 2021 from "Fire Prevent" by Richard Coggon BSc (Hons) MIFireE identifies that the Building has a B2 rating, and a number of "*Significant Hazards*". In his conclusion (part 6), Mr Coggon states as follows:

   "*No cavity fire barriers could be located within the timber cladding cavity wall system; this will require rectifying as a minimum to be compliant with the Building Regulations, the Regulatory Reform (fire safety) Order 2005 and MHCLG Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings.*

   The provision of cavity fire barriers only will allow for a B1 rating on an EWS1 Form. Where this is not sufficient and an A1 rating is required, the 4th floor timber cladding and combustible materials within the timber cladding system will be required to be replaced with non-combustible alternatives.

   …

   An adequate standard of safety has not currently been. Thanet Lodge currently has an EWS1 Form rating of B2 as remedial works are required on the 4th floor. Once remedial works have been completed as per Section 5 the risk of external fire spread will be sufficiently reduced to allow an EWS1 Form rating of either A1 or B1, depending on the works carried out."

4. A further report dated 4 October 2021 ("Desktop Study Fire Resistance Assessment") was provided by John Preston (BEng) Hons AIFireE (based on Mr Coggon's earlier survey). It made the following findings at section 4:

   4.1 Elements of Structure

   The survey has highlighted that the structural steel does not have any fire resistance treatment and it is understood that the steel has not been

designed with an inherent additional thickness to achieve the required fire resistance.

As the steel supports multiple penthouses it requires fire resistance under the recommendations of Approved Document B. Based on the information provided it appears the structural steel does not meet the recommendations.

4.2 Compartmentation

As stated in Section 3.3.1 of this report compartmentation is required to achieve 60 minutes fire resistance. The floor (roof of the existing building) appears to be made of wood, with a cement board over the top. This will provide little fire resistance between the floors. It is understood that there is rib lath plaster provided to the ceiling of the flats below the penthouses.

The underside of the penthouse floors consist of wooden joists and planks with no fire resistance provided.

4.3 Concealed Spaces

The survey has suggested that there may be compartmentation continuation and cavity barrier location issues. Approved Document B recommends that all compartment walls are continued from the floor level and continued upwards to ceiling level. Figure 9 and Figure 10 below illustrates the design is not continuous through to the floor below.

Currently this does not appear to meet the recommendations of Approved Document B, as there is a continuous cavity linking all of the penthouses.

5. Various recommendations were made in section 5 of that report. None has, to our knowledge, been put into effect, whether by the Respondent or the RTMco.

Law

6. Section 123 of the Act specifies that an application for a remediation order may be made by an interested person, requiring a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time. Section 123 (3) defines a 'relevant landlord' as follows:

> In this section "relevant landlord", in relation to a relevant defect in a relevant building, means a landlord under a lease of the building who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect.

7. By virtue of section 96 of the Commonhold and Leasehold Reform Act 2002 ('CLRA 2002') it is no longer required to repair or maintain anything relating to the relevant defect:

Management functions under leases

...

(2) Management functions which a person who is landlord under a lease of the whole or part of any premises has under the lease are instead functions of the management company.

(3) And where a person is party to a lease of the whole or a part of the premises otherwise than as a landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.

(4) Accordingly, any provisions of the lease making provision about the relationship of –

(a) a person who is landlord under the lease, and

(b) a person who is party to the lease otherwise than as landlord and tenant,

in relation to such functions do not have effect.

(5) "Management functions" are functions with respect to services, repairs, maintenance, improvements, insurance and management.

8. Section 97 CLRA 2002 sets out as follows:

Management functions: supplementary

(1) Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is a landlord under the lease.

(2) A person who is –
(a) a landlord under a lease of the whole or any part of the premises...
is not entitled to do anything which the RTM company is required to do under the lease by virtue of section 96, except in accordance with an agreement made between him and the RTM company.

9. The effect of those sections is to put into abeyance a landlord's ability to carry out any maintenance functions in the lease, and of course from enforcing any correlating service charge covenant, for so long as the right to manage endures. The landlord is in effect 'frozen out' from both the decisions and the actions it would otherwise be required or entitled to make in connection with those covenants. That is the overall scheme of those parts of CLRA 2022 in which the right to manage provisions are set out, as most recently identified in *A1 Properties (Sunderland) Limited v Tudor Studios RTM Company Limited* [2024] UKSC 27. Nor can the landlord be in breach of those covenants while it is excluded from them.

10. In *FirstPort Property Services Ltd v Settlers Court RTM Company Ltd* [2022] UKSC 1, Briggs LJ (giving the unanimous judgment of the court)

said this as part of the analysis leading to the conclusion that the right to manage a building on an estate did not extend to shared estate facilities:

"35. *Section 97(2) makes it clear that, save in relation to insurance (see section 97(3)), the RTM company has the right to perform its allotted functions itself, to the exclusion of any participation of the landlord, third party manager or even a manager appointed under the* [Landlord and Tenant Act 1987]*, save to the extent that the RTM agrees otherwise. In short, it has no obligation to share management with anyone…*

…

38. It may be fairly said that a fundamental purpose of the 2002 Act is to confer management rights and responsibilities on a body (the RTM company) which is accountable to and controlled by the very tenants who will be affected by the conduct of that management, through their right to be members of the RTM company, rather than by either the landlord or a third party manager which will have its own agenda. That works perfectly well if the right to manage is confined to the relevant building…"

The Preliminary Issue

11. Establishing that the Respondent is a 'relevant landlord' for the purposes of the Act is a necessary pre-condition for consideration of making a remediation order. The Tribunal does not have jurisdiction to make a remediation order against anyone other than a "relevant landlord" as defined.

12. Is the landlord in this case a 'relevant landlord'; is it "*required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect*", or does it no longer fulfil the definition because of section 96 CLRA 2002?

The parties' positions

13. Mr Ashraf Borghol (sole director of the Respondent company) admits that the Respondent undertook the development works.

14. He told us at the CMH that he had purchased the freehold in 2006 from the former landlord, at a time when the RTM process had already been in-train, and had (apart from adding the additional stories) been ousted from any decisions or maintenance in respect of the Building from that time.

15. He stated that as freeholder he would be prepared to carry out "*compartmentation remedial works as described in the report, if it is found to be my responsibility*." We observe that he did not quite seem to comprehend the extent of the required works to eliminate the risk of fire spread, nor his obligations further to schedule 8 to the Act to pay for investigations and so forth. Nevertheless, he did not deny that there are relevant defects. He submitted however that the RTMco, which took the right to manage in 2006, is responsible for fire safety in the Building.

16. By his written submissions dated 23 October 2024 and 8 November 2024, Mr Borghol seeks to roll-back from his admission that there were relevant defects, and asserts that an up-to-date report will be required, though there is no indication that he has sought to obtain his own report. He simultaneously accepts that the reports that exist "*indicate numerous fire risks and hazards within the Building, including compartmentation and many others*".

17. His position is that section 123(3) of the Act refers to "*an individual or entity that holds a legal interest in the Building and is responsible for its management or maintenance*". He says that the statutory framework in the Act recognises the RTMco as "*the entity responsible for compliance with safety obligations, making it responsible for managing risks and ensuring adherence to safety regulations*". He further asserts that the RTMco is the 'Accountable Person' for the purposes of the Act, who has the duty to manage safety risks including identifying and addressing any defects that could compromise fire safety.

18. Mr Borghol asserts that the RTMco takes full responsibility for the maintenance of the Building, and that the landlord's obligations are restricted while the RTMco is in place because of sections 96 and 97 of CLRA 2002. He relies on *Settlers Court* as establishing that once a RTM company has assumed management, the freeholder is excluded from making management decisions in connection with the building over which the right to manage has been acquired, without the express permission of the RTM company. As the requirement to repair or maintain anything relating to the relevant defect is key to the definition of 'relevant landlord', a landlord who cannot meet such a requirement because of the intervention of a statutory regime cannot be considered to meet the definition.

19. Mr Borghol asserts that therefore, by operation of section 123(4), the RTMco "*should logically be considered the 'relevant landlord'*" for the purposes of "*remediation costs and safety related obligations*".

20. Mr Arun Mirchandani is the long-leaseholder of 29 Thanet Lodge. He made two submissions, the second of which I gave permission to him to rely on by order dated 4 November 2024.

21. With that second submission, Mr Mirchandani made an application to convert the remediation order application to a remediation contribution order application under section 124 of the Act. I refused permission with reasons given on the same date, principally because the tests and facts that the Tribunal would need to consider are different from those on which this Application relies.

22. In his first submission, Mr Mirchandani sets out that he believes that the Tribunal can make an order against the Respondent, on the basis that "*the RTM requested the Respondent to make the remediation works*". He relies on sections 97 and 105 CLRA 2002 and asserts that the RTMco can transfer management functions through mutual agreement, or by cessation of the right to manage.

23. It is noted Mr Mirchandani is not the representative for the RTMco (and indeed, is seeking a separate order for appointment of a manager in its place based on various complaints over its mismanagement of the Building). In the context of the other Applicants' and RTMco's submissions, what he appears to be saying is that *if* one of these things happened, *then* the Respondent would be the relevant landlord, not that one of these things *has* already happened. He says he accepts that the Respondent is not a 'relevant landlord' without management functions.

24. In his second submission, Mr Mirchandani provided to the Tribunal a letter from BPP Law School provided to him by its free advice service, under cover of his own further submissions.

25. In his submissions, Mr Mirchandani considers that the Preliminary Issue misses the point and leaves leaseholders without an effective solution for the defects discovered at the Building. He invites the Tribunal to engage in the question of whether it is the Respondent's responsibility to do the remediation work ignoring the question of who is the 'relevant landlord', because he is concerned that the RTMco is unwilling or unable to do the works. He asks the Tribunal to consider Mr Borghol a "willing landlord", and to find some kind of way that he can step into the shoes of a 'relevant landlord' to rectify the fire safety issues. There should, he says, be some way for the parties to proceed by simply accepting the jurisdiction of the Tribunal in order to achieve an appropriate remediation order. He further requests that the Tribunal provide "*guidance on the appropriate measures that the leaseholders can take to ensure these remediation works can be completed in a timely and efficient manner*."

26. In something of a contrast with Mr Mirchandani's own submissions, the advice from BPP suggests that Mr Mirchandani has made too much of a concession when he accepts that the Respondent is not a 'relevant landlord'.

27. It advises that as a matter of public policy, the Act is to "*prevent leaseholders from having to pay the costs of remedying defects causing inadequate fire safety and instead place the onus on the building owners*", and that "[b]*uilding owners are responsible for complying with their legal obligations to keep their buildings safe*" (both cited from government Guidance on the use of remediation orders published by the MHCLG and DLUHC on 16 October 2023). BPP suggests that to find otherwise would be to drive a coach and horses through the Act as any building with an RTM company will not benefit from the provisions. Hyperlinks to Hansard debates on 20 April 2022 (Lords' amendments) and 26 March 2024 (a post-legislative debate session) are also included, as is an FAQ document on the RICS website dated 5 November 2024, though no particular passages relied on in these links are identified.

28. BPP asserts that the Tribunal has not considered the effect of section 123(4), which clarifies that reference to landlord under a lease includes a person who is party to a lease otherwise than as a landlord or tenant. BPP asserts that the Tribunal must consider whether the Respondent is such a person.

29. BPP also asserts that the Tribunal has failed to consider the effect of section 124 of the Act (Remediation Contribution Orders). As the landlord in this case was also the developer, in that he added the penthouses, the Respondent in this case could be made subject to such an order. It should be said it seems BPP was aware that the Tribunal is not seized of a section 124 application, as it advised Mr Mirchandani to make such an application.

30. Mr Samuel Proposch and Mrs Chiara Levrini (leaseholders of flats 15 and 5 respectively) submit that "*the Respondent is a landlord under a lease of the building who is required under the lease to repair or maintain anything relevant to a defect albeit that whilst the RTMco has not ceased to act or agreed otherwise the Respondent is prohibited from carrying out management functions*". They argue that CLRA 2002 does not extinguish the landlord's management functions, merely gives the RTMco the exclusive right to perform them. It merely puts the landlord's management functions into abeyance. They also cite *Settlers Court*, paragraphs 35 and 42.

31. Mr Proposch and Ms Levrini state that were the RTMco to pass a resolution to voluntarily wind itself up or otherwise cease to act, the Respondent would plainly fulfil the definition in section 123(3) of the Act. It would be "*overly legalistic and cumbersome*" to require the RTMco to do so before the Respondent became liable to a remediation order, which must militate strongly against a finding that the Respondent is not a 'relevant landlord'.

32. They further state that being made subject to a remediation order and being compelled to rectify defects caused by the penthouse construction are not matters that fall within the definition of management functions, because any such works would go beyond repair properly so-called, and such works cannot have been in the contemplation of legislators when drafting CLRA 2002.

33. Construing the provisions to find that a landlord who has management functions but is prevented from exercising them cannot be made subject to a remediation order would lead to an absurd result, because only a corporate body can be made subject to a remediation contribution order, not a natural person who was a landlord.

34. Mr Chiarparin, on behalf of the RTMco, supports and adopts the submissions made by Mr Proposch and Mrs Levrini.

Decision

35. In the *R (The Good Law Project) v Electoral Commission* [2018] EWHC 2414 (Admin), giving the judgment of the court, Lord Justice Leggatt set out the following passages regarding statutory interpretation:

> ***Statutory interpretation***
>
> *33. Save for one point, there is no dispute about the principles of statutory interpretation. The basic principles are that the words of the*

statute should be interpreted in the sense which best reflects their ordinary and natural meaning and accords with the purposes of the legislation. It is generally reasonable to assume that language has been used consistently by the legislature so that the same phrase when used in different places in a statute will bear the same meaning on each occasion – all the more so where the phrase has been expressly defined.

34. It is also generally reasonable to assume that Parliament intended to observe what Bennion on Statutory Interpretation *(7th Edn, 2017) in section 27.1 calls the "principle against doubtful penalisation". This is the principle that a person should not be subjected to a penalty – particularly a criminal penalty – except on the basis of clear law…*

35. … We think the position was fairly stated by Sales J in Bogdanic v Secretary of State for the Home Department *[2014] EWHC 2872 (QB), para 48, when he said:*

> *"The principle of strict interpretation of penal legislation is one among many indicators of the meaning to be given to a legislative provision. It is capable of being outweighed by other objective indications of legislative intention, albeit it is itself an indicator of great weight."*

36. In *R (on the application of O (a minor, by her litigation fried AO)) et ors v Secretary of State for the Home Department [2022] UKSC 3*, Lord Hodge set out the judgment (with which the other Supreme Court Lord- and Ladyships agreed). At paragraphs 29 – 32, he set outs the weight to be given to external aids to construction as follows:

29. The courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used": Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG *[1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated:*

*"Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context." (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd *[2001] AC 349, 396).*

Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained…

30. External aids to interpretation therefore must play a secondary role. Explanatory notes, prepared under the authority of Parliament,

may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity. In this appeal the parties did not refer the court to external aids, other than explanatory statements in statutory instruments, and statements in Parliament which I discuss below. Sir James Eadie QC for the Secretary of State submitted that the statutory scheme contained in the 1981 Act and the 2014 Act should be read as a whole.*

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in Spath Holme*, 396, in an important passage stated:*

> *"The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. … Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."*

37. In *Pepper v Hart* [1993] AC 593, their lordships held that it is only where legislation is ambiguous, obscure or might lead to absurdity that *Hansard* might be relied on by a court in interpreting legislation, provided of course that the statements relied on in *Hansard* are, themselves, clear.

38. The exercise which we must therefore carry out is first to consider the ordinary and natural meaning of the words of the statute in the context of section 123 itself, , then to consider them in the context of the surrounding provisions and purpose of part 5 of the Act, taking into account any external guide to construction.

39. Only if, after conducting that process, we consider that the meaning of the provision remains ambiguous or obscure, or its meaning would lead to an absurd result, may we go to *Hansard*. However, the relevant parts of *Hansard* we could take into account are ministerial statements and debates in respect of the Bill before it was enacted, rather than parliamentary debates or statements after the legislation was enacted. In that regard, the relevant Hansard reference is what the then-Minister Michael Gove said in his statement reported in Volume 706 on Monday 10 January 2022 commencing 3.34pm (*Pepper v Hart*) and subsequent pre-enactment debate, as helpfully now all encapsulated in the relevant note on Westlaw. The Lords amendments debates hyperlinked by BPP are also relevant.

(i) Preliminary points

40. We should first state that we cannot, as is proposed in BPP's submission for Mr Mirchandani, consider the Respondent to be 'party to the lease otherwise than as a landlord', if we decide it is not the 'relevant landlord'. Firstly, it is a party to the lease, as a landlord. Secondly, the question is not whether the Respondent is 'a landlord'. It is whether it is a 'relevant landlord' against whom the Tribunal has jurisdiction to make a remediation order. Calling it something different from what it is – the landlord – will not assist.

41. Nor can we find, as Mr Borghol invites us to do, that the RTMco is a 'relevant landlord'. It is not a party to the lease in any capacity, so cannot fulfil section 123(4) of the Act. It has only taken over the management functions in consequence of CLRA 2002.

42. We cannot, as Mr Mirchandani implores us to do, decide that because Mr Borghol is a "willing landlord" (insofar as he accepted at the CMH that there were defects and that he was amenable to fixing them, though of course the Respondent's argument subsequently rather rolls back on the latter) the Tribunal should simply go on to make a remediation order and to find that the Respondent is a 'relevant landlord' because some kind of moral rectitude requires it. The Tribunal is a creature of statute, and can only make an order if it has jurisdiction. Its jurisdiction is governed by law set down by Parliament, not feelings of 'right' and 'wrong'. Any such approach would be immediately open to successful appeal.

43. Nor can we advise the leaseholders on what they should do, as he proposes later in his submission. As we said at the CMH, it is up to the parties to work together and negotiate where there appears to be a satisfactory resolution to be reached, or to take such legal advice or other steps are they are advised to take, should the Tribunal find it cannot make a remediation order because the Respondent is not a 'relevant landlord'.

44. Finally, we cannot determine, as Mr Proposch, Mrs Levrini and the RTMco invite us to do, that just because the legally prescribed situations in which a landlord is not or would no longer be prohibited from exercising management functions are inconvenient in the current circumstances because they do not yet apply, that justifies us undermining the provisions

of sections 96 and 97 CLRA. The provisions clearly set out that 'management functions' encompass repairs, maintenance, and improvements. Whatever one might categorise remediation work as, one or more of those terms applies to it. That must be taken as the will of Parliament, absent any support for an argument to the contrary outside of the assertion that it is "*overly legalistic and cumbersome*" to read the statute any other way.

(ii) Meaning of the words in section 123(3)

45. Starting with the wording of section 123(3), a relevant landlord "*is a landlord under a lease of the building who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect*."

46. The meaning of that phrase is neither obscure or obtuse. On ordinary language with ordinary meaning, a landlord who has a repairing obligation (whether contractual or statutory) can be forced, by the provisions in section 123(3), to meet that obligation. The provision enables the Tribunal to make an order broadly equivalent to an order for specific performance in the county court, to compel a person to do something under a lease, tenancy agreement, or statute that they are responsible for.

47. The notes to section 123(3), which of course have not been endorsed by Parliament but may provide a reliable indication of the intention behind the provision, reflect our interpretation that it is a landlord under a current repairing obligation that the Tribunal has jurisdiction to make a remediation order against:

> *989 Subsection (2) sets out that a remediation order is made by the First-tier Tribunal. A remediation order can be made by the Tribunal on the application of an interest* [sic] *person (defined in subsection (5)). A remediation order can require a landlord to remedy specified relevant defects in a specified time (the meaning of "specified" is set out at subsection (6)). This means that the Tribunal can order a landlord to undertake certain work to remediate their building within a specified timeframe.*
>
> *990 Subsections (3) and (4) define a "relevant landlord" against which the Tribunal may make a remediation order. "Relevant landlord" means* ***a landlord who has an obligation to repair or maintain the building*** *and subsection (4) sets out that the term includes, for the purposes of this section, persons who are party to the lease even if they are not a landlord or tenant. This means that remediation orders can be made against management companies with repairing obligations, as well as against freeholders and superior landlords such as head lessees with repairing obligations.*

48. The latter part of paragraph 990 also recognises that it will not always be an immediate landlord who has the obligation.

49. At first blush therefore, it is clear that a party to a lease (whether as landlord or, as per section 123(4), as a management company for example) with a contractual or statutory obligation, is the 'relevant landlord' against whom a remediation order may be made. If that contractual or statutory obligation has been removed by operation of statute and at the behest of leaseholders – albeit for the meantime – there is nothing to enforce against that party. The landlord is no longer required to repair or maintain anything relating to the relevant defect. Just as in a court no order for specific performance could be given, no remediation order could be made against such a party by the Tribunal.

(iii) Context: Part 5 of the Act

50. We cannot stop at that point. We must go on to consider whether, in the context of the surrounding provisions and the purpose of Part 5 of the Act (in which the leaseholder protections are found), anything renders that preliminary conclusion absurd.

51. The RTMco and leaseholders say yes, for various different reasons. Mr Mirchandani expresses that he is concerned that the RTMCo is unable or unwilling to do the required remediation works. He says that coming to the conclusion that Mr Borghol (by which he means, we think, the landlord company, because Mr Borghol is not the landlord in his individual capacity) is not the relevant landlord would leave leaseholders without effective protection under the Act.

52. That is not correct. The leaseholders are defined 'interested persons' in section 124(5) of the Act, entitled to seek a remediation contribution order.

53. Though we observe that it was not until after a successful judicial review that RTM companies were added (by the Building Safety (Leaseholder Protections etc.) (England) (Amendment) Regulations 2023) to the list of 'interested persons' entitled to apply for a remediation contribution order, they too now have that recourse.

54. The RTM company also has the additional recourse available under section 97 of CLRA 2002, in which it may agree that particular management functions may be exercised by the Respondent, though of course the Respondent could not be compelled to agree, and it appears that the RTMco has not sought to engage with the Respondent prior to the leaseholders issuing these proceedings so that they may have missed that opportunity.

55. Mr Proposch, Mrs Levrini and the RTMco further argue that would result in absurdity, because only a corporate body can be made subject to a remediation contribution order, not a natural person who was a landlord. We note that in this case, the landlord is a corporate body and therefore this submission is in the theoretical. We think it likely that the Act has been phrased that way as it is extremely unlikely that an individual person would engage in building works of the nature that would give rise to a remediation contribution order, giving rise to significant legal liabilities, considering the very high risk involved to them personally (as they would not be protected by company law, shares, limited liability agreements etc). It seems likely

that even if they could obtain liability insurance personally (which we also consider unlikely), it would be prohibitively expensive to even a wealthy individual. The fact that a remediation contribution order is only available against a corporate body or partnership is therefore, to our minds, neutral in the interpretation to be put on section 123(3).

56. Broadening out our search to turn up any further evidence supporting a conclusion one way or the other, is clear that the primary concern of Part 5 of the Act is (put simply) to prevent leaseholders having to pay for remediation of 'relevant defects'. Turning to the Explanatory Notes accompanying Part 5 overall, the following passages provide support for our conclusion that the Act is concerned with who pays for remediation (boldened/underlined passages ours):

*911. Sections 116 to 125 and Schedule 8 make provision about the remediation of certain defects in certain buildings. They are collectively referred to as the "leaseholder protections", **as they protect leaseholders in multi-occupied residential buildings from certain costs associated with remediating historical building safety defects**.*

912. Most multi-occupied residential buildings in England, such as blocks of flats, are owned by a freeholder, with the individual flats owned on long leases. A leasehold property is owned by the leaseholder for the length of the lease agreement with the freeholder, after which point the ownership of the property returns to the freeholder. The freeholder typically owns the land on which the building is built, as well as the structure and common parts of the building (such as the staircases and hallways). Leases of over 21 years are generally known as long leases and it is not uncommon for 999-year leases to be granted. Leaseholders have certain rights to extend the length of their lease if they wish to do so.

*913. The ownership structures of multi-occupied residential buildings can be complex with multiple additional landlords who own the building or parts of it, separate to the freeholder of the land on which the building sits. **In the most straightforward cases, there will be a freeholder who owns the land and the building itself, and leaseholders who own the long leases of dwellings contained within the building; this explanatory note uses that straightforward case for illustrative purposes.***

*914. **It is the freeholder's responsibility to ensure the safety of the building and the upkeep of the structure and common parts, and the costs associated with these responsibilities can normally be charged to leaseholders through the service charge**, as per the terms of the lease. The service charge will commonly cover the costs associated with routine maintenance and repairs.*

915. Since the Grenfell Tower fire in 2017, it has become apparent that a number of residential blocks of flats have serious historical fire safety defects, often, but not always, associated with their original construction.

Most notably this has included the use of unsafe cladding on the external walls of these buildings. Due to the risk to life posed by these defects, extensive and often costly remediation work to make buildings safe can be needed.

916. The ***terms of most leases, which are contractual agreements between the leaseholder and freeholder, will allow the costs associated with this remediation work to be passed on to individual leaseholders through the service charge****. The costs per lease to remediate historical building safety defects have sometimes been very high and frequently run into the tens or hundreds of thousands of pounds. These costs have put strain on leaseholders who are often unable to meet these costs.*

917. ***The Government has brought forward a series of interventions to protect leaseholders from the costs associated with remediating historical building safety defects****, including direct grant funding for the costs of remediating unsafe cladding on certain buildings, and agreeing with developers that they will fix buildings they have had a role in developing or refurbishing.* ***This Act also contains a number of provisions to allow those directly responsible for creating building safety defects to be held accountable through the Courts****.*

918. The leaseholder protections measures further ***protect certain leaseholders in law by preventing altogether, or otherwise limiting, the costs that can be passed through the service charge to the leaseholder in respect of certain historical building safety defects****.*

57. Paragraph 914 sets out the 'usual' relationship between a landlord and tenant under a lease, and paragraph 913 accepts that there are such relationships that are outside of that 'usual'. Although there are many Buildings over which the right to manage has been exercised in England and Wales, that cannot be described as the 'usual' scenario.

58. Further on in the notes related to 'relevant building', collective enfranchisement and commonhold are also discussed (as being exempt from the provisions). The notes again make clear the relationship being considered is the 'usual' relationship, in which the landlord has the liability for maintenance: "*929. The leaseholder protections measures work at a fundamental level by limiting or preventing the costs that can be passed through the service charge to leaseholders by the freeholder.* ***When costs cannot be passed on through the service charge, the freeholder, who is responsible for undertaking works to maintain the building, becomes liable for these costs****. In situations where the building is collectively owned by the leaseholders, there is no separate entity to bear the costs — the leaseholders are the freeholder. Consequently, the definition of "relevant building" does not include leaseholder-owned buildings*".

59. As can be seen throughout the notes, the emphasis is on the costs to be passed to leaseholders. That is consistent with Schedule 8 to the Act, which is the waterfall concerned with who *pays* for remediation.

60. Although that does not undermine the fact that clearly Parliament intended that the Tribunal should be given power to compel those who have obligations in respect of repair or improvement of relevant buildings to comply with their covenants, without clear indication that should also apply to a landlord without a present obligation, the fact that such costs could potentially be recovered by the Applicants in this case through other means – ie by section 124 of the Act, is therefore material to the interpretation to be put on section 123(3).

(iv) Public policy argument

61. BPP's advice letter raises what it terms a 'Public Policy' argument, on which Mr Mirchandani relies. To the extent that it adds anything to the analysis in the paragraphs above, we consider it below.

62. Mr Mirchandani, by the BPP letter, places reliance on the FAQs on RICS' website regarding the Act. There are a large number of drop-down queries on that website, and Mr Mirchandani has not made clear what in particular is relied on to support a public policy argument. Nevertheless, we have investigated the FAQs that appear there.

63. There is no drop-down with a question relating to 'relevant landlord'. The closest drop-down is "*What this means for building owners*", in which the information provided is generic and about management of safety risks, not about remediation. The same may be said for the drop down for "*What this means for residents and homeowners*", in which the most relevant sentence that might be what BPP had in mind is this (our emphasis): "*The leaseholder protection provisions of* [the Act] *came into force 28 June 2022, at which point* ***landlords will be financially liable****, in law, for the remediation of historical building safety defects…*". If anything, this would tend to support the position that the Act overall is primarily concerned with who pays for remediation.

64. Mr Mirchandani, by the BPP letter, further submits that such an interpretation as we have indicated will "*drive a coach and horses through the Act as any building with a Right to Manage Company will not be able to benefit from the provisions*". That submission appears to be based on a misunderstanding that these applications are concerned with any provision other than section 123. That can be the only explanation for the self-same letter advising that section 124 makes provision for both the leaseholders, and now the RTMco, to seek a Remediation Contribution Order.

(v) Conclusion

65. It is notable that none of the Explanatory Notes refer to the position of a RTM company. As we have already identified, it was not until after a successful judicial review that RTM companies were added to the list of 'interested persons' entitled to apply for a remediation contribution order.

It appears that the position of RTM companies *vis* the legislation may not have been in Parliament's mind when the statute was enacted, but Parliament has certainly had the opportunity to review the provisions since then and has repeatedly done so, leading to amendments in which it can be demonstrated that it plainly *did* have RTM companies in mind.

66. Put simply, because they know that the effect of CLRA 2002 is to prevent the Respondent from exercising any management functions in respect of the Building, the Applicants and RTMco in this case ask us to read the word "required" in section 123(3) of the Act as being fulfilled in the passive (it simply exists in the lease, whether or not the landlord is capable legally of exercising it). The RTMco, and Mr Proposch and Mrs Levrini in particular press us to accept a position that if the RTMco were to be wound-up, or the right to manage otherwise ceased, the rights and obligations that it currently has as a consequence of statute would return to the landlord. It therefore argues that the Respondent remains a landlord under the lease of the building who is required under the lease to repair or maintain anything relating to a relevant defect "*albeit that whilst the* [RTMco] *has not ceased to act or agreed otherwise the Respondent is prohibited from carrying out management functions*."

67. We cannot agree. The difficulty with the argument made by Mr Proposch, Mrs Levrini and the RTMco is that whilst the RTMco continues in its management of the building, the Respondent is prohibited from carrying out those obligations.

68. Mr Proposch, Mrs Levrini and the RTMco assert that requiring the RTMco to (e.g.) cease to act before a remediation order could be made against a Respondent who is responsible for a relevant defect is "*overly legalistic and so cumbersome as to militate strongly against the conclusion that the Respondent is not a relevant landlord*". Even were that to be the result (on which we are unconvinced), it is impermissible to determine the legal basis of our jurisdiction on the basis of 'ideal outcomes' for one party or another, or because the RTMco now has (perhaps understandable) 'buyer's remorse' in the context of what such a decision means for them now that the Act is in force; we can only decide on the basis of the law as it has been enacted.

69. Mr Proposch, Mrs Levrini and the RTMco further assert that no remediation contribution order can be made against an individual, and so if the landlord is an individual the RTMco will be left in the invidious position that it can seek neither a remediation order nor a remediation contribution order against such an individual. That submission is entirely in the theoretical, because in this case, the Respondent is a corporate entity. The argument has some force because it is right to say our conclusion would leave an RTMco in that position with no option but to cease its right to manage or somehow negotiate an agreement under section 97(3) CLRA, if there exists an individual who is foolhardy enough to have carried out the kind of works to which the relief in section 124 of the Act is aimed in their personal capacity (i.e. without the protection of a corporate or partnership structure).

70. However, that theoretical outcome cannot itself render the provision in the Act absurd, lacking any evidence that was not intended by the clear language of the provision that was used by Parliament. We must take Parliament to have intended the consequences of the choices it has made.

71. Nor can we take into account that when CLRA 2002 was enacted, the kind of obligations around building safety that the modern legal landscape is finally working its way towards were unknown, so that Parliament could never have intended that it would cover remediation. Remediate means nothing more than to remedy or make right. That is encompassed in the management functions defined in section 96 CLRA 2002. The wording of the right to manage provisions, as underlined in *Settlers Court*, makes clear that the RTM company takes over all management for the building, to the exclusion of all others, including such repair, maintenance and improvement as is provided for in the lease.

72. We conclude that the language of section 123(3) is clear and unambiguous both on its own and in the context of the overarching purpose of the Act, and that our interpretation is supported by the Explanatory Notes to it. Alike specific performance in the county court, section 123(3) is plainly aimed at enforcing the obligations of those with the repairing covenants under the lease or statutory maintenance obligations, who are failing to exercise them (for whatever reason). As with the remedy of specific performance in the county court, a person who is prohibited from exercising those obligations cannot be forced by order to comply with the very thing they are prohibited from doing. There is no obligation there for the court to enforce. To find so would be contrary to the principle against doubtful penalisation (albeit in a civil context), and would also lead to absurdity.

73. There is nothing that can justify us reading into the legislation to say that Parliament was not aware that the effect of section 123(3) is that leaseholders with a RTM company cannot obtain a remediation order, nor that Parliament would have intended that section 123(3) ought to be read in some way other than its clear and obvious meaning in the context of Buildings with RTM companies. The only branch of state with legislative power over the particular difficulty caused to RTM companies by the provision is Parliament, and it must be taken to mean what it has said.

74. In the circumstances, we do not consider that we need to go to *Hansard*. It is an entity that is party to a lease **and** who has an active repairing obligation (whether contractual or statutory) to repair or maintain anything relating to the relevant defect that is the 'relevant landlord' that may be made subject to a remediation order. The Respondent in this case is not such an entity.

Name: Judge N Carr **Date:** 18 February 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).