FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/BSB/2024/0500**
Property	**:**	**1-9 PLANETREE PATH, LONDON E17 7FW**
Applicant	**:**	**(1) HELPFAVOUR LIMITED** **(2) KEIRAN JEFF OLDEN AND LOUISE CHRISTIANE JEANNE JOBARD** **(3) PETER MICHAEL JOHN LOCKWOOD AND WILLIAM MATTHEW WINTERHALTER-BLACK**
Representative	**:**	**Compton Group (on behalf of the 1st Applicant)**
Respondent	**:**	**(1) ROSCO INGO LIMITED** **(2) ROSCO & PERLINI LIMITED**
Type of application	**:**	**For a remediation contribution order under section 124 of the Building Safety Act 2022**
Tribunal	**:**	**Judge Sheftel** **Mr A Thomas RBI, FRICS, MIFireE**
Date of Decision	**:**	**10 June 2025**

DECISION

Summary of Decision

The tribunal makes a remediation contribution order as set out in the Order attached to this Decision.

Background

1. This is an application for a remediation contribution order under section 124 of the Building Safety Act 2022 (the "BSA") in respect of 1-9 Planetree Path, London E17 7FW (the "Building").

2. The First Applicant holds the freehold reversion of the Building. The Second Applicants are the registered leaseholders of flat 5 and the Third Applicants hold the leasehold interest of flat 9.

3. The Building comprises nine flats, over seven floors. As a self-contained building that contains at least two dwellings and is more than 11 metres high, there is no dispute that it is a relevant building for the purposes of section 117 of the BSA.

4. The First Respondent was the developer of the Building within the meaning of s124(5) of BSA. Similarly, it is agreed that the Second Respondent is an associated person of the First Respondent for the purposes of s.121(5)(a) of the BSA.

Procedural history

5. There have previously been two case management hearings in this matter, on 16 October 2024 and 13 December 2024. At those hearings, the Respondents had been represented by Osmond & Osmond solicitors. However, on 17 January 2025, Osmond & Osmond notified the tribunal that they were no longer acting for the Respondents.

6. The hearing of this matter was listed for 7-8 May 2025, although in the event it did not go beyond the first day. At the hearing, the First Applicant was represented by Mr Lockwood (solicitor). Also in attendance were Mr Olden & Ms Jobard (Second Applicants) and Mr Lockwood (one of the Third Applicants).

7. The Respondents did not attend.

8. The question of whether the tribunal should proceed in the absence of a party is governed by rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "2013 Rules"). This provides as follows:

> "*If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal*
>
> *(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and (b) considers that it is in the interests of justice to proceed with the hearing*."

9. Rule 34 imposes a two-stage test. First, the tribunal must be satisfied that the party has been notified of the hearing or reasonable steps have been taken to

notify the party. If the first limb is satisfied, the tribunal must also consider whether it is in the interests of justice to proceed with the hearing.

10. As regards the first limb, the Respondents had been represented by counsel at the previous case management hearings, the most recent of which had specified a hearing window. Notification of the hearing date itself was sent by the tribunal to the Respondents by post at their registered addresses, which had been provided by the Applicants in the original application form. In addition, copies of a letter to the Applicants from the tribunal dated 28 April 2025, chasing the hearing bundle, which referred to the hearing date, were also sent to the Respondents by post. It should be noted that there was a typographical error in the address of the tribunal's letters to the First Respondent compared to the address for the registered office which had been provided by the Applicants in the original application form. The letters were sent to the First Respondent at 55 Beaulah Road, Walthamstow, London E17 7FW, whereas in fact the correct address is 55 Beulah Road, Walthamstow, London E17 9LG. However, there does not appear to have been another address which could have been confused for the correct one (and the address on the tribunal's letter had the correct property number and the fact that it was Walthamstow, E17). Further, the letters were not returned undelivered. Moreover and in any event, at the hearing, Mr Hammond, solicitor for the First Applicant, confirmed that he had sent both the hearing bundle and the First Applicant's skeleton argument to both Respondents by post at their registered offices on 15 April 2025 and 1 May 2025 respectively.

11. For the avoidance of doubt, no such issues arose with regard to the Second Respondent: the tribunal's letters were sent to its registered office at 11-12 Old Bond Street, London W1s 4PN and were not returned undelivered.

12. In the circumstances, as indicated to the Applicants at the hearing, we were satisfied that the test in the first limb of rule 34 has been met with respect to both Respondents.

13. Turning to the second limb of Rule 34, we were satisfied that it would be in the interests of justice to proceed with the hearing. The Respondents had not complied with directions, including as to the provision of an updated statement of case, witness statements etc, which had been set at the case management hearing of 13 December 2024 when they had legal representation – and appeared

to have played no part in the proceedings since that case management hearing. In our view, there was no reason to delay the proceedings, noting that the Applicants were anxious to obtain a decision given that they have already had to spend the money which is the subject of the current claim.

14. We therefore proceeded with the hearing in the absence of the Respondents. The tribunal heard from Mr Lockwood, (who had provided a witness statement) and Mr Olden & Ms Jobard, as well as submissions from Mr Hammond on behalf of the First Applicant.

The claim

15. There have been some small changes to the quantum since the application was first made. On behalf of the First Applicant, the remediation contribution order sought is in the sum of £31,016.57 plus interest. It should be stressed that this sum does not include the costs of cladding remediation works, which are yet to take place, and the costs of which are likely to be significantly higher. According to the First Applicant's statement of case, the cladding system defects are the subject of an application for funding by the First Applicant to the Building Safety Fund. It is said that when the First Applicant knows the cost of the remediation of the cladding system, it will, and indeed is obliged to as a condition of funding, make a fresh application to this tribunal for a further remediation contribution order in respect of those costs.

16. Separately, the Second and Third Applicants each claim the sum of £240 in respect of repairs to flat doors as further set out below.

17. The Respondents had initially defended the claim on the bases that not all of the costs claimed were recoverable under s.124 of the BSA, or that parts of the costs did not relate to relevant defects. Further, the Respondents argued that in any event it was not just and equitable to make a remediation contribution order against the two Respondents.

18. Pausing there, it should be noted that the Respondents had previously raised an issue regarding the costs relating to fire alarm works (totalling £19,206, approximately 60% of the present claim). The Respondents had argued that this head of claim should be struck out or stayed. The Respondents' principal submission in this regard had been that it would be more appropriate for this

part of the claim to be determined at the same time as the proposed future RCO application for the costs of remedying the alleged cladding system defects. This was on the basis that the question of whether the costs of the fire alarm system should be the subject of a RCO will depend, at least in part, on whether the cladding system was a relevant defect for the purposes of s.120 of the BSA – it was suggested that the fire alarm costs relate to a change in evacuation strategy for the Building, which itself arose out of concerns over the cladding (and to a lesser extent, compartmentation). However, as set out in the tribunal's case management order of 13 December 2024, it was determined that the fire alarm costs could be considered in the present proceedings.

The law

19. The tribunal's jurisdiction to make a remediation contribution order is set out in section 124 of the BSA:

"*(1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so.*

(2) "Remediation contribution order", in relation to a relevant building, means an order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying or otherwise in connection with relevant defects (or specified relevant defects) relating to the relevant building.

(2A) The following descriptions of costs, among others, fall within subsection (2)—

(a) costs incurred or to be incurred in taking relevant steps in relation to a relevant defect in the relevant building;

(b) costs incurred or to be incurred in obtaining an expert report relating to the relevant building;

(c) temporary accommodation costs incurred or to be incurred in connection with a decant from the relevant building (or from part of it) that took place or is to take place—

(i) to avoid an imminent threat to life or of personal injury arising from a relevant defect in the building,

(ii) (in the case of a decant from a dwelling) because works relating to the building created or are expected to create circumstances in which those occupying the dwelling cannot reasonably be expected to live, or

(iii) for any other reason connected with relevant defects in the building, or works relating to the building, that is prescribed by regulations made by the Secretary of State.

(2B) The Secretary of State may make regulations for the purposes of this section specifying descriptions of costs which are, or are not, to be regarded as falling within subsection (2).

(3) A body corporate or partnership may be specified as a person required to make payments only if it is—

(a) a landlord under a lease of the relevant building or any part of it,

(b) a person who was such a landlord at the qualifying time,

(c) a developer in relation to the relevant building, or

(d) a person associated with a person within any of paragraphs (a) to (c).

(4) An order may—

(a) require the making of payments of a specified amount;

(aa) if it does not require the making of payments of a specified amount, determine that a specified body corporate or partnership is liable for the reasonable costs of specified things done or to be done;

(b) require a payment to be made at a specified time, or to be made on demand following the occurrence of a specified event.

(5) In this section—

"associated": see section 121;

"developer", in relation to a relevant building, means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it;

"expert report" has the meaning given by section 123(9);

"interested person", in relation to a relevant building, means—

(a) the Secretary of State,

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

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

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

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

(f) any other person prescribed by regulations made by the Secretary of State;

…

"relevant steps": see section 120;

"specified" means specified in the order.

""temporary accommodation costs", in relation to a decant from a relevant building, means—

(a) the costs of the temporary accommodation, and

(b) other costs resulting from the decant, including removal costs, storage costs and reasonable travel costs;

"works" means works—

(a) to remedy a relevant defect in a relevant building, or

(b) in connection with the taking of relevant steps in relation to such a defect."

20. Section 120 defines "relevant defect" for the purposes of sections 122 to 125 and Schedule 8 to the BSA as follows:

"...

*(2) "**Relevant defect**", in relation to a building, means a defect as regards the building that—*

(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and

(b) causes a building safety risk.

(3) In subsection (2) "relevant works" means any of the following—

(a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;

(b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;

(c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

"The relevant period" here means the period of 30 years ending with the time this section comes into force.

(4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.

(4A) "Relevant steps", in relation to a relevant defect, means steps which have as their purpose—

(a) preventing or reducing the likelihood of a fire or collapse of the building (or any part of it) occurring as a result of the relevant defect,

(b) reducing the severity of any such incident, or

(c) preventing or reducing harm to people in or about the building that could result from such an incident.

(5) For the purposes of this section—

*"**building safety risk**", in relation to a building, means a risk to the safety of people in or about the building arising from—*

(a) the spread of fire, or

(b) the collapse of the building or any part of it;

"conversion" means the conversion of the building for use (wholly or partly) for residential purposes;

"relevant landlord or management company" means a landlord under a lease of the building or any part of it or any person who is party to such a lease otherwise than as landlord or tenant."

Are the sums in issue properly the subject of a RCO / did relevant defects exist?

Costs sought by the First Applicant

21. As set out in the First Applicants' Reply, there are 8 categories of costs for which a remediation contribution order is sought in the present case:

    (1) Lack of fuse spar on AOV panel by Future Group – cost **£144.00**;

    (2) Sprinkler remediation by Tandi Sprinklers – cost **£881.23**;

    (3) "Turn lock to open" signs by Allen & Brown – cost **£141.00**;

    (4) Intumescent smoke seals to communal lobby door carried out by Allen & Brown – cost **£114.00**;

    (5) Remediation of access panel to sprinkler inspection hatch carried out by Allen & Brown – cost **£468.00**;

    (6) Compartmentation survey by Cladding Project Management on 1 February 2024 – cost **£2,880.00**;

    (7) Compartmentation works completed by Gemini Construction Limited on 17 July 2024 – cost **£7,501.34**;

    (8) Fire alarm works completed by Future Fire Systems – cost **£19,206.00**.

22. Invoices/confirmation of quantum for each of the above costs was provided in the bundle and we are satisfied that such costs were indeed incurred.

23. On the question of whether the above costs can properly fall within a remediation contribution order, it is important to have regard to the provisions of s.124 of the BSA as set out above. In essence, what is required is the existence of a relevant defect – i.e. a defect that arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and causes a building safety risk. 'Relevant works' means works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period (i.e. 30 years ending with the day on which the BSA came into force).

24. The Respondents argued in their statement of case that defects which do not relate to the original construction, but which have developed since, cannot be relevant defects. In particular, it was submitted that problems which arise due to fair wear and tear or disrepair caused by reasons other than the method of (and materials used in) construction of the Building would not fall within s.124 of the BSA. We do not disagree with this, and indeed it did not appear to be challenged by the Applicants.

25. Secondly, the defect must cause a "building safety risk", which is a risk to the safety of people, arising from the spread of fire or collapse of the building as set out in s.120(5) of the BSA. Finally, the costs in question must be incurred either to remediate a relevant defect or were a relevant step in connection with a relevant defect for the purposes of s.124 of the BSA.

26. Before considering the individual categories of costs, it is worth mentioning the evidence as a whole. Although the parties had been given permission to file expert evidence, no such evidence had been produced – at least in the sense of an expert report which complied with rule 19 of the 2013 Rules. However, the Applicants nevertheless relied on various documents. Although this included recommendations by the managing agent's contractors, which we consider have more limited evidential value, reliance was also placed on:

    - Fire Risk Assessments dated 23 February 2021, 18 May 2022 and 27 October 2022;

- Recommendations by the local authority, the London Borough of Waltham Forest, and in particular, a report by the Fire Safety Joint Inspection Team dated 6 June 2023 (the "JIT Report");
- a FRAEW Report by PRP dated 22 January 2025 on behalf of DLUHC (now the Ministry for Housing and Local Government) (the "FRAEW Report").

27. Although not in the form of an expert report, we agree with the First Applicant that these various documents, and in particular the JIT Report and FRAEW Report, do have evidential weight.

28. Turning to the costs in question, our findings are as follows:

Lack of fuse spar on AOV panel

29. This matter was identified following a routine fire testing by Future Fire Solutions. Although this item was challenged in the Respondents' statement of case on the basis that the AOV (automatic opening vent) was bought as a kit and complied with regulations, the First Applicant's position was that the absence of a fuse spear constituted a relevant defect and a double pole insulation switch was fitted to remedy such defect.

30. The tribunal accepts the First Applicant's submission that the absence of a fuse spar can constitute a relevant defect (as defined) and agrees that such cost can fall within a remediation contribution order for the purposes of s.124 of the BSA. For the avoidance of doubt, we also accept that the quantum was appropriate in the absence of any evidence to the contrary.

Defects to sprinkler system

31. The matter was identified following an emergency call-out due to escape of water. As such, it had been argued by the Respondents that the costs related to a maintenance issue rather than a relevant defect. However, the first Applicant's position was that the failure of the sprinkler was due to the particular filler that had been used, which was a known problem in the industry. As such, this was not wear and tear but rather a defect in construction which created a fire safety risk: the Applicant's submission was that the mastic corroded the pipe with the result that the sprinkler system would not function properly.

32. In the absence of any evidence in opposition, the tribunal accepts the first Applicant's submission in this regard and agrees that such cost can fall within a

remediation contribution order for the purposes of s.124 of the BSA. For the avoidance of doubt, we also accept that the quantum was appropriate in the absence of any evidence to the contrary.

Lack of "turn lock to open signs"

33. The First Applicant submitted that the matter had been identified in the JIT Report and a letter of intention from the London Borough of Waltham Forest. In paragraph 14.15 of the JIT Report, it is stated:

> "The front and rear final exit doors to the building, as well as the bike store and plant room, are fitted with thumb-turn locks. Install signage adjacent to the lock stating, 'turn lock to open', and that it also states whether the lock should be turned clockwise or anti-clockwise."

34. On the First Applicant's case, the placing of signs is a relevant step to ameliorate dangers caused by relevant defects. However, while we accept that this claim is for a relatively modest sum, it is not clear from the documents that this is the case. While the value of such signs is self-evident, we do not accept that it has been established that this is measure in response to any particular relevant defect for the purposes of section 124 of the BSA, as opposed to being something for general fire safety management. We therefore do <u>not</u> accept that such cost can fall within the remediation contribution order for the purposes of s.124 of the BSA and therefore do not allow this item of cost.

Lack of intumescent seals to communal lobby door

35. The matter was identified in the JIT Report at paragraph 10.24. It appears from the Respondents' statement of case that there was some confusion as to what this cost related to, as the Respondents' statement of case suggested that this was a maintenance issue rather than a cost in relation to a relevant defect. However, the First Applicant confirmed that as set out in the JIT Report:

> "… door to the front entrance lobby was fitted with a plastic vent grille, no intumescent material was seen to the grille. Gaps of 5mm were noted to the opening edge."

36. In the absence of any evidence that a seal had been fitted as at the time of construction, we accept the First Applicant's submission that the absence of such seal amounted to a relevant defect and agree that such cost can fall within a

remediation contribution order for the purposes of s.124 of the BSA. For the avoidance of doubt, we also accept that the quantum was appropriate in the absence of any evidence to the contrary.

Defect in access panel to sprinkler inspection hatch

37. The matter was identified in the JIT Report at paragraph 10.3, which provided as follows:

> "The sprinkler pipe access hatch to the service riser (above the dry riser outlet cabinet) on each floor level, was fitted with a thin metal door which provided no fire resistance."

38. We accept that this amounted to a relevant defect and that the costs incurred to install a fire-resistant access panel can fall within a remediation contribution order for the purposes of s.124 of the BSA. For the avoidance of doubt, we also accept that the quantum was appropriate in the absence of any evidence to the contrary.

Compartmentation survey and costs in relation to compartmentation

39. The Respondents did not deny that there were defects in compartmentation, just that it was contended that some of the instances were not defects. It was also suggested that the cost of works was unreasonable. However, such assertions were not substantiated as the Respondents did not attend the hearing.

40. The First Applicant relied on the contents of the compartmentation survey dated March 2024, which identifies the various defects in respect of compartmentation. This was commissioned following the JIT Report, which identified the need for a compartmentation survey. For the avoidance of doubt, we accept that the costs of the works can fall within a remediation contribution order for the purposes of s.124 of the BSA. With regard to the quantum, it should be noted that the sum claimed differed slightly from what the First Applicant had previously identified. As set out in the First Applicant's skeleton, in its Reply had claimed the sum of £7,501.34, based on the figures used in a section 20 consultation notice, i.e. the fees of Gemini (the contractor) of £6,819.40, plus CPM management fee of £681.94. In fact, Gemini completed initial compartmentation work for £6,500.40. It was also pointed out that the London Fire Brigade then re-inspected the building and Gemini undertook additional work (where a service

pipe travelled between floors). Gemini raised a further invoice for £850.50. However, as this had only recently been brought to the First Applicant's attention by its agent, it was said at the hearing that the First Applicant did not intend to introduce evidence as to this payment this late in the day. Accordingly the first Applicant pursues only the payment of the Gemini invoice of £6,500.40 plus the management fee of £681.94, a total of £7,182.34. According to the First Applicant, the costs were the subject of a consultation process under section 20 of the Landlord and Tenant Act 1985. For the avoidance of doubt we accept that the quantum was appropriate in the absence of any evidence to the contrary.

41. As regards the costs of the compartmentation survey itself, we accept the First Applicant's submission that the costs are recoverable pursuant to section 124(2A)(b) of the BSA – i.e. "*costs incurred or to be incurred in obtaining an expert report relating to the relevant building*" as further set out above. For the avoidance of doubt, pursuant to section 124(5) and 123(9) of the BSA the definition of 'expert report' means "*an expert report or survey relating to (a) relevant defects, or potential relevant defects, in a relevant building; (b) relevant steps taken or that might be taken in relation to a relevant defect in a relevant building*". We are satisfied that the compartmentation survey falls within this definition.

Fire alarm costs

42. The fire alarm costs arose out a change to the evacuation policy for the Building. This was identified in a consultation letter from the London Borough of Waltham Forest dated 22 September 2023, which noted the need for an alarm system. As set out in the First Applicant's Reply, the "*re-configuration of the fire alarm system was necessary to support the change from a stay put evacuation policy to a simultaneous evacuation policy. This is a relevant step taken in relation to a relevant defect in a relevant building*".

43. The costs themselves comprise the installation of the fire alarm system by Future Fire Systems at £17,640.00 (including VAT), plus a 10% management fee of £1,746.00. According to the First Applicant, the costs were the subject of a consultation process under section 20 of the Landlord and Tenant Act 1985.

44. The relevant defect which necessitated the fire alarm works was principally said to have been the existence of combustible cladding, albeit compartmentation was also a factor. According to paragraph 44 of the First Applicant's Reply, "*The consultation letter identified a number of issues, including the risks created by the compartmentation as well as the cladding*".

45. In support of the contention that the cladding constituted a relevant defect, reference was also made to an improvement notice dated 28 May 2024, which referred to the problem. Moreover, the First Applicant relies on the FRAEW Report. As set out at paragraph 18 of the FRAEW Report, its key findings were as follows:

"- There are three wall systems on the property :

- EW01 - Brick slip facade with PIR insulation , cement particle sheathing board and mineral wool filled SFS
- EW02 - Acrylic render EPS insulation bonded to the substrate.
- EW03 -Equitone (Tectiva) fibre reinforced cement panel with an A2-s1 reaction to fire with phenolic insulation
- Where Rendered Expanded Polystyrene is installed rapid and extensive fire spread is possible. It is likely that secondary fires are possible at higher and lower levels.
- EPS is a type of plastic that softens and shrinks when exposed to temperatures of 80-100°C. This can prevent ignition from small heat sources but may damage the render coat. At higher temperatures of 210-250°C, the EPS melts and flows, forming pools on horizontal surfaces which can cause secondary fires away from the original fire source.
- Phenolic foam is a thermoset material and therefore will char (and smoulder) but not run, melt or drip when it comes into contact with a fire source. The insulation can self-extinguish after that fire source is removed.
- A risk of harm around the perimeter of the building is possible given the hazard of falling and burning debris."

46. The risk level identified in the FRAEW Report in relation to the external wall as 'Medium High'.

47. In the circumstances, the tribunal accepts the First Applicant's submission that the cladding/external wall constitutes a relevant defect. Further, we accept that the fire alarm costs can fall within a remediation contribution order for the purposes of s.124 of the BSA. For the avoidance of doubt, we also accept that the quantum was appropriate in the absence of any evidence to the contrary.

Costs sought by the Second and Third Applicants

48. As noted above, the Second and Third Applicants each claim £240 in respect of costs relating to repairs to flat doors.

49. According to Mr Lockwood's evidence, on or around 10 April 2024, they received a letter from Compton (managing agents) requiring them to repair or replace their front doors to comply with fire safety standards. This arose from the JIT Report, which noted that the doors the doors had been fitted with sprung hinges rather than self-closing devices. Mr Lockwood's evidence was that he and other leaseholders contracted with Capital Home Services UK Limited to fit the necessary self-closing device. The work took place on 25 April 2024 at a cost of £240 including VAT) per flat. The Third Applicants confirmed at the hearing that they had also incurred this cost.

50. We are satisfied that this cost arose in remedying a relevant defect in relation to the Building (the lack of a self-closing mechanism of the door) and therefore can fall within a remediation contribution order for the purposes of s.124 of the BSA.

Total sums that can be the subject of a remediation contribution order

51. Taking account the above findings, we confirm that the total sums that can be the subject of a remediation contribution order are as follows:

    (1) In favour of the First Applicant: £30,875.57

    (2) In favour of the Second Applicants: £240

    (3) In favour of the Third Applicants: £240

    For the avoidance of doubt, the sum in respect of the First Applicant is reduced from the total amount claimed by £141 for the reasons given in paras.33-34 above.

Is it just and equitable to make a remediation contribution order?

52. There had been no dispute that a remediation contribution order could, in principle, be made against each of the Respondents.

53. As set out in the Respondents' statement of case, it was accepted that the First Respondent was the developer of the Building within the meaning of s.124(5) of the BSA. Similarly, it was accepted that the Second Respondent is an associated

person of the First Respondent by virtue of the fact that Mr Ross Newham was a director of both companies during the relevant period for the purposes of s.121(5) of the BSA.

54. Nevertheless, it was contended in the Respondents' statement of case that it was not just and equitable to make a remediation contribution order against either Respondent.

55. As regards the First Respondent, it was said that the Building was constructed to a high standard and was fully compliant with all appropriate regulations in force at that time. Indeed, LBWF nominated the First Respondent for a Local Authority Building Control excellence award in 2021. It was also contended that the First Respondent did not generate any profit from the project. The First Respondent was the subject of a voluntary strike off on 13 October 2020 and was dissolved on 20 October 2020. While it was restored to the register on 21 February 2023, this was only for the purpose of pursuing a negligence claim again Reynard Consulting Ltd, a firm of chartered surveyors instructed by the First Respondent – although it was stressed that this related to party wall issues. The statement of case also asserts that while judgment has been obtained the company has been unable to enforce and has no other assets.

56. More generally, it was contended that it would be more appropriate to make an order against the First Applicant in respect of costs incurred by lessees. Not only was it asserted that the First Applicant has considerably greater assets than the First Respondent, but it was also noted that the purchase of the freehold in 2010 was an arm's length transaction and it was submitted that the principle of caveat emptor should apply.

57. As regards, the Second Respondent, it was contended that the arguments against making a remediation contribution order were even stronger. According to the Respondents' statement of case at para.114:

> "… the Respondents are not linked in any way in terms of their businesses. As stated above, the First Respondent's sole business was constructing the Building. The Second Respondent was not involved in that in any way and is in fact solely involved in the business of property maintenance. Indeed, the Second Respondent was only incorporated on 26 May 2020 which was less than 4 months before completion of the Building. Its business is unrelated. There is no reason, therefore, why it should be liable for any defects in the Building. It just so happens that Mr Newham decided to incorporate a new company shortly before the Building was complete. If he had waited, and wound up the First Respondent first, there would be no question of the Second

> Respondent being liable. This is not, therefore, a case where the two companies were effectively conducting business as part of the same corporate group and with the First Respondent operating with minimal assets for the purpose of evading liability. It just so happens that there was a small period of overlap between the two different companies and two different business operating."

58. As noted above, however, the Respondents did not attend the hearing and so did not expand upon their written statement of case. Moreover, no evidence was provided to support the assertions in the statement of case.

59. The Applicants contended that it was just and equitable to make a remediation contribution order against both Respondents.

60. As regards the First Respondent, it was stressed that the First Respondent was the developer and so responsible for any relevant defects in the Building. On this issue, as set out above, we have found there to have been relevant defects for the purposes of the BSA – whether or not the Building complied with building regulations as at the time of its construction as contended by the Respondents – on which we have not heard evidence – is a different question.

61. Further, the First Applicant's Reply raised issues as to compliance with provisions of the Companies Act 2006 including as to the accuracy of its accounts. In particular, it was asserted that the First Respondent was not a dormant company throughout the period 2021-2024 as it was a claimant in High Court proceedings (as referred to above) and has obtained judgment in those proceedings. In any event, however, the First Applicant submitted that the First Respondent's net asset position is irrelevant to the question of whether the tribunal should make a remediation contribution order.

62. In our view, it is not necessary to make any finding as regards the various allegations made by the First Applicant. We agree with the Applicant that on the basis that the First Respondent was the developer, and therefore responsible for the relevant defects that we have found as set out above, we consider it just and equitable to make a remediation order as against the First Respondent.

63. Turning to the Second Respondent, the position is less straightforward. There is no dispute that the Second Respondent is an associated company for the purposes of section 124 of the BSA, by virtue of the common directorship of Mr Newhan. However, the First Applicant was unable to suggest that the Second

Respondent had any direct role in the development of the Building. Mr Hammond referred to the tribunal's decision in *Grey GR Ltd Partnership v Edgewater (Stevenage) Ltd (and others)* (24 January 2025) CAM/26UH/HYI/2023/0003 ("Vista Tower"), and some of the factors that were identified by the tribunal in considering whether or not it was just and equitable to make a remediation contribution order against each of the respondents in that particular case. The tribunal in *Vista Tower* noted (at para.349) that in applying the just and equitable test, "*Different considerations may be relevant and different approaches may be just and equitable in different cases*".

64. In the present case the First Applicant made various submissions in support of the contention that it would be just and equitable to make an order against the Second Respondent:

    (1) Mr Newham was the majority shareholder in both the First Respondent and Second Respondent;

    (2) Both of the First Respondent and Second Respondent are in the property industry – the First Respondent is a developer and the Second Respondent is a property maintenance company;

    (3) While it could not be suggested that the proceeds from the development of the Building could be traced from the First Respondent to the Second Respondent, Mr Hammond submitted that the timing of the incorporation of the Second Respondent, which followed substantial cash receipts by the First Respondent, was "*more than coincidental: R2 is a phoenix company incorporated from the ashes of R1*".

65. Having regard to the factors identified by the First Applicant, we do not consider that there is sufficient evidence to be able to confidently draw the conclusion sought by the First Applicant in relation to ground (3). However, as to the other grounds, we do note that both companies are in the property industry – albeit the Second Respondent is not described as being engaged in property development. Moreover, we also consider it significant that Mr Newham is the majority shareholder of both companies. Further, such conclusions are not negated by the Respondent's argument regarding the assets of the First Applicant

and the fact that is purchase of the freehold was an arm's length transaction. It was, of course, also the position that the Second Respondent did not attend the hearing to refute the First Applicant's submissions or advance their own case.

66. In the circumstances, we consider it just and equitable to make an order against each of the Respondents.

67. We make the order that the Respondents be jointly and severally liable. At the hearing, Mr Hammond suggested that the order could either be on the basis of joint and several liability or in the first instance as against the First Respondent, but if the Applicants are unable to recover in full from the First Respondent, then they shall be entitled to recover the balance from the Second Respondent. We consider that the first approach to be preferable as it produces a simpler result and leaves the choice for the Applicants as to how they choose to enforce – rather than having to demonstrate, for example, that they had exhausted attempts at enforcement against one respondent before moving on to the other. More generally, insofar as it is held to be just and equitable to make an order against each respondent, there is a logic to the notion that they be jointly and severally liable.

Claim for interest

68. Finally, as noted above, the First Applicant also seeks interest on the costs that are the subject of the remediation contribution order. Mr Hammond provided a schedule of interest, claimed at the rate of 8% since the date the costs were incurred, with a daily rate until payment.

69. It was submitted on behalf of the First Applicant that these costs have been incurred and insofar as the purpose of the legislation it to provide a contribution by developers and others for fire safety costs, this should also reflect the time during which an applicant has been kept out of its money. While it is possible to see the attraction of such argument, the difficulty is that there is no statutory basis to award interest. There is nothing prescribed in the BSA and the tribunal does not otherwise have statutory power to make such an order.

70. In the circumstances, the claim for interest is refused.

71. A copy of the remediation contribution order is appended to this Decision.

Name: Judge Sheftel **Date:** 10 June 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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).

Annex – Remediation Contribution Order

[Separate document]

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/BSB/2024/0500**
Property	**:**	**1-9 PLANETREE PATH, LONDON E17 7FW**
Applicant	**:**	**(1) HELPFAVOUR LIMITED** **(2) KEIRAN JEFF OLDEN AND LOUISE CHRISTIANE JEANNE JOBARD** **(3) PETER MICHAEL JOHN LOCKWOOD AND WILLIAM MATTHEW WINTERHALTER-BLACK**
Representative	**:**	**Compton Group (on behalf of the 1st Applicant)**
Respondent	**:**	**(1) ROSCO INGO LIMITED** **(2) ROSCO & PERLINI LIMITED**
Type of application	**:**	**For a remediation contribution order under section 124 of the Building Safety Act 2022**
Tribunal	**:**	**Judge Sheftel** **Mr A Thomas RBI, FRICS, MIFireE**

REMEDIATION CONTRIBUTION ORDER

Section 124 of the Building Safety Act 2022

UPON considering the application, evidence and submissions in this matter at a final hearing held on 7 May 2025

AND UPON the Tribunal being satisfied that **1-9 PLANETREE PATH, LONDON E17 7FW** (the "**Building**") is a relevant building for the purposes of the Building Safety Act 2022

AND UPON the Tribunal being satisfied that it is just and equitable to make remediation contribution orders for the reasons set out in the decision dated 10 June 2025 (the "**Decision**")

IT IS ORDERED THAT:

1. These are remediation contribution orders made pursuant to section 124 of the Building Safety Act 2022 (as amended by section 116 of the Leasehold and Freehold Reform Act 2024) which apply to the Respondents whose company names are set out in the title above who are specified in these Orders and each of them jointly and severally in respect of the Building.

2. The Respondents and each of them jointly and severally shall make the payments identified in these Orders to the Applicant for the purpose of meeting the costs incurred or to be incurred in remedying or otherwise in connection with relevant defects relating to the Building.

Payments

3. The Respondents shall make payment to the First Applicant, by no later than 4pm on **8 July 2025**, in the sum of **£30,875.57** for the purpose of meeting the costs described in paragraphs 29-47 and 51(1) of the Decision.

4. The Respondents shall make payment to the Second Applicants, by no later than 4pm on **8 July 2025**, in the sum of **£240** for the purpose of meeting the costs described in paragraphs 48-50 and 51(2) of the Decision.

5. The Respondents shall make payment to the Third Applicants, by no later than 4pm on **8 July 2025**, in the sum of **£240** for the purpose of meeting the costs described in paragraphs 48-50 and 51(3) of the Decision.

6. These Orders are enforceable under section 27 of the Tribunals, Courts and Enforcement Act 2007 as if the sums were payable under an order of the Court.

Judge Sheftel **10 June 2025**