FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00HN/BSA/2024/0001 and 0002
Property	:	Blocks A and B Purbeck House, 3 Oxford Road, Bournemouth BH8 8ES
Applicant	:	Barclays Nominees (George Yard) Limited
Representative	:	Mr Bowker, counsel, instructed by CMS Cameron McKenna Nabarro Olswang LLP
Respondent	:	LDC (Oxford Road Bournemouth) Limited
Representative	:	Mr Nissen KC, counsel, instructed by Walker Morris LLP
Type of Application	:	Application for a Remediation Order pursuant to the Building Safety Act 2022
Tribunal Member(s)	:	Regional Judge Whitney Regional Surveyor A Clist MRICS Mr A Thomas RBI FRICS MBA MIFireE
Date of Hearing	:	21-24 January and 3 March 2025
Date of Decision	:	8th May 2025 CORRECTED IN BLUE 16TH May 2025 pursuant to Rule 50

CORRECTED DECISION

Background

1. The Applicant seeks a Remediation Order pursuant to the Building Safety Act 2022 in respect of Block A and Block B. Separate applications were made but these were consolidated.

2. Block A has 39 flats and Block B 64 flats. In total there are 519 bedrooms. The Applicant is the owner of the freehold interest. The Respondent is a company which is part of the Unite Group. It holds a leasehold interest in the building. The building is used to provide student accommodation to students principally at Bournemouth University.

3. The parties agree that the Applicant is an "interested person" as the owner of the freehold interest and that the Respondent is a "relevant landlord" as it lets the accommodation at the blocks to students. Further it is accepted both blocks are "relevant buildings".

4. Certain "relevant defects" were admitted by the Respondent but not all contended for by the Applicant. Further the Respondent contends that notwithstanding the admitted defects a Remediation Order should not be made.

5. The Tribunal has issued various sets of directions. The parties have substantially complied with the same and we were provided with the following:

    - A bundle of 6355 pdf pages with page numbers throughout this decision shown as [ ];
    - A supplementary bundle of 1175 pdf pages shown as S[ ];
    - Skeleton argument from each party;
    - Bundle of authorities

Inspection

6. The Tribunal inspected the premises on the afternoon of 20th January 2025. Each side's counsel and solicitors were in attendance. The inspection was led by the parties' experts, Ms Sheehan for the Applicant and Mr Brown for the Respondent.

7. Block A fronts on to Oxford Road, Bournemouth with Block B behind separated by a modest paved courtyard area. On the opposite side of the road was another high rise block and on either side of the blocks were tall buildings. To the Tribunal it felt that the development in question was surrounded on all sides by high rise buildings.

8. We initially viewed the two buildings externally including seeing the vents at the side and the terracotta tiles. We observed some of the

terracotta tiles were damaged. It was also apparent where works had been undertaken to open up the cladding for the purpose of investigations.

9. We noted that the courtyard between the two blocks housed a bike store and bin storage area. There was also an electricity sub station in this area. Adjacent to the blocks to the right hand side (if looking from the front on Oxford Road) was a car parking area which we are told is not part of the development save that there is an undercroft parking area below part of Block B which we are told is separately owned. This appeared to have a relatively low roof height.

10. Plans were provided to the panel which included descriptions of the various external wall systems. Both experts walked the Tribunal around the buildings identifying the same.

11. The Tribunal commenced the internal inspection of Block B. We were shown a fire door to the stairway which had a regular mastic silicone sealant around the Georgian wired glass pane. To the eighth floor, we viewed a ceiling in the corridor to which the penetration had been sealed with an intumescent mastic sealant. We are directed to areas throughout various services, riser and cleaner's cupboards whereby there were gaps surrounding penetrations. Also on the eighth floor, a threshold gap of a fire door was measured at 28mm to which both experts agreed.

12. The Tribunal were taken to other fire doors throughout the building, including to the fifth floor where threshold gaps of between 20 – 24mm were recorded. We were shown an example of a fire door with a timber frame whereby most had a steel frame.

13. We were shown similar elements within Block A. We were directed to some graduating gaps to the header jambs, for example to a riser cupboard whereby the range was 2-4mm. The automatic operation of a smoke vent to the top floor was observed. Finally, we were directed to the threshold gap to the wash room on the ground floor which was measured at 23mm. We were directed to the floor coverings to the laundry room and the corridor whereby it appeared that some had been replaced since the building was constructed, evidenced by a gap between the floor and the skirting boards.

The Law

14. The Application is made pursuant to Section 123 of the Building Safety Act 2022 ("the Act") which provides that:

"Section 123 Remediation orders

(1)The Secretary of State may by regulations make provision for and in connection with remediation orders.

(2)A "remediation order" is an order, made by the First-tier Tribunal on the application of an interested person, requiring a relevant landlord to do one or both of the following by a specified time—

(a)remedy specified relevant defects in a specified relevant building;

(b)take specified relevant steps in relation to a specified relevant defect in a specified relevant building.]

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

(4)In subsection (3) the reference to a landlord under a lease includes any person who is party to the lease otherwise than as landlord or tenant.

(5)In this section "interested person", in relation to a relevant building, means—

(a)the regulator (as defined by section 2),

(b)a local authority (as defined by section 30) for the area in which the relevant building is situated,

(c)a fire and rescue authority (as defined by section 30) for the area in which the relevant building is situated,

(d)a person with a legal or equitable interest in the relevant building or any part of it, or

(e)any other person prescribed by the regulations.

(6)In this section—

"relevant building": see section 117;
"relevant defect": see section 120;
"relevant steps": see section 120;
"specified" means specified in the order.

(7)A decision of the First-tier Tribunal or Upper Tribunal made under or in connection with this section (other than one ordering the payment of a sum) is enforceable with the permission of the county court in the same way as an order of that court"

15. The parties also provided a bundle of authorities which included Sections 84, 85 & 86 and the whole of Part 5 of the Act. We do not set all of these sections out within this decision but have had regard to the Act and these sections in particular in reaching our determination.

Hearing

16. The hearing took place at Havant Justice Centre. Initially the hearing was listed for 4 days commencing upon Tuesday 21st January 2025. It became apparent that a further day would be required for submissions. Unfortunately this could not take place until 3rd March 2025.

17. All parties attended in person for the hearing. The below is a summary only of what took place during the same.

18. As an aside the Tribunal believed the proceedings were being recorded however the recording obtained for the first four days was not of sufficient quality to enable a transcript which was requested by the Respondent to be prepared.

19. Counsel for the parties had agreed a timetable and the Tribunal was happy to adopt the same.

20. At the start of the proceedings Mr Bowker confirmed that certain items were no longer being sought by the Applicant. He identified these as the following items contained in the draft updated Remediation Order prepared by the Applicant [81] being:

    7(b) The electrical installations which require enclosure in a fire resistant construction.
    7(c) The unstopped penetrations in ceilings.
    7(d) The unstopped penetrations in compartment walls and floors.

21. Mr Bowker confirmed in opening that his client was seeking a Remediation Order for all of what he termed the live issues within the draft updated Remediation Order save for those withdrawn as set out above. He contends it is reasonable for a Remediation Order to be made. He suggests even if we do not agree with him, that all the cladding on the building including what is known as EWT2 and EWT5 is a defect, a Remediation Order is still required.

22. Mr Nissen KC suggested this case was different from Waite v Kedai Limited LON/00AY/HYI/2022/0005 & 0016 . That case placed emphasis on leaseholders which was different from this case. Mr Nissen KC accepted the Tribunal had a discretion as to whether or not to make a Remediation Order however he disputed Mr Bowker's submission that an order should be made in all circumstances unless there was an exceptional reason why it should not do so. He did not accept there was any reference to "exceptionality".

23. Mr Nissen KC suggests that the question to be answered is whether in exercising the discretion it is appropriate to make an order considering the situation of the parties. It is for the Tribunal to take account of the facts of the case and of the material to take account of the same. He submits that the Applicant is seeking an order for its commercial benefit and not to provide leaseholder protection.

24. Mr Nissen KC submits that any defect must cause a building safety risk. He submits that we can take account of PAS9980 in determining any risk. He suggests that if there is charring of insulation this is not a spread of fire as required under section 120(5) of the Act. Further Section 120(3) of the Act is critical to determining the questions in relation to the alleged internal defects. He suggests that what we need to consider now is the condition as it was constructed. If wear and tear he suggests we cannot be so satisfied that this is a building safety defect.

25. Mr Bowker called Mr Buckley-Sharp. He confirmed his statement [588-594] was true. Mr Buckley-Sharp is a fund manager employed by abrdn plc. abrdn plc provide asset management services in relation to the Property on behalf of the Applicant.

26. Mr Bowker asked certain agreed supplemental questions in respect of recent disclosure. Mr Buckley-Sharp confirmed he had seen these documents. He concluded that it was a large volume of information which he believed should have been shared earlier in the proceedings.

27. Mr Nissen KC then cross examined him.

28. He confirmed the specific asset manager for the blocks is a Mr Peter Tomley. Mr Buckley-Sharp manages two portfolios with in excess of 50 developments. 24 of these relate to Barclays.

29. He agreed that the asset value is part of his role however he suggests every mandate has investment guidelines being principles not just including financial return. He suggests the investment principles for the Applicant are matters of public record although he accepts not exhibited. The Health and Safety of the occupants is of paramount importance.

30. He explained generally the building would be inspected once a year on behalf of the Applicant. He had not corresponded with any of the actual occupants of the two buildings. Safety is the responsibility of the Respondent. His responsibility is to have the fire risks addressed for the long term. The current lease will end in about 6 years. He suggested that he was being pro-active in looking to make the Property safe.

31. Mr Buckley-Sharp explained he had personally visited the Property on three occasions. Firstly in 2015 and subsequently in a visit with BCP Council in February 2023 and later in 2023. He stated he was keen to see if works had begun to make the Property safe.

32. Mr Buckley-Sharp did not believe works were being done in a timely manner. He stated that his client wanted the works done as soon as possible. He confirmed he was aware that BCP and the Fire Service were keeping matters under review. He considered that the Applicant and Respondent had been corresponding over the works required for about five years and this was too long.

33. He confirmed that any consents should be in the form adopted by the Applicant's solicitors. He stated that no movement had been made on the granting of consent for the works (which was required under the lease) as there was no agreement as to what works were required to be done. He stated he thought it was unlikely that the Applicant would stand in the way of works being undertaken.

34. Mr Bowker did not re-examine.

35. The Tribunal then heard from the Respondent's witnesses of fact.

36. The first witness was Mr Pyrah. He confirmed his statement [614-623] was true. Mr Pyrah is the Group Fire Safety Manager at Unitse Group PLC. He joined Unite in 2022 and took up his current role in October 2023.

37. He was cross examined by Mr Bowker.

38. He was referred to the Fire Impairment Records [3267-3282]. He stated that they aim to review these measures every six months. He confirmed once works were completed then items are deleted including works identified by Global previously.

39. He confirmed ultimate responsibility for the fire safety of the Property rests with him although day to day Mr Parmar oversees the work. He confirmed that Mr Chris Sorrenti was the Head of Special Projects.

40. He understood the student occupiers had been told about the issues with the Property. He did not know what exactly as he was not involved in the resident's engagement strategy.

41. He stated that Unite's cladding remediation strategy was introduced before he joined Unite. It was introduced following the Grenfell fire when Unite looked to assess the risk on all buildings and prioritise the work to be undertaken. He presumed Mr Sorrenti was responsible for writing all strategy notes.

42. Mr Pyrah stated that resources are stretched. He was aware of the BB7 and Hydrock reports but had not read all. He stated Mr Parmar would have done so. He understood originally Unite had about 160 buildings potentially affected by fire safety risks. He believed now there were about 65 buildings.

43. He assumed the local authority and fire service will not have been provided with the experts reports within these proceedings. He understood Avon Fire Service (being the principle fire authority for Unite) had no concerns given the enhanced measures in place. He was not aware of matters relating to the Improvement Notice previously served by the local authority or the Fire Safety Matters Notice as these pre dated his appointment.

44. He suggested that four evacuation tests per year are undertaken. The Property general manager organises the same and both blocks are tested at the same time. Generally one would be undertaken to simulate a night time evacuation. He explained that typically there are about 500 students across the two blocks. Some would not evacuate, he stated no head count as such was undertaken but information would be stored in the fire folder on site.

45. He confirmed that contractors were ready to begin work on replacing doors subject to the Building Safety Regulators approval. This was expected in the next day or so.

46. On questioning as to why it had taken so long to obtain a FRAEW he felt he would have to defer to others.

47. He confirmed that he covered a large portfolio of properties. He would review any identified risk and then apply internally for any required funding. He confirmed currently they were working on replacing about 1200 doors at a cost of about £1million.

48. Mr Nissen re-examined and then the Tribunal questioned.

49. In answer to questions from the Tribunal he confirmed that no search would be undertaken to ascertain how many people had not evacuated.

50. Mr Nissen then called Mr Parmar. He confirmed his statement was true subject to being updated [596-611]. Mr Parmar is the fire safety manager at Unite group plc, having joined in June 2022.

51. He confirmed he had scanned through the Global report [3163]. Further he had read the Cladding Remediation Strategy at [5966] and [5983].

52. He confirmed he was aware through internal discussion of the application to appeal an Improvement Notice served by the local authority S[369]. He was not aware of the legal process involved.

53. In reference to paragraph 50 of his statement [609] there was a clear journey and it had taken time to get to the point of works commencing but processes had been followed and matters had not been stationary.

54. He would oversee 12-16 cladding projects in each year. The wider remit for works is now covered by the Capital Projects Team of which Mr

Sorrenti is in charge. It is Mr Sorrenti who would set the objectives for reports.

55. He explained internal approvals for all design and works would be required. A report would be prepared by Mr Sorrenti who would submit this to the Board. Typically the Board would approve all schemes in the Summer. Without Board approval works do not proceed.

56. Despite being high risk a building would then revert to deferred status. He confirmed the strategy as to works and when undertaken is led and informed by Chris Sorrenti.

57. He explained typically there is a list of projects which have a risk rating. Generally the highest risk are to be undertaken first. In respect of these blocks the PAS9980 was seen later and so fell outside the cycle for projects. If it gets the green light from the investment committee, they generally tell contractors so ready to mobilise in the January. January to June is the design phase with works after.

58. At this point day one concluded. Mr Parmer was reminded he was a witness and so was unable to discuss the case with anyone.

59. At the beginning of Day 2 Mr Bowker also indicated he was not pursuing 7(a)(ii).

60. Mr Nissen KC confirmed that his client had received approval from the Building Safety Regulator to undertake door remediation works.

61. The cross examination of Mr Parmar continued.

62. He believes the improvement notice was bought to his attention in Summer 2023. He did not provide information to the local authority, this was provided by Mr Pyrah's predecessor. He was not aware of the grounds of appeal.

63. He confirmed he visited the Property jointly with the fire service in February 2023.

64. He confirmed he instructed a FRAEW to be undertaken. It was required to produce a remedial scheme to move forward.

65. He confirmed a corporate body is the Principal Accountable Person for the purpose of Registration with the Building Safety Regulator. He had not dealt with the Registration, this was undertaken by the Estates Team. He stated it was coincidence this happened at the same time as he instructed the FRAEW. If the process had allowed him to, he would have instructed this sooner. He was referred to the Strategy Notes at [5966] and [5983]. He agreed that reference to "substantial" [5969] refer to the risk and he confirmed that Purbeck House is programmed for works to be undertaken during 2025.

66. Mr Parmar confirmed he would allocate the risk. He fed this in to the decision making although it is Mr Chris Sorrenti who prepares the programme and makes the decisions in conjunction with the Board.

67. On questioning by the Tribunal Mr Parmar confirmed that Purbeck House was approved last Summer but dependant on the outcome of this case would likely require further approval.

68. Mr Parmar confirmed works were originally programmed pre 2023 on basis of removal and replacement of all cladding. This was changed as the Board did not approve the scheme which was felt not to be proportionate.

69. On questioning on [5988] Mr Parmar explained that he did not know why Park Way Gate had been remediated in 2021/2022 save it was a building with a substantial risk. Dorset House had been expedited as there were health and safety concerns due to cladding falling off the building.

70. On questioning by the Tribunal in respect of [5989] Mr Parmar could not remember how many projects are currently live, he thought there were eight. Two projects had begun in January 2025. He agreed cost is always a consideration but is not the primary outcome.

71. Mr Parmar explained that he is governed by the business' internal processes. He explained in 2025 a number of moderate risk buildings are being remediated due to lender requirements. He accepted funding requirements were coming ahead of risk.

72. Mr Parmar confirmed having considered the reports he felt it was disproportionate to the risk to remove the Kingspan panels behind the terracotta tiles.

73. Mr Nissen KC re-examined.

74. Mr Parmar confirmed the projects selected for each year would be selected after the board approval. The investigations start in the January and he then reports to Chris Sorrenti. Budgets had been allocated and so Purbeck House had been left behind.

75. Next Mr Nissen KC called Mr Walker. He confirmed his statement [628] was true. Mr Walker is the Defects Manager at Unite group plc.

76. Mr Walker confirmed that on 21st January 2025 approval had been given by the Building Safety Regulator for works to the doors to be undertaken. This was in accordance with the Checkmate report contained within the bundle.

77. He confirmed he was familiar with the FRAEW. It was held on a central database for all sites to which he had access.

78. In answer to questions from the Tribunal he stated that 1190 doors are to be replaced at the Property. He confirmed that certain doors would have been replaced in the past following quarterly door inspections undertaken by the local team. He stated that all will be replaced.

79. Mr Nissen then called Mr Joel. He confirmed his statement [635-640] was true. Mr Joel is the Head of Pre-Construction at Topeek Southern Ltd who are described as the principal contractor who will be appointed to undertake remediation works at the Property.

80. On cross examination he agreed that [957] was the proposed programme of works. A colleague had written it on 8/1/25. He had also written the proposed scheme (see [965]). He confirmed that Unite will appoint a Fire Engineer although he does not believe they have appointed one yet. The estimated cost of the works in the scheme is about £1.5million but if full remediation of all wall claddings this would rise to about £7million.

81. He confirmed he had allowed 23.6 weeks for design but he accepted could be less. In his opinion the key timing issue will be the Building Safety Regulator approval. In his view the current scheme will take about one year on site and if the full cladding likely to take 2 years.

82. Upon completion of the witness evidence of fact Mr Bowker confirmed the items not being pursued were on page [81] items 7 (b), (c), (d) and (e). Item (e) being in addition to those set out above:

"In respect of the electric water heater cupboard, the incomplete construction within cluster corridors, namely, where there is no separation between the cupboard and the bedroom."

83. Mr Bowker then called Ms Sheehan.

84. The joint statements were at [118-138] & [139-161]. Her report was at [162-299]. She was a director of Jensen Hughes (fire engineering and litigation). She has specialised in fire safety work since 2005.

85. She confirmed she understood her duties to the Tribunal under Rule 19 of the Tribunal Procedure Rules. She went through various minor corrections to her report.

86. Initially Mr Seow in her London office was instructed to provide reports for the Applicant's asset manager. Subsequently she was asked to become involved given the litigious nature.

87. Mr Nissen KC cross examined Ms Sheehan.

88. As to EWT2 & 5 it is agreed that the panels are Kingspan KS 900 & 1000 MR. The difference relating only to the dimensions of the panels [193]. She was satisfied with the safety of the panels themselves. However in her opinion it was not sufficient to just look at the testing of the panels but also as to the method of installation.

89. Ms Sheehan stated that in her opinion the parties were better informed now although she accepted the previous schemes proposed by Hydrock and BB7 would remediate any risk but other routes also existed. She was no longer contending that the EWT2 & 5 panels all needed to be removed.

90. She agreed the LPS1181 is designed for commercial buildings. LPS is an insurance industry body primarily looking at property protection. It does give information which should not be read in isolation. In her opinion it is better to consider tests that are available as it is better than no test data.

91. Ms Sheehan explained that the site construction needed to match the test construction. Here we have 2 steel panels with a PIR core which is not fully encapsulated, an issue arises where the edges are open.

92. She explained that she and Mr Brown had been provided with literature by Kingspan. The panels on Purbeck House are not fire rated. Kingspan confirmed all panels supplied had a PIR core.

93. Ms Sheehan stated she reported on what was on the buildings. She now knows of the test and the new FRAEW can take account of the information found including that provided by Kingspan and how the panels were installed on the buildings.

94. In her opinion the Building Safety Act defines what is a building defect. Any PAS or FRAEW already knows of the risk or perceived risk. Under PAS you then work out a scale of risk. It is tool for determining a cost and risk proportionate scheme. In her opinion if you assume a risk is appropriately reviewed then it may not be a defect if the risk is low. Risks are all a question of proportionality.

95. PAS is a guidance document and not an in depth risk assessment.

96. At [4069] were the list of Kingspan drawings. Ms Sheehan was referred to [4095 & 4096]. These were examples of the EWT5 scenario. In her opinion this required encapsulation to make the same safe. In her opinion whilst it will char from fire any fire may also leapfrog if not encapsulated. She was concerned that the test did not show the barrier and so not clear what was tested and so a risk still exists.

97. Ms Sheehan stated that some drawings (see [4102]) show encapsulation. It is a question of considering what is on the building to assess if it causes a risk.

98. At this point we reached the conclusion of day 2. Ms Sheehan was warned she must not discuss her evidence overnight.

99. The following morning the Tribunal met initially just with counsel. The Tribunal drew to counsel's attention that it had seen and considered a

report from BRE Group Limited titled Fire Performance of Cladding Materials Research-Appendix A Literature review which appeared to consider the testing regimes and may be relevant. In particular it referenced that the use of the LPS 1181 test in respect of residential premises may not be appropriate.

100. Further the Tribunal advised counsel that it did take judicial notice of the findings made in respect of Kingspan as part of the Grenfell Tower Inquiry.

101. The Tribunal agreed with counsel the experts could meet to discuss the BRE report and we would adjourn until 11am for the parties to consider. It was agreed Mr Bowker could discuss this new report with Ms Sheehan.

102. Counsel returned shortly after 11am. It was agreed that questioning in respect for the BRE report would be conducted by way of "hot tubbing" the two experts separate to their current reports once both had given their evidence upon their substantive reports. We were also supplied with a supplementary report on behalf of Mr Brown the Respondent's expert.

103. It was confirmed by Mr Nissen that Mr Brown was placing no reliance on pages [3721 and 3722] which referred to coffins. The inclusion of these pages appears to be in error.

104. The cross examination of Ms Sheehan then continued.

105. Ms Sheehan agreed that the certification ([3788-3790]) was not affected by the orientation of the panels. Ms Sheehan stated she had not observed any taping and jointing of panels and there are no cavity barriers. In her opinion there is nothing that provides fire protections [3451] and the glass fibre is not sufficient. She has no information that it has fire resistance. It is necessary to look at everything with a critical eye. The panels themselves are not a problem but the lack of encapsulation is the problem.

106. Ms Sheehan was referred to paragraphs 196 and 197 of her report [197]. She stated she could not see how the spread of fire would stop. Whilst the heat may be minimal volatile gases would be given off. She considered the mechanisms of fire and acknowledged charring could occur.

107. In her opinion the BS test has full encapsulation. This is different from the LPS test which she was not sure covered gases. The volatile gases may be given off by charring.

108. She accepted that paragraph 22 of her supplementary report [216] could be said to be speculation but in her opinion the question of encapsulation was key to the test results.

109. She was referred to Mr Brown's supplemental report and the hand written drawing at page 13 in connection with her findings which were set out at page 14 paragraph 4.1.13 of Mr Brown's supplemental report. Ms Sheehan suggested she had used the panels on the elevation based on the test. She accepts she could have looked back at this but doesn't think it undermines her conclusions.

110. Ms Sheehan was referred to the BRE testing S[260]. In her view this reinforced her view that encapsulation was required.

111. Ms Sheehan confirmed she had seen [74-76] of the bundle which set out the list of defects. She stated she believed the issue of self closers being required was agreed. She agreed there was no evidence of these or the doors being defective when first installed upon construction. She agreed the gaps should not exceed 15mm for certain doors and 8mm for other doors. The Property included a mixture of both types. She agreed this was different from what she had measured. She agreed usage could cause increase in gap together with maintenance undertaken. Equally if the floor had been changed then this may affect the size of the gap.

112. Ms Sheehan agreed there was etching in the glass on some doors but not all although it appeared most had the correct Georgian glass in place.

113. On questioning by the Tribunal Ms Sheehan explained the LPS test was more akin to testing on a warehouse. The BS8414 test was more like the situation outside a flat.

114. Mr Bowker re-examined.

115. Ms Sheehan agreed the SFS base track has no fire properties.

116. Ms Sheehan stated the panels themselves are not inherently unsafe. It is a question how they are built and in her judgment encapsulation and detailing is key.

117. Mr Nissen KC called Mr Brown.

118. Mr Brown confirmed his report [300-533] was true and he was aware of his duty to the Tribunal. Further subject to minor amendments he wished to make his supplementary report was true.

119. Mr Brown provided details of his professional qualifications. He confirmed that since 2018 he had run his own consultancy principally providing expert reports. He had reported on in excess of 75 residential cladding cases.

120. He was then cross examined.

121. He confirmed he had not had sight of the Global report until the bundle was prepared. He confirmed he received a mixture of oral and

written instructions from his client. He confirmed he did not initially undertake an FRAEW but did subsequently. He had not been instructed to consider the question of delay.

122. Mr Brown explained he was given documents to review, provided his initial views and then held a site inspection. Thereafter he reported back taking account of what he had seen on the ground.

123. In his view on the items not agreed in respect of the cladding systems was that whilst there is a risk it is at a reasonable level.

124. Mr Brown agreed that if the PIR was exposed to flames fire may spread rapidly but as manufactured sandwiched between steel outside there is no exposed insulation. Having considered the test results charring would build up over time.

125. He explained matters had been updated as a result of obtaining information from Kingspan. This was referred to at [357] and paragraph 4.3.4 of his report. He confirmed the information was obtained at his request. Mr Macklin of Kingspan was very helpful in providing technical information.

126. Mr Brown explained he included reports and documents he considered of value. He had not included the PhD thesis of Ms Sheehan's colleague who assisted her.

127. Mr Brown stated whilst he would give his opinion on issues or defects he did not consider it was for him to state what might be a relevant defect. That was a matter for the Tribunal to determine in his opinion.

128. Mr Brown was taken to [489]. He explained he had expressed a view as to a relevant defect since in his opinion if there was no risk of spread of fire there could not be a defect.

129. Mr Brown was referred to pages [384-386] of his report. He thought by putting matters in quotes he showed he was taking extracts. He agreed there was no mention that LPS testing was for industrial buildings. He did not see this as being relevant to the fire performance of the panels. Industrial buildings are typically the primary market for sandwich panels. In his opinion it is the output from the test which is relevant.

130. Mr Brown confirmed his FRAEW is an abbreviated risk assessment for this process. He wanted to capture the essence of the issues.

131. Mr Brown was taken to the ABI Technical Briefing dated May 2003 [3724] and in particular paragraph 3.5 [3733]. He confirmed this document relates to industrial premises. He suggests since it was introduced it has reduced losses due to fire spread. It references that

LPS 1181 certified products will not make a significant contribution to a fire. He agreed the context was targeted at industrial buildings but he was drawing out why it was promoted by insurers.

132. Mr Brown suggests one of the key differences in approach between him and Ms Sheehan is he looks at how the panels will react to fire. He considered the reaction of products to fire.

133. At [397 & 398] he referred to a paper prepared by a Mostyn Bullock. He had not been able to obtain a copy to review but was satisfied that Mr Bullock would not have placed his name to something he did not support . He had referred to it for generality.

134. Mr Brown confirmed he had seen the BRE report referred to the experts by the Tribunal. He had not specifically referred to it as he considered it to be of its time.

135. Mr Brown confirmed he had considered the charring within the timeframes of an evacuation. He thought this was likely to be 30 -60 minutes. In his opinion the contribution of exposed PIR would be negligible. The material would he believe self extinguish and he does not consider the presence of volatiles at the next window to be significant. He accepted there could be sporadic flaming but did not think it would cause any fire to spread. In his view the very large cost involved in total removal means that such action would be disproportionate.

136. Mr Brown confirmed he discussed this with his client. He did not see a risk that this could lead to a fire leapfrogging up the building. In his opinion if it would it would fail the BS test. He accepted if it had been a risk he may have taken a different view.

137. Mr Brown stated he had been involved in the spread of fire in relation to the way materials burn for coming on 40 years. He had covered a wide range of buildings and was satisfied he had the necessary experience.

138. Mr Brown stated he is always sceptical on testing. However in his opinion poor quality construction is often more likely to blame.

139. On questioning by the Tribunal Mr Brown stated that regulation is going from a performance based to regulation based approach.

140. At this point day 3 ended. Mr Brown was reminded he must not discuss his evidence.

141. On day 4 the cross examination of Mr Brown continued.

142. Mr Brown agreed the issue of cavity barriers and associated matters is the primary difference between him and Ms Sheehan in respect of the disputed wall types. In his view it partly comes down to installation. The suite of drawings Kingspan provided are dated 2013,

some ten years after the Property's construction. These are claimed to be relevant to their certified product. The product itself is unchanged from when installed on these buildings and they would have produced a similar drawings package but it was not available now.

143. Mr Brown acknowledged he had not looked at what design is now recommended.

144. Mr Brown was referred to the BRE report S[259] he explained this gives visual observation and the fire takes 16.5 minutes to reach 5/6m high. The crib for the test is set up 2 m below so the total height of the flames reached is 7 or 8m. The crib was extinguished after 28 minutes. Whilst there is charring the fire does not spread.

145. Mr Brown confirmed he understood that the product produced by Kingspan is now called Quadcore but was told by Mr Macklin this is the same. Whilst he is aware of the criticisms levelled at Kingspan he understands this relates to a separate part of the business. In his view if there were any suspicions he would have expected BRE to take action.

146. Mr Brown was asked about the doors. He did not accept the measurements of Ms Sheehan. He accepted some gaps but the building has been operating for 20 years so what one would expect.

147. Mr Brown was then questioned by the Tribunal.

148. He confirmed PAS9980 identifies three categories of risk:

High: remediation required
Low: nothing required
Medium: remediate to as low as reasonable practicable

149. In his view referring to insurance standards is acceptable. Insurers wish to reduce the spread of fire.

150. In his opinion the fact not everyone left the buildings during evacuation tests was not a factor to take account of.

151. In his opinion there is little difference between industrial and residential standards.

152. Mr Brown confirmed he had acted for Unite Group on three cladding disputes in Scotland. He believed he was helped by Unite throughout his instructions on these buildings. He would not put forward his view unless he was sure it was safe.

153. He accepted you would probably not install any of the cladding that is on the Property if you were constructing the same now.

154. Mr Nissen KC re-examined Mr Brown.

155. Upon conclusion the "hot tubbing" of the experts took place. The Tribunal first asked the same questions of each.

156. Ms Sheehan had not been aware of the document. Mr Brown was aware but neither wished to change their evidence having had sight of the same.

157. Both agreed requirements for fire safety had changed over time. Mr Brown referred again to changes resulting in a compliance based approach which in his opinion had unintended consequences including leading to increased costs for the industry. In his opinion a degree of flexibility would be useful.

158. Both were referred to page 16 and paragraph A2.7.1.8 of the BRE Research Paper introduced by the Tribunal.

159. Ms Sheehan agreed with the findings that LPS1181 is not an appropriate test for fire performance of external walls and facades given the way the test operates.

160. Mr Brown referred to the fact that at A2.3 mentioned reviewing in connection with residential buildings and the type of cladding systems used. It was he stated being looked at in that context. Further whilst published by BRE the paper was prepared by academics. In his opinion it is of its time and that causes a big difference.

161. Mr Bowker then questioned the two experts.

162. Ms Sheehan agreed the report could assist as part of all the documents one considers. Mr Brown was of the view that it provides background and consideration of the tests was more important. This was one of many documents which he had read and he did not list all. It was not a document which he considered was helpful.

163. Mr Nissen KC then questioned the experts.

164. Upon conclusion the first part of the hearing concluded. It was agreed with all present that the final day would be listed in person at Havant on 3rd March 2025.

165. Upon resumption on 3rd March 2025 the Tribunal apologised to the parties as it appeared the recording equipment used for the first part of the hearing had malfunctioned and a transcript could not be produced from the recordings.

166. Mr Bowker relied upon his skeleton argument and an updated bundle of authorities.

167. Mr Bowker suggested the making of a remediation order is essentially a binary choice. He looks to rely on the evidence as a whole.

168. He suggested there were 3 concerns in relation to the risk: seriousness, delay and effective management.

169. Mr Bowker highlighted that neither the actual manager for the Property or Mr Sorrenti were called to give evidence. As to the latter he suggested he should have been called as the ultimate decision maker.

170. Mr Bowker suggested it is still not clear that works will be undertaken in 2025. He referred to the fact that on occasion Unite Group had prioritised lender requirements in determining the scheduling of works.

171. Mr Bowker suggested that Mr Buckley-Sharp in giving his evidence did not give the impression that the Applicant was only interested in its reversionary interest. He suggested his evidence was reliable. He was not satisfied with the speed at which the works were being moved forward. He suggests that the facts point to the need for a Remediation Order so there is a risk of enforcement.

172. Mr Bowker suggested that a Remediation Order is required as there is a lack of insight on the part of the Respondent. If a Remediation Order is made it will not interfere with any works being undertaken. He suggests that there is a deliberate difference between Sections 123 and 124 of the Act. He suggests this is because section 123 of the Act is a precision tool for getting work done.

173. Turning to the programming Mr Bowker suggested that even taking Mr Joel's evidence the works could be undertaken by June 2026. He reminded the Tribunal that the Respondent could apply for a variation of any Order if required.

174. Mr Bowker submitted that both experts were competent. He referred to Mr Brown's analysis [420]. He suggested that Mr Brown was not a reliable witness as he didn't speak to his report and not reliable. He suggests Ms Sheehan demonstrated she was reliable.

175. Mr Bowker suggested the only consequence of not remediating EWT2 and EWT5 is purely financial. Mr Brown on occasion crossed the line into advocating for his client and had a selective approach to the evidence.

176. He relied on testing and documents such as that produced by the Association of British Insurers [3724] which related to commercial buildings or even more niche industries such as the food manufacturing industry. His approach was not balanced such as relying upon the LPS1181 test without explanation as to its context.

177. Mr Bowker referred to various instances where he quoted Mr Brown such as "they are very pro active on fire safety", "I'm arguing on another case" which suggest he was going into battle for his client.

178. Further Mr Bowker relied on the email Mr Brown sent to Kingspan [1499] which he suggests shows Mr Brown had crossed the line as an expert.

179. Mr Nissen KC relied upon his skeleton argument which the Tribunal had read in advance of the hearing.

180. He did not accept there was a distinction between sections 123 & 124 of the Act. He suggests there is no material difference. Mr Nissen KC suggests there must be a qualitative assessment in determining if a Remediation Order should be made.

181. Mr Nissen KC suggested that Mr Brown considered the level of risk and referred to PAS [5770] and the objectives [5782]. This can be used to inform the identity of the risk. He did not accept the criticisms of Mr Brown. He suggested both experts wanted information from Kingspan and this email was not concealed but disclosed.

182. Turning to Ms Sheehan he suggested that she accepted the orientation of the panels was irrelevant. At paragraph 22 of her supplemental report S[216] she accepted that her view was speculation.

183. Mr Nissen KC stated that whilst Mr Brown produced selective quotes in the body of his report he attached the whole documents. He relied on documents for different purposes and considered all in the way a careful expert would. He submitted both experts agreed that EWT2 & 5 did not require removal of the panels but Ms Sheehan wanted encapsulation and cavity barriers. In Mr Brown's opinion there was no risk of fire spread on the evidence. It would burn until a char layer forms and is not self igniting.

184. He submitted that Ms Sheehan did not explain the risk. The burden is on the Applicant and must show it is intolerable. He submits that no mechanism for fire spread was shown. He suggests that fire will not spread on its own.

185. Mr Brown gave an analysis and both experts relied on tests but for different purposes. He suggests Ms Sheehan had no evidence for her theory of the need for cavity barriers. Mr Brown relied on the BRE test to show the effect a fire would have on a panel. He submitted Ms Sheehan accepted the drawing re charring and was comfortable with the results.

186. Mr Nissen KC suggested you could rely upon the LPS 1181 test. Whilst there may be a focus on commercial property the objective of the tests the market place would place reliance upon these test results. Both experts agreed the BRE document introduced by the Tribunal did not change the evidence given.

187. Mr Brown was asked no questions on the FRAEW yet he determined the risk was low or at least tolerable [439 onwards]. The FRAEW is evaluative and Mr Brown quantified the level of risk.

188. He suggested that Kingspan did not require encapsulation within its designs. The documents produced are relevant to the product. The drawings produced show Kingspan turned its mind to encapsulation [4102]. He suggested there was no criticism of Kingspan from either expert who were supportive and produced documents. It was a different side to the business than that which had been criticized in the Grenfell Tower Inquiry. Mr Brown was happy with the information supplied.

189. He suggests on the evidence there is no relevant defect in the EWT2 &5 panels.

190. Mr Nissen KC suggested that Mr Buckley-Sharp was unduly critical of Unite. He suggests not one document was produced which show that Barclays were putting the student occupants first. They have no relationship with the students. He submits it is notable no public entity has sought a Remediation Order. He suggests his client has a constructive relationship with the local authority and whilst an improvement notice was served this was withdrawn once new information was provided.

191. Further he suggests control measures are in place. Simply because there is combustible PIR this does not in his submission mean it must be removed.

192. Mr Nissen KC suggests his client cannot just focus on this Property. They have adopted a risk based approach which he suggests is legitimate and aims to undertake work to the high risk properties first subject to lender requirements. He suggests there is no evidence this has adversely impacted on this Property.

193. He suggests there must always be a relationship with the costs of undertaking works. Further he submits the landlord could abuse the lease covenants in terms of withholding consent for any works and this is an important factor which weighs heavily against the making of a Remediation Order.

194. Mr Nissen KC invited us to accept the evidence of Mr Joel and add a contingency of 6 months if we are to make an order.

195. As to the internal doors in his submission these are not relevant defects within the definition of Section 120(3)(a) of the Act. Ms Sheehan accepted the self closers are fair wear and tear. In his submission there was no evidence of defects although his client has contracted with Checkmate to undertake works to the doors. However ongoing maintenance will always be required.

Decision

196. The Tribunal wishes to thank both counsel for their submissions. We also pass on our thanks to those who prepared the electronic bundles. Whilst voluminous these worked well and greatly assisted all in the conduct of the proceedings.

197. We record that we are only determining those issues which remained live by the end of the hearing and submissions. The parties had helpfully agreed certain matters so that the decisions we had to make were limited. We had before us some 22 reports, 4 fire risk assessments and 11 miscellaneous reports which had been obtained over the past 5 or 6 years. We were provided with a bundle of authorities which contained the majority of Remediation Order decisions made by the First Tier Tribunal.

198. In making our decision we record that we have had regard to:

- The hearing bundle of 6355 pages;
- The supplemental bundle of 1175 pages;
- The supplemental report of Mr Brown dated 21st January 2025;
- The bundle of authorities
- Counsel's respective skeleton arguments;
- Fire Experts note on Cladding Types 22nd January 2025;

199. At [139-160] was the updated joint statement prepared by the experts dated 2nd December 2024. We do not address those parts of the statutory test required for making a remediation order which we have recorded above were agreed.

200. We consider firstly the witnesses of fact.

201. We found Mr Buckley-Sharp to have been honest and straight forward in giving evidence. We find that whilst of course maintaining the value of the assets he manages for the Applicant is a key responsibility we accept that his client will have agreed other core principles with his company. Further we find that requiring remediation of defects is a legitimate aim for Mr Buckley-Sharp to pursue on behalf of his client.

202. Turning to the Respondent's witnesses of fact. We record as to those witnesses from the Respondent themselves all were relatively junior and had little say over the making of decisions of substance. All referenced Mr Sorrenti who did not attend or give evidence and yet he appeared to be the key decision maker outside of the Board for determining what works were to be undertaken and the programming of the same.

203. Mr Pyrah was only recently appointed to his current role. He could give little meaningful evidence and often simply replied that matters took place prior to his appointment. We do note what he told us in respect of the fire evacuation drills. What was plain was that this seemed less than satisfactory with no one being sure as to the percentage of occupants who remained in situ during these drills save he was satisfied it was not "in the 100's". This is concerning given that measures have been adopted to mitigate the current risks to the Property as a whole and by implication it is recorded not all students do vacate.

204. Mr Parmar we considered did his best to fully answer the questions put to him as far as he was able. Equally he had not been in post for all the time period being questioned and his role was relatively junior. We found it telling that in answer to questions he explained the programming was changed to enable less high-risk buildings to be remediated due to the requirements of lenders. Whilst the Respondent's case was that it had a programme to remediate the buildings within its portfolio on a risk basis it was clear this is not always followed. Pressure from those providing funding to Unite Group seems to attract greater weight than risk and this was not properly explained.

205. Mr Walker's evidence added little save for confirming the details as to the door replacement by ~~e~~Checkmate.

206. Mr Joel gave some background to the proposed programme of works. He accepted from a construction point of view the preliminaries need not take that long, certainly not longer than 6 months. Where we were less clear is why the work would take 2 years if works were required to EWT2 & 5.

207. The Tribunal considers the expert evidence.

208. We must say we did not find either of the experts entirely satisfactory.

209. We were asked to consider three items which may be a relevant defect: EWT2 & 5 and issues surrounding the internal doors. Other items were agreed or conceded. For clarity we note that it is accepted that EWT3, 4 and 6 are relevant defects.

210. Mr Brown was of the view he could not offer an opinion as to whether something amounted to a relevant defect under the terms of the Act. He stated that was a matter for the Tribunal. Ms Sheehan was prepared to offer her opinion on whether something amounted to a relevant defect.

211. We find that an expert can and should offer opinion on whether or not something amounts to a relevant defect under the terms of the Act. Whilst we agree with Mr Brown the ultimate decision is one for the Tribunal to make, we would expect an expert witness to offer opinion on this point. We are however only able to determine those matters which

the parties have contended are relevant defects. We have concerns that certain items have been conceded by the Applicant which may be relevant defects or require a different approach to remediation which would go beyond the submissions and evidence before us.

212. We were concerned both experts appeared to simply accept without critical analysis the information provided by Kingspan. In particular given there appeared to be no testing that related to the use of the panels being considered in this case on residential buildings. We found this approach surprising in the context of the Building Safety Act and the circumstances leading to the same.

213. Mr Brown admitted he was aware of the BRE report which the Tribunal drew to the parties' attention. He did not consider it relevant to draw to the Tribunal's attention being as he described it as "of its time". We were surprised given this document expressly related to residential premises and post dated the events of Grenfell Tower. Mr Brown was critical of a compliance based approach to fire safety with much of his approach being one of considering risk relative to cost and making what he referred to as a proportionate determination to such matters. This is not the approach which statute has adopted.

214. It was clear Mr Brown had worked alongside the Respondent and its parent Unite. He referred at times in his evidence to obtaining information from them and the discussions he held. Certainly at points we did have concerns that certain opinions made by Mr Brown were him advocating his clients position. A good example related to the evacuation policy which Mr Brown tried to suggest was effective and yet we heard from Mr Pyrah how on one recent test a large number of students which he advised did not "number 100's" had not evacuated. This did not appear to be an effective methodology to this Tribunal.

215. Further we were concerned that Ms Shee~~n~~han equally accepted the information from Kingspan without any critical analysis. This seemed to flow into her change of position that the EWT2 & EWT5 panels could be remediated in a way less than total replacement.

216. We had regard also to our inspection of the Property and what we have recorded above.

217. We turn to the items in dispute and deal firstly with the internal alleged relevant defects. We do not find these are proved.

218. It was plain to us from our inspection that a relatively large number of the doors required works to be undertaken. This is supported by the Checkmate report and the fact that Checkmate have been contracted to replace about 1200 doors. We are told that during the course of the hearing the Building Safety Regulators consent was obtained this work would be taking place. Certainly many seemed to have significant gaps or other defects and are likely to cause a building safety risk including the spread of fire and smoke. However under the

definition in section 120 of the Act to be a relevant defect Section 120(3) must be satisfied. It was contended by the Respondent that any defect was as a result of wear and tear or changes to flooring or similar at the Property. It was suggested there was nothing to show that when originally constructed the doors would have been defective.

219. We comment that we are satisfied that the doors are defective and as we say amount to a building safety risk. However on balance taking account of all the evidence including the inspection we cannot be satisfied on the balance of probabilities that the doors and their furniture as constructed were defective.

220. We consider the two wall types EWT2 & 5. The two types are:

EWT 2 – Terracotta tiles[2119]

EWT 5 – Insulated Steel Kingspan Panels [2125]

221. EWT2 can be found on the front and side elevations of block A Purbeck House. It is as the name suggests terracotta tiles with behind Kingspan steel encased panels with aluminium support rails. EWT5 is essentially simply the Kingspan panels and is found on the side and rear elevations. We consider both together as neither party considered that these should be treated differently. We did however stand back and consider whether we should do so but determined this was not required.

222. Mr Brown contended that if there was any risk such risk was "tolerable" and do not present a building safety risk. He suggests that the insulation will form a char which would inhibit the spread of fire. Ms Sheehan suggests if properly installed would not require remedial works but, in her opinion, due to the lack of firestopping this could lead to spread of fire and amounts to a Building Safety Risk and a Relevant Defect. Ms Sheehan referred to the potential for fire leapfrogging up the building and see paragraph 92 above.

223. Both experts referred to the FRAEW and the need for further FRA and FRAEW's to be undertaken under the PAS9980 framework.

224. Mr Brown placed significant weight on the LPS1181 test and various other reports and testing. We note that none reference residential property use and all were said to relate to some form of commercial or industrial usage. As Mr Brown explained this was where his background in fire safety had been developed, initially working for a commercial insurer.

225. Ms Sheehan also placed some weight on the LPS1181 test but also considered other matters such as the potential spreads of fire up the building within her report. This evidence was disputed.

226. We note that no results of BS8414 tests on the panels either before the construction date or in the 22 years since have been provided. As a Tribunal we are surprised that no tests were undertaken and would have expected a manufacturer to have had such tests conducted. We note the documents supplied by Kingspan are not contemporaneous with the date of construction. We are mindful of the Grenfell Inquiry conclusions and note both experts seem to have simply accepted the information provided by Kingspan without the healthy scepticism we would expect in these circumstances.

227. Both experts at points referred to a cost risk analysis being necessary. We are not satisfied that in determining whether or not there is a relevant defect this is relevant. The test makes no reference to cost. In our judgment in defining if there is a relevant defect one considers whether or not there is a building safety risk which in this instant would be the spread of fire.

228. Overall we believe there is a risk of a spread of fire from EWT2 & 5. Both have exposed PIR core which is combustible. We have considered carefully the testing and reports. However the tests, notably the LPS1181, relate to and are designed for commercial premises. The various examples of fires shown within the bundle are very different premises to the instant Property. We prefer the evidence of Ms Sheehan and that within the bundle that fire could spread from these panels due to the exposed cores. We also find that there is a lack of cavity barriers which is of itself a further relevant defect. Both experts accepted there was a lack of cavity barriers. We find that there is a risk of the spread of fire from one panel to the next including by way of leapfrogging notwithstanding any charring that may occur.

229. We do not consider the documents from Kingspan to be helpful. It is not clear whether or not cavity barriers and encapsulation should be required. However looking at the tests and what we now all know, in our judgement a failure to have such in place could lead to a spread of the fire. Mr Browns analysis within his supplemental report of the BS8414 appears to show that flames could rise significantly and in our judgment this shows a spread of fire. We are not satisfied that the charring which both experts accept would occur would prevent the spread of fire. The charring may limit spread but not prevent the same. As a result we are satisfied that the EWT2 & 5 panels constitute a Building Safety Risk of spread of fire and a relevant defect.

230. We must consider now whether or not we should make a Remediation Order.

231. Both parties agree we have a discretion. We agree.

232. We note that it is accepted that the Respondent has been aware that the Property has defects for about 5 years. To date work has not been undertaken. We do accept that an organisation such as the Respondent and its parent company Unite need to balance their overall obligations across their portfolio as a whole. We were told at the outset that they undertook a risk based approach. However it became apparent as the evidence developed that this was only part of what was taken into account. Costs and financial matters generally appear to have weighed heavily as was acknowledged by Mr Parmar when he referred to the requirements of lenders.

233. We accept for commercial entities that costs will always be a consideration. It would be unrealistic to not accept this and it was perhaps unfortunate that the Respondent did not adopt a more straight forward approach in presenting its evidence on this point.

234. Equally we have no doubt that Mr Buckley-Sharp and his client have the value of their interest in mind. However we were satisfied that the need for remediation of a defective building was also important to the Applicant. This is what one would expect from a large corporate entity following on from the dreadful events of the Grenfell Tower tragedy.

235. We note that the making of a Remediation Order is not a punitive step. It is an aim of the Act to improve the safety of all residential buildings.

236. We have considered the various authorities and in particular that relating to the The Chocolate Box, being another large building in Bournemouth. In that case it was the Secretary of State who sought an order. By the time the matter came to hearing works were underway. Notwithstanding this the Tribunal did make a remediation order.

237. In this case there is no certainty as to when works will begin. We are told they are to be included within this year's scheduled works but it was unclear following the Respondents witnesses evidence and in particular that of Mr Pyrah and Mr Parmar as to whether or not further board approvals would be required. We heard the opportunities for obtaining Board approvals are limited to Board meetings in the summer of each year.

238. Mr Nissen KC suggested that no statutory authority had taken action. He explained when an improvement notice had been served upon provision of information this had had withdrawn. We note however there was no evidence as to the satisfaction or otherwise from the local authority or the fire service. We place little emphasis on the fact no authority had taken any action, cogent as we are as to the limited resources available to such bodies.

239. Overall we are satisfied that we should exercise our discretion and make a Remediation Order. We take account of the actual day to day

occupants of the Property and our findings as to defects which require works to be undertaken. These works are significant. We consider that the Respondent has been aware of the need for works for at least 5 years. The works are to remedy a building safety risk being the spread of fire and we consider it is consistent with the previous decisions in circumstances such as this to exercise our discretion and make such an Order. In our judgment the making of such an Order is in furtherance of the objectives of the Act.

240. We therefore make an order in the terms attached. We have considered the period of time and have taken account of the evidence of Mr Joel. We are satisfied that such a lengthy contingency period as suggested by Mr Nissen KC is not required.

241. We have also considered carefully the need for the Respondent~~s~~ to obtain consent from the Applicant. Whilst issues were raised as to the form of licence and whose solicitor should provide the form to be used these are in our judgment usual commercial matters that parties should be able to agree. Plainly the Applicant wants works undertaken. We believe such negotiations can take place in tandem with any application to the Building Safety Regulator. In our judgement if agreement cannot be reached this may be grounds to seek a variation of the order.

242. As to the extent of the works we have considered matters carefully. We are concerned that due to the lack of evidence encapsulation alone of EWT2 & EWT5 may not be sufficient to ameliorate the risk found. However this is Ms Sheehan's position (Mr Brown contends no works are required and the risk is tolerable). We did struggle to understand how she reached this view given her concerns expressed in her reports as to the panels. It seems to us such panels as are in place are a Building Safety Risk and ought to be removed notwithstanding the very high cost. However that was not what either party contended for and we make our Order on the basis of the submissions made to us.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference(s)	:	HAV/00HN/BSA/2024/0001 and 002
Property	:	Blocks A and B Purbeck House, 3 Oxford Road, Bournemouth BH8 8ES
Applicant	:	Barclays Nominees (George Yard) Limited
Representative	:	Robert Bowker instructed by CMS Cameron McKenna Nabarro Olswang LLP
Respondent	:	LDC (Oxford Road Bournemouth) Limited
Representative	:	Alexander Nissen KC instructed by Walker Morris LLP
Type of Application	:	Application for a Remediation Order Section 123 Building Safety Act 2022.
Tribunal Member(s)	:	Regional Judge Whitney Andrew Thomas FRICS MIFireE RBI Amanda Clist MRICS
Date of Hearing	:	21, 22, 23 and 24 January 2025 and 3 March 2025
Date of Order	:	8th May 2025 Corrected pursuant to Rule 50 on 16th May 2025

REMEDIATION ORDER

UPON considering the applications, evidence and submissions in this matter and the provisions of the Building Safety Act 2022

AND for the reasons set out in its Decision dated 8th May 2025

THE TRIBUNAL ORDERS THAT:

1. The Respondent, LDC (Oxford Road Bournemouth) Limited (the relevant landlord) shall remedy the relevant defects as determined by the Tribunal in accordance with the attached schedule (the "Works") in Block A and Block B, Purbeck House, 3 Oxford Road, Bournemouth (the "Building").

   The Respondent shall do so within 24 months from the date of this order

2. The parties have permission to apply, including but not limited to in relation to paragraphs 1 and 2 and the schedule of Works overleaf. In particular, the Respondent has permission to apply:

   - To be permitted to undertake different Works to those specified in attached Schedule by this Order, if it is revealed by investigation and analysis by a suitably qualified consultant that reasonable alternative works will remedy the relevant defects and

   - to extend the time for compliance with this Order.

3. Any application to the Tribunal must:

   i) be made using the Tribunal's Form "Order 1";
   ii) be supported by detailed evidence explaining the reason for the application and a proposed draft order setting out the variation sought;
   iii) There is permission to the Respondent to rely on relevant expert evidence in support of the application; and
   iv) include a realistic time estimate for the application to be heard.

4. The Respondent must notify the Tribunal and the Applicant, that it has complied with this Order, within one month of the certified date of practical completion of the Works. The form of this shall be
   - a Section 16 (Building Regulations 2010) declaration of compliance with the Building Regulations.
   - Statement from the respondent that all remediation works to remove relevant defects are completed.
   - Copy of the post works Fire risk assessment with particular reference to External walls, Cavity Barriers and Fire doors. This may contain a FRAEW.

5. Pursuant to section 123(7) of the Building Safety Act 2022, this Order is enforceable with the permission of the County Court in the same way as an order of that court.

SCHEDULE OF WORKS

By 8 May 2027 LDC (Oxford Road Bournemouth) Limited is required to remedy the relevant defects in Block A and Block B, Purbeck House, 3 Oxford Road, Bournemouth as specified below:

1. In respect of the terracotta rainscreen system (EWT2), carry out all work necessary to remedy the relevant defects such works to include:
   (a) closing the exposed edges of the PIR core of the Kingspan MR panel behind the window, sill, head and jambs;
   (b) installing cavity barriers around the reveals that cross the rainscreen cavity;
   (c) adding steel flashings around the service penetrations;
   (d) adding steel flashings around the vertical edges of panels where the insulation core is exposed;
   (e) adding flashings to the openings formed by mast climbers during the original project;
   (f) adding steel flashings to openings formed by and replacing insulation material removed during intrusive inspections carried out in the course of investigations.
2. In respect of the Kingspan MR panels (EWT5), carry out all work necessary to remedy the relevant defects such work to include:
   (a) closing the exposed edges of the PIR core of the Kingspan MR panel behind the window, sill, head and jambs;
   (b) adding steel flashings or an alternative suitable form of protection
      (i) on the vertical edges of the panels where the insulation core is exposed
      (ii) on the horizontal edges of the panels where the insulation is exposed;
      (iii) to the openings formed by mast climbers during the original project;
      (iv) to openings formed by and replacing insulation material removed during intrusive inspections carried out in the course of investigations
3. In respect of the insulated curtain walling (EWT4):

(a) carry out all work necessary to remedy the relevant defects such work to include removing and replacing the combustible insulation with a suitable alternative, namely, to replace with materials which are classified in accordance with A2-s1, d0 or A1, classified in accordance with BS EN 13501- 1:2007+A1:2009; and

(b) new cavity barriers should be installed to compartment lines and edges of cavities.

4. In respect of the metal window pods (EWT3), carry out all work necessary to remedy the relevant defects such work to include removing and replacing the combustible insulation with a suitable alternative including the replacement of cavity barriers.

5. In respect of the metal louvre cladding (EWT6), carry out all work necessary to remedy the relevant defects such work to include removing and replacing the combustible insulation with a suitable alternative including replacing cavity barriers.

6. In respect of the undercroft parking soffit, carry out all work necessary to remedy the relevant defects such work to include removing and replacing the combustible insulation with a suitable alternative.

7. Carry out the works identified at paragraphs 1 to 6 above (the "Works") and remedy the specified relevant defects in compliance with the Building Regulations applicable at the time the Works are carried out.

8. Carry out the Works so that the relevant defects no longer exist.

9. Carry out the Works in accordance with PAS 9980 so that a satisfactory FRAEW is issued.

10. Make good any damage caused as a consequence of the Works.