



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : LON/00AE/BSA/2024/0503

Property : 2 Hillside, London, NW10 8GE

Applicants : (1) Ms Gemma Kieft
(2) Johua John & Ilda Bulica
(3) Shatyn Permalloo
(4) Mike and Jane Cane

Representative : N/A

Respondent : Hyde Housing Association Limited

Type of application : For a remediation order under section 123 of the Building Safety Act 2022

Tribunal : Judge Vance
Mr A Thomas, RBI FRICS MBA MIFireE

Date of Hearing : 24 July 2025

Date of Decision : 5 September 2025

Date of Corrected Decision : 16 September 2025

Corrected DECISION

**Typographical errors corrected on 16 September 2025 under
Rule 50 of the Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

NB: Pages in square brackets and in bold below refer to pages in the hearing bundle before the Tribunal (1,064 pages).

Summary of the Tribunal's decisions

1. The Tribunal makes a Remediation Order in respect of 2 Hillside, London, NW10 8GE in the terms of the Order that accompanies this decision.

Background

2. This is an application **[5]** dated 3 September 2024 seeking a Remediation Order under section 123 of the Building Safety Act 2022 (“the 2022 Act”) in respect of 2 Hillside, London, NW10 8GE (“the Building”). The Building was constructed in approximately 2009 by Rydon Construction Limited (“Rydon”) and is a 6-storey purpose built block (lower ground, ground floor, and four additional floors). It is primarily residential, containing 23 flats, and is constructed of a reinforced concrete frame, floor, staircases and pitched corrugated aluminium zinc roof. External fascias are comprised mainly of brickwork, weathered timber cladding and glazed curtain walling to the entrance foyer **[256]**.
3. The external walls of the Building consist of two primary wall types, referred to as EWO1 and EWO2 in this decision. EWO1 is a timber cladding system whereas EWO2 is a brickwork system. The façade also includes private balconies servicing the Flats, which are constructed of timber decking and a steel structure.
4. The Respondent, Hyde Housing Association Limited (“Hyde”), owns the freehold of the Building and is also the landlord in respect of the residential flats. The Applicants are all long leaseholders of flats in the Building and were represented in these proceedings by Ms Gemma ~~Keift~~ **Kieft**, the leaseholder of Flat 5.
5. A Notice of Passing of Plans issued by London Borough of Brent under the Building Act 1984 dated 13 May 2025 describes the height of the Building as 17.995 metres from the lowest ground level adjoining the Building. As it is neither 18 metres or greater in height, nor has at least seven storeys, the Building is not classified as a higher risk building for the purposes of s.65 of the 2022 Act. The Applicants did not argue to the contrary.
6. The Building is part of the Stonebridge Estate and the wider estate includes a sister property, 8 Hillside, also owned by Hyde, which is classified as a higher risk building and which is also due to be remediated. Hyde’s position is that it has prioritised remediation of the

Building over 8 Hillside because of the current long delays in securing regulatory approval to remediate higher risk buildings.

7. The Applicants seek a Remediation Order on grounds that relevant defects are present as defined in s.120 of the 2022 Act. Hyde agrees, but disputes the extent of the defects present, in particular, with respect to the brick clad façade and balconies. Its asserted position throughout these proceedings has been that it is committed to remediate the Building and to protect leaseholders from the costs of the same so far as possible.
8. At the hearing of this application on 24 July 2025, we were told that the Building is now scaffolded, preliminary works have been completed, and physical work to remove timber cladding to the Building was due to commence on 8 August 2025. Those works are being carried out by Rydon and are the subject of a “Supplemental Works Agreement” entered into between Hyde and Rydon dated 10 January 2025 [879]. Hyde’s position is that the works that Hyde have contracted to carry out go beyond what is required to remedy the relevant defects affecting the Building. Most notably, the evidence of Mr Driscoll, Hyde’s Director of Asset Management and Sustainability, was that as part of the upcoming works all external timber elements are to be removed, including both the timber cladding system and all timber decking to balconies.
9. Hyde’s position in respect of a Remediation Order, however, is that if the Tribunal considers it appropriate to make one, it should be more limited in scope than the works identified in the Supplemental Works Agreement. For example it argues that timber decking present on balconies only constitutes a relevant defect if those balconies are part of elevations that have timber rainscreen cladding. If the timber cladding is removed that the decking will, according to Hyde, cease to be a relevant defect.
10. Hyde’ accepts that it is open to the Tribunal to make a Remediation Order if it sees fit and that it would submit to such an Order if that is the Tribunal’s determination [122]. Both the Applicants and the Respondents have provided alternative forms of a draft order [212-211].

The legislative framework

11. Section 123 of the Act (as amended) provides as follows:

“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.”
12. Section 120 defines “relevant defect” for the purposes of sections 122 to 125 and Schedule 8 to the Act as follows:

“120 Meaning of “relevant defect and “relevant steps”

[...]

- (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.”

13. Regulation 2(2) of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 (“the 2022 Regulations”) empowers the Tribunal to make a remediation order under s.123 of the Act, on an application made by an interested person, and reg. 2(3) specifies certain requirements in respect of such an application:

“(3) An application for a remediation order must—

- (a) state it is an application under section 123 of the Act;
- (b) identify the building to which the application relates;
- (c) identify the defects to the building for which a remediation order is sought;
- (d) identify the landlord (as defined in section 123(3) and (4) of the Act) which the applicant considers is responsible for repairing or maintaining anything relating to the relevant defects.”

14. The position, as at the hearing, was that the parties were agreed that: the Building is a “relevant building” within s.117; the Applicants are “interested persons” within the meaning of s.123(5); the Respondent is a “relevant landlord” within the meaning of s.123(3); and that the external walls of the Building contain “relevant defects” within the meaning of s.120, the extent of the defects is in dispute.

The Hearing

15. This application was originally due to be heard on 29 and 30 April 2025. However, on 16 April 2025, Judge Vance converted that hearing to a Case Management Hearing and postponed the final hearing. He made that order following receipt of an application from Hyde who asserted that although the parties had previously been aligned on the extent of relevant defects present at the Building, and as to the works necessary to remediate them, this was no longer the case. Hyde said that following a recent analysis of the intended remediation scheme Rydon has agreed that the timber façade required remediation but disputed that the same was true of the masonry façade. In Rydon’s view there are no relevant defects to the masonry façade and as such the EW02 works recommended in the Hydrock Report were unnecessary. This view was shared by Mr Steven Cooper, BEng (Hons) CEng CMIFireE, who had prepared an initial report for Hyde.
16. Despite proximity to the trial date, I was satisfied that those events meant that it was in the interests of justice to postpone the trial. I directed Hyde to apply to formally amend its statement of case. It did so, and that application was considered at the CMH on 29 April 2025, at

which Hyde was given permission to amend its statement of case and to adduce expert evidence from Mr Cooper BEng (Hons) CEng CMIFireE, a Director of Virtus SC Fire Engineering Ltd[71].

17. The final hearing took place on 24 July 2025, and was attended by Ms ~~Keiff~~ Kieft and her husband. Hyde was represented by Mr Allison KC, whose instructing solicitor was present as was Hyde's in-house counsel. Also present were Mr Driscoll and Mr Cooper, who were both cross-examined on the evidence they had provided in witness statements. Ms ~~Keiff~~ Kieft had also provided a witness statement but Mr Allison KC did not seek to cross-examine her on her evidence. The Applicants had not sought permission to instruct an expert, and therefore the only expert evidence before the Tribunal was from Mr Cooper.
18. No party requested that the Tribunal inspect the Building and we considered it unnecessary. Firstly, because helpful photographic evidence had been provided and, secondly, because it would have been a fruitless exercise given that the whole Building was scaffolded in readiness for the upcoming extensive remediation works.

Fire Engineers' reports

19. There are three reports from fire engineers regarding the condition of the Building in the hearing bundle, all of which were commissioned by Hyde. All engineers agreed that the Building required remediation but diverged as to the extent and scope of that remediation. The earliest report is an external fire risk wall assessment ("FRAEW") dated 23 December 2022, obtained from Hydrock Consultants Limited [556] in which it assessed the suitability of the external wall systems based on the Building Regulations 2010 (as amended), using the methodology of British standard PAS 9980:2022. The report was prepared following initial invasive site visits on 26th and 27th September 2022 undertaken by Jordan Shaw of Hydrock. His site visit is said to form the basis of the 23 December 2022 external wall assessment, but the assessment itself was written by Mr Saggu, a colleague of Mr Shaw. Hydrock's recommendations included:
 - (a) replacement of all timber cladding with panels that achieve at least limited combustibility and the insertion of appropriate cavity barriers;
 - (b) replacement of timber decking to all balconies with materials that achieve at least limited combustibility; and
 - (c) remediation of all cavity barriers within wall type EW01 (i.e., at floor slab level, along compartment walls, between apartments, between stairs and adjacent accommodation and between EW01 (timber cladding) and EW02 wall types).
20. Hyde subsequently obtained a second PAS9980 report dated 31 May 2024 [677], from by Mr Steven Marshall, BEng (Hons) MSc CEng

MIFireE MIET, of Marshall Fire Ltd. He suggested that rather than replacing the timber cladding system it could be remediated by inserting products rated to an A2 classification which would act as fire breaks, physically separating the remaining timber portions. He said that this would reduce the potential for fire spread to a tolerable level. He also recommended that timber soffits in recessed balconies and adjacent to any windows should be replaced, as should the timber decking to balconies (or a non-combustible sheet installed beneath the timber decking to act as a shield if the combustible timber decking was retained). He did not consider there was a need to remediate the brickwork wall type (EW02) (para. 4.3).

21. The third report is that of Mr Stephen Cooper, dated 15 May 2015 **[171]** which was obtained by Hyde following the Tribunal granting it permission, on 29 April 2025 **[71]**, to adduce expert evidence from him on the question of whether relevant defects are present in the Building and what remediation works are required. On granting that permission, the Tribunal directed that the Applicants, who had elected not to obtain their own expert evidence, should have the opportunity to ask questions of Mr Cooper. Ms Kieft did so, and Mr Cooper's replies are in the bundle **[201]**.
22. At para. 1.25 of his report, Mr Cooper stated that his opinions on the remediation measures required generally accorded with the recommendations made by Hydrock in its FRAEW, except that he disagreed about: (a) the need to remediate timber balcony elements on those elevations that have a brick, masonry wall cladding system; and (b) the need to install cavity barriers at the interface between different wall systems.
23. At para. 1.24 Mr Cooper said that he had largely discounted the recommendations of the Marshall Fire FRAEW because, in his opinion, the recommendation that the timber cladding (EW01) could be remediated by the insertion of products to act as a firebreak was impractical and would result in a change to the aesthetic and visual appearance of the elevations. Nor was he convinced that such an intervention would adequately slow the rate of fire spread.
24. At section 3 of his report, Mr Cooper correctly identifies the Applicants' position that the Building suffers from the following relevant defects (for the purposes of s.120):
 - (a) both the timber (EW01) and brickwork cladding (EW02) incorporate materials that are combustible and not of 'limited combustibility';
 - (b) the balconies incorporate combustible materials, with the deck, soffit and balustrade of the balconies being combustible. and

- (c) there are inadequate cavity barriers in the external walls of the Building, with barriers in place around windows and doors but not provided in line with compartment floors and walls, and with no cavity barriers between the external timber cladding system and the brickwork system.
25. His opinion in respect of each of these alleged defects is set out at paras. 3.5 – 3.34, and section 4 of his report. In summary, Mr Cooper’s opinion was that:

Timber cladding (EW01)

- (a) the combination of timber cladding, timber framework supporting the cladding and combustible thermal insulation is a relevant defect, with the consequential building safety risk amplified by missing and incorrectly installed cavity barriers;

Brickwork cladding (EW02)

- (b) this type of wall construction is inherently resistant to fire spread and fire penetration, due to the robust non-combustible outer and inner leaves that constitute the masonry cavity walls. Its presence does not constitute a relevant defect. Mr Cooper also concluded that the use of combustible thermal insulation was permitted in the cavity of masonry cavity walls and that it is unlikely that combustible insulation would be involved in a fire given the inert and impenetrable nature of the brick outer leaf and the concrete inner leaf. As such, the use of combustible insulation encapsulated between the two leaves of the masonry wall is not a relevant defect;

Balconies

- (c) where elevations have timber cladding, a fire involving a balcony could spread to involve the timber cladding on the walls and pose a risk to people in the building. As such, he agrees that this constituted a relevant defect because a fire spreading in this manner may pose a risk to people in and about the building;
- (d) however, where elevations are clad in brick, the presence of timber decking, soffits and balustrade do not pose a risk to people in and about the building and, consequently, is not a relevant defect. This is because of the distance between balconies on adjacent floors and that whilst it is possible that a fire may spread from one balcony to another, the speed at which this may occur will provide time for people to escape from the building before a building safety risk is created, there being no mechanism by which the fire can spread over the surface of the walls themselves.

Cavity barriers

- (e) cavity barriers ought to be provided at the top and edges of wall cavities, in the cavities in line with compartment floors and walls and around all openings, including windows, ventilation ducts etc. where timber (EW01) cladding is present. A timber cladding system is not as robust or resilient as a masonry cavity wall in a fire and the absence of cavity barriers, or the provision of incorrectly and inadequately installed cavity barriers would, in his opinion, result in rapid and uncontrolled spread of fire and smoke in the cavities. The rate and extent of this spread would put people in the building at an unacceptable risk, such that a building safety risk is created. Where no or inadequate cavity barriers are present, this therefore amounts to a relevant defect;
- (f) cavity barriers are not required to be provided in masonry cavity walls because, even if fire or smoke were to spread within the wall cavity, the inert and impenetrable (to fire) concrete block inner leaf will prevent fire and smoke from spreading into the Building. Despite this, mineral fibre cavity barriers have been provided in line with the floors in the Building, and each window has a steel lintel at the head and cill. Those steel sections function as cavity closers. As cavity barriers are not required for compliance with the Building Regulations, any defects or inadequacies with those that have been provided are not relevant defects and do not cause a building safety risk to be created;
- (g) the absence of cavity barriers or other closers provided to the vertical jambs on either side of the windows do not amount to a relevant defect and does not create a building safety risk. This is because fire, being driven by natural buoyancy from the heat produced, will spread vertically faster and in preference to spreading sideways. Whilst lateral fire spread could occur, fire spread into the external wall cavity of masonry cavity walls would not spread with the same speed as from the head of the window.
- (h) cavity closers should, however, be provided around any service duct etc. that is not formed from steel of at least 0.5mm thickness, notwithstanding the presence of fire stopping to the duct where it passes through the inner leaf or substrate of the wall.
- (i) the omission of cavity barriers at the junction of the timber cladding with the brick masonry walls is not a relevant defect because the installation of cavity barriers at the junction of different cladding systems is not a proportionate response and will have minimal, if any, impact on the reduction of risk for people in and about the building, as long as those cladding

systems are provided with cavity barriers in the locations specified in Approved Document B, Fire safety, (“AD B”), published by the Office of the Deputy Prime Minister in 2000 (as amended), which gives guidance in respect of the Building Regulations 2010. Mr Cooper acknowledges that compliance with the Regulations is not determinative as to whether a relevant defect is present but is nevertheless satisfied that no defect giving rise to a building safety risk is present in this case.

The Applicants’ case

26. The Applicant’s position is that there is an urgent need to remediate the Building. Ms ~~Keift~~ Kieft points out that Hyde first acknowledged that the Building was affected by relevant defects when it returned a completed Landlord’s Certificate dated 29 November 2023 [840], as required by Regulation 6 of the Building Safety (Leaseholder Protections) (England) Regulations 2022. The relevant defects identified were “inadequate cavity barriers” and “the presence of combustible materials”.
27. Ms ~~Keift~~ Kieft’s evidence [140] is that her request for the Certificate was made on 30 July 2022, but it took Hyde until 4 December 2023 to provide it, far in excess of the four-week period specified in Regulation 6. She then spoke to someone at Hyde in November 2023 who advised her that Rydon were currently on site and that remedial work was likely to start in January 2024. That was incorrect, and work is not due to start until August 2025. She also said that she had been told on two occasions that Hyde would issue a favourable EWS1 upon completion of the remediation works, but this now appeared to be in doubt. Ms ~~Keift~~ Kieft told us that these delays, and the incorrect information given to her, meant that the Applicants did not trust that Hyde will ensure that the works set out in the Supplemental Works Agreement will be carried out within the timescale it suggests.
28. In addition, the Applicants assert that Hyde has shifted its position during the course of these proceedings. Its original position, as set out at para. 5 of its statement of case [115] accorded with the conclusions reached in the Hydrock Report that all timber should be removed from the façade. At that point, the parties were agreed on the scope of relevant defects identified in the Hydrock Report, but Hyde’s position has now changed following Mr Cooper’s expert report.
29. The Applicants point out that, in contrast, their position has been consistent. They have always considered the timber balconies and lack of cavity barriers to constitute relevant defects because they cause a building safety risk arising from the spread of fire. They point out that online Government guidance on the use of remediation orders states that examples of relevant defects could include “flammable balconies and other external attachments”. They also assert that the balconies do not meet the requirements in the AD B.

30. The Applicants' position is that it took the issue of their proceedings to force Hyde to progress remediation works. They do not have confidence that this will happen without the Tribunal making a Remediation Order and seek that such an Order includes the following:
- (a) a specific obligation on Hyde to procure an EWS1 certificate rated **B1** or above on completion of the remediation works;
 - (b) a schedule of specific remediation works, in order to ensure that Hyde does not change its position as to the works required.

The Respondent's case

31. In his skeleton argument, at paras. 14-15, Mr Allison correctly identified that there is currently a debate as to the extent of the 'risk' required for a 'building safety risk' to be present, for the purposes of the s.120 definition. The debate is evident in the different approaches taken by First-tier Tribunals when addressing this question. In the absence of Upper Tribunal or higher authority, there is currently uncertainty as to whether a 'tolerable' risk, from a PAS9980 perspective constitutes a 'building safety risk'. In *Grey GR Limited Partnership v Edgewater (Stevenage) Limited* CAM/26UH/HYI/2023/0003 the FTT said this at paras, 72:

"72. We think the better view is that any risk above "low" risk (understood as the ordinary unavoidable fire risks in residential buildings and/or in relation to PAS9980 as an assessment that fire spread would be within normal expectations) may be a building safety risk. Section 120(5) describes a risk to the safety of people arising from the spread of fire or collapse, not a risk reaching an intolerable or any other particular threshold. We do not think "collapse" indicates the risk must be of catastrophic fire spread, as was suggested. It need only be a risk to the safety of people arising from the spread of fire in a tall residential building."

32. For the purpose of this application, Hyde adopts Mr Cooper's approach which aligns with the view expressed by the FTT in *Grey v Edgewater*, namely that a building safety risk exists if the risk is over and above 'low risk', being "the ordinary unavoidable fire risk in residential buildings" (para.217 of his report **[180]**).
33. Hyde's position is that the relevant defects present at the Building are those identified by Mr Cooper in his expert report. As such, it contends that whilst the presence of brickwork wall type (EW02) is not a relevant defect, the timber cladding (EW01) is a relevant defect and requires complete removal. As to the timber balconies, Hyde accepts Mr Cooper's view that a building safety risk (and therefore a relevant defect) arises where a timber balcony is surrounded by a timber wall type, but that that risk will be removed if the timber wall type itself is remediated.

34. Mr Allison submits that the effect of Mr Cooper's position is that the Building will be put in the position it would have been in had the Building Regulations been complied with and that the residual risk would be no more than the usual 'low risk' that is the 'ordinary unavoidable fire risk in residential buildings' He contends that it is difficult to see why Hyde should have to remediate further than this.
35. Hyde opposes the Applicants' suggestion that the Remediation Order should contain a specification of required remediation works. In Mr Allison's submission, this Tribunal has no power to require Hyde to carry out specific works. Our power, he says, is limited to requiring Hyde to remedy specified relevant defects in the Building by a specified time. He points out, however, at para.19 of his skeleton argument that in reality the works that Rydon is undertaking (see specification at **[899-902]**) under the Supplemental Works Agreement **[879]** go beyond what is required to remedy the relevant defects.
36. Mr Allison also objected to the Applicants' suggestion that the Remediation Order require Hyde to procure an EWS1 certificate on completion of the remediation works. In his submission, the Tribunal had no jurisdiction to do so. He pointed out, however, that the Supplemental Works Agreement provides that works will not be considered complete until an EWS1 Form with A1, A2 or B1 rating has been issued – see paras. 3.3 **[885]** and para. 8 **[887]**. He also agreed that Hyde had no objection to this position being included in a recital to the Remediation Order

Reasons for Decision

37. Both the Applicants and Hyde agree that the gateway requirements for making a Remediation Order are met. The Building is a "relevant building" within the meaning of s.117 because it is located in England, contains at least two dwellings, is at least 11 meters high, and is not excluded by s.117(3). As the Applicants are all leasehold owners of flats at the Building, they have a legal or equitable interest in it and therefore constitute "interested persons" within the meaning of s.123(5). Hyde is a "relevant landlord" within the meaning of s.123(3) because it is the freehold owner of the Building and is also the landlord under the Applicants' leases and is required to repair or maintain the Building under those leases (which will include remedying relevant defects for the purposes of reg.2(3)(d) of the 2022 Regulations).
38. Both sides also agree that there the Building contains relevant defects and, as such, we are satisfied that it is appropriate for the Tribunal to make a Remediation Order. We agree with Mr Allison's submissions that when doing so our jurisdiction is limited to: (a) identifying the relevant defects present that require remediation; and (b) specified relevant steps in relation to a specified relevant defect in a specified relevant building".

What relevant defects are present?

39. We found Mr Cooper to be a convincing and highly knowledgeable expert witness. He states in his report **[174]** that he has a first class honours degree in Fire Engineering and has been a registered Chartered Engineer since 2001. He also states that he has been a Companion Member of the Institution of Fire Engineers since 2015 and was a member of the Steering Group for BSI PAS9980. He says that he has almost 40- years' experience in firefighting, fire testing, fire research and fire engineering. His expertise in the area was, in our view evidenced in the quality of his report, his written answers to the Applicants' questions, and in his oral evidence at the hearing.
40. We recognise, of course, that there are two other fire assessment reports in the bundle before us, both obtained by Hyde. However, we find Mr Cooper's evidence to be compelling and is to be preferred to that contained in the Hydrock and Marshall reports. Mr Cooper has signed both his report and his responses to the Applicants' questions with a written statement of truth confirming that the opinions expressed represent his true and complete professional opinions on the matters to which they refer. He also confirmed at para. 1.4 that his report was prepared in line with the duties on experts arising from the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 and that his duty to the Tribunal overrides any obligation to the person from whom he received instructions or by whom he was paid. Importantly, Mr Cooper's report is the only expert evidence before us that addresses the questions that we are concerned with in this application, namely, what relevant defects are present for the purposes of s.120 of the 2022 Act.
41. The Applicants argue that the opinions expressed in the Hydrock report should be preferred to Mr Cooper's because only Hydrock carried out an intrusive survey of the Building before preparing its report. However, Mr Cooper confirms at para. 2.6 of his answers to their questions **[205]** that he has no doubts or concerns with the factual information provided in the Hydrock FRAEW. What he disagrees about is some of Hydrock's conclusions regarding the level of risk and the extent and scope of remediation required to reduce the risk to an acceptable level (para 1.23 **[176]**). We agree with Mr Cooper (para 2.8 **[205]**) that is common for different fire engineers to arrive at different conclusions as to the precise risk level posed by a façade as well as the extent of remediation required. The fact that Mr Cooper did not carry out an intrusive survey before preparing his report is not, in our view, of any material significance. The significant differences between his report and that of Hydrock's has nothing to do with Hydrock's assessment of the physical characteristics of the Building, including what external wall systems are present. Mr Cooper agrees with Hydrock in that respect. The difference is rather one of opinion, with Mr Cooper disagreeing with some of the conclusions reached by Hydrock. He is very suitably qualified to express such opinions and, in doing so, was perfectly entitled to draw on information contained the Hydrock and Marshall reports. Nor, in our view, is the

weight to be given to his evidence impacted by the fact that he did not inspect the Building prior to preparing his report. A desktop review was, in our assessment, entirely satisfactory. Moreover, Mr Cooper has since confirmed (para 2.6 **[205]**) that he visited the development on 30th May 2025, and his that visual inspection confirmed the opinions he expressed in his report.

42. We accept as correct the conclusions reached by Mr Cooper in section 4 of his report as to the relevant defects present in the Building, as referred to in para. 25 above. We find the following relevant defects to be present in the Building. We are satisfied, for the reasons given by Mr Cooper, that each causes a building safety risk to arise as defined in s.120:
 - (a) the presence of timber cladding, timber framework supporting the cladding and combustible thermal insulation in wall type EW01;
 - (b) the presence of timber decking, balustrades and soffits within the balconies where they are situated in an elevation with timber rainscreen cladding; and
 - (c) the presence of inadequate cavity barriers in external wall type EW01, to the extent identified in para. 4.13 and 4.14.3 of his report, specifically where there has been there has been inadequate provision at the top and edges of wall cavities, or in the cavities in line with compartment floors and walls and around all openings. Also amounting to a relevant defect are cavity barriers in type EW01 with inadequate fire resistance (as identified in Approved Document B).
43. We agree with him that brickwork cladding in wall type EW02 is inherently resistant to fire spread and fire penetration and that its presence does not constitute a relevant defect. We also accept that the use of combustible insulation encapsulated between two leaves of the masonry wall does not amount to a relevant defect because the two leaves are inherently non-combustible. Similarly, we agree with him that cavity barriers are not required to be provided in masonry cavity walls (type EW02) because, even if fire or smoke were to spread within the wall cavity, the concrete block inner leaf will prevent fire and smoke from spreading into the Building. Furthermore, we accept Mr Cooper's evidence that that the omission of non-fire rated cavity closers to the window jambs in the masonry cavity walls is not a building safety risk because the potential for a fire to spread within the wall cavity is low.
44. As to the balconies located in elevations clad in brick, we also accept his evidence that the presence of timber in the balconies does not pose a risk to people in and about the building and is therefore not a relevant defect. We agree with Mr Cooper's opinion that because the fire can spread over the surface of the brick elevations the speed at a fire might spread vertically or laterally from one balcony to another is likely to provide sufficient time for people to escape from the building before a building safety risk is created.

45. In their questions to Mr Cooper, the Applicants referred to the fire at Samual Garside House in Barking Riverside that occurred on 9 June 2019. They said that the Building had the same configuration of timber stacked balconies that contributed to fire spread and asked Mr Cooper whether he believed their presence posed a similar risk. In his response (para 2.17, [207]), Mr Cooper said that he was very familiar with the Garside House fire, having been instructed by the Barking Riverside Consortium immediately following it, to advise them on the remediation of timber cladding on the entire estate. He explained that the balustrades at Garside House were similar, but not identical, to the timber on the balconies at the Building. In his opinion, once the timber cladding system has been removed from the Building and replaced with a Class A2 or better system, the potential for fire spread over the elevations would be significantly reduced to the extent that a building safety risk would no longer exist. Whilst there would always be a residual risk of fire spread between adjacent balconies by way of the timber balustrading or decking, this risk, in his opinion, would be no greater than the unavoidable potential for spread of fire from floor-to-floor via windows on adjacent floors.
46. Mr Cooper is clearly extremely well placed to give an opinion on the composition of the balconies in the Building and those formerly in place at Garside House. We see no reason to disagree with his opinion as to the risk of fire spread where balconies are located in elevations clad in brick. We accept and find that there is a low risk of both vertical and horizontal fire spread into another flat. Plans of the Building at [297-301] indicate that there are two staircases servicing the flats which would provide alternative means of escape if a fire did occur. One staircase leads to the entrance foyer and the other to a community hub. Whilst both are internal areas, we accept Mr Cooper's evidence that if a fire were to occur, residents would be able to evacuate the Building whilst maintaining a safe distance from the balconies (para.2.4 [204]).
47. During the course of his evidence Mr Cooper stated that, historically, the number of balcony fires in the UK has been low. He referred to a short 2016 report from BRE Global, a company that carried out fire investigation activities for the Department for Communities and Local Government. The report is entitled "Fire safety issues with balconies" and after referring to four case studies the authors make some suggestions as to measures to reduce safety risks. Mr Cooper pointed out that in the introduction to the report the authors identified that it had reported on 24 balcony fires in the UK since 2005 (although there had been six fire incidents since 2015).
48. Mr Cooper provided the Tribunal and the Applicants with a copy of the BRE report. We paused the hearing for Ms ~~Keift~~ Kieft to consider its contents. She then confirmed she was content to cross-examine Mr Cooper about its contents and to address us on it. Ms ~~Keift~~ Kieft questioned Mr Cooper about case studies 3 and 4.

49. Case study 3 concerned a fire in a block of flats in June 2015 where fire spread upwards from a Juliet balcony to involve timber cladding on the balcony above, with burning material dropping down igniting the balcony below. Ms ~~Keiff~~ Kieft's suggestion was that the same spread of fire could occur at the Building in respect of balconies with brick cladding.
50. Case study 4 concerned a fire in a block of flats in August 2015, in which the balconies ran the full length of the Building on east and west faces separated by aluminium and glass privacy screens. The balconies had timber decking and the fire, which started next to a privacy screen, spread from the decking to the timber façade, beyond the privacy screen to the decking and façade of the neighbouring flat. Ms ~~Keiff~~ Kieft's concern was that the balconies in the Building also run the entire length of one elevation and that a similar risk of fire spread was present.
51. We do not find either the BRE report, or the case studies cited, to be useful when examining the issues involved in this application. The speed and extent to which a balcony fire will spread depends on multiple factors, crucially the construction of the balconies and façade, but also variables such as weather and wind speed and direction. It does not appear to us to be helpful to seek to draw parallels between the very brief descriptions of buildings described in the short case summaries and the construction of the balconies and façade at the Building.
52. We therefore conclude that the presence of timber in the balconies where the surrounding elevation is brick does not amount to a building safety risk from the spread of fire because of the low risk of fire spread.

Contents of the Remediation Order

53. The Remediation Order that accompanies this decision is based on the draft form of order suggested by Mr Allison. We have, however, included the recital agreed by Hyde in respect of form EW1. We have also amended the schedule of relevant defects to reflect our findings as to the defects present that require remediation as set out in para.42 above. The parties are agreed as to the timescale for remediation and we have specified a remediation date of 25 October 2026. We have not included a commencement date as this is not required under section 123.
54. We do not agree to the Applicants' proposal that the Order contain an obligation on Hyde to procure a signed EWS1 form. We agree with Mr Allison that the Tribunal does not have jurisdiction to impose such an obligation. Nor do we consider we have jurisdiction to attach a specification of works to the Order, as the Applicants propose. We consider Mr Allison KC is correct to say that the wording of s.123 does not accord us the power to require Hyde to do specified 'works' and that it is for Hyde to decide how it will remedy the relevant defects. We also accept his submission that there are good practical reasons for this limitation because, once works are underway, unforeseen issues can arise resulting in the need to adapt or modify the works schedule.

55. Ms ~~Keiff~~ Kieft suggested that the Tribunal has jurisdiction under s.123(2)(b) to both require provision of an ~~EW~~¹ EWS¹ in the Order and to attach a specification of works to the Order. That subsection empowers us to order a party to take “specified relevant steps” in relation to specified relevant defects. It was introduced by the Leasehold and Freehold Reform Act 2024 and “relevant steps” in relation to a relevant defect is defined at s.120(4A) as steps which have as their purpose of preventing or reducing the likelihood of a fire or collapse of a building (or any part of it) occurring as a result of the relevant defect, reducing the severity of any such incident, or preventing or reducing harm to people in or about the building that could result from such an incident.
56. We are not persuaded by Ms ~~Keiff~~ Kieft’s submission. We have construed subsection (b) in the context of the section as a whole and in the wider context of Part 5 of the 2022 Act. In our view, the power conferred on the Tribunal by that subsection, namely, to make an order requiring the carrying out of *relevant steps* in relation to a defect must be distinct from the power to make an Order requiring *remediation* of defects conferred by subsection (a). If the Tribunal decides to make an order requiring a landlord to carry out relevant steps it is not making an order requiring remediation of the building. Subsection (b) cannot therefore be used to impose additional obligations on a landlord over and above that the Tribunal has power to impose under subsection (a), which is limited to making an order requiring the remediation of specified defects within a specified time.
57. In the absence of any previous legal authority on the interpretation of the subsection we consider it appropriate to have regard to the Explanatory Notes to the 2024 Act as an external aid to interpretation. Paragraphs 680 and 682 read as follows:
- “680. The 2022 Act made clear that a relevant landlord is responsible for the safety and upkeep of a building. There have been instances where relevant landlords are unsure about whether to take responsibility for relevant steps needed to make their buildings safe during or as part of remediation such as the installation of fire sprinklers, waking watches and simultaneous evacuation alarms.”
682. Subsection (4A) introduces a definition of ‘relevant steps’. These are essentially preventative or mitigating steps that can be taken to reduce the risk and/or severity of any incident resulting from a relevant defect.”
58. We recognise that the Explanatory Notes, which appear to have been published after the 2024 Act was enacted, are only of limited persuasive authority and we do not attach significant weight to them. Nevertheless, they lend support to our interpretation that the “relevant steps” referred to in s.123(2)(b) are distinct from remediation.

59. Parliament's intention in introducing subsection (b) through the 2024 Act appears to us to have been to enable the Tribunal, through a Remediation Order, to impose an obligation on a relevant landlord to take steps to prevent and mitigate relevant defects. Such steps may be required during or as part of remediation but are distinct from the power conferred in subsection (a) to require remediation. An example may be requiring a landlord to provide a "waking watch" whilst fire safety works are being carried out. If Parliament's intention was to allow the Tribunal to specify how a landlord was to remedy relevant defects by, for example, requiring works identified in a specification of works, then it would, in our view, have amended subsection (a), which it did not do. We conclude that s.123(2) empowers us to make a remediation order that contains a schedule of specified defects that need to be remedied, but not one that requires compliance with a particular specification of works. How the landlord goes about remediation must be a matter for it.
60. We appreciate that Remediation Orders made by the Tribunal should be capable of enforcement in the County Court if they are not complied with. However, we see no difficulty in enforcement if Hyde were not to comply with our Order. The Order specifies the defects present and it would be for the Applicants to satisfy the Court that Hyde had failed to remedy those defects.
61. For these reasons we make a Remediation Order in the form of the Order that accompanies this decision.

Amran Vance
5 September 2025

Appendix - Rights of appeal

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

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

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

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such

reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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

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