



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

Case reference	:	LON/00BB/BSB/2024/0011
Property	:	HALLINGS WHARF STUDIOS, CHANNELSEA ROAD, LONDON E15
Applicant	:	SECRETARY OF STATE FOR HOUSING, COMMUNITIES & LOCAL GOVERNMENT
Representative	:	Walker Morris LLP
Respondent	:	EDR BUILDERS LIMITED (1) HOLLYBROOK (UK) LIMITED (2)
Representative	:	Charles Russell Speechlys LLP (for the Second Respondent)
Type of application	:	For a remediation contribution order under section 124 of the Building Safety Act 2022
Tribunal	:	Judge Sheftel Judge Powell Ms H C Bowers
Date of Decision	:	21 May 2026

DECISION

Summary of Decision

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

Background and procedural history

1. This is an application for a remediation contribution order pursuant to section 124 of the Building Safety Act 2022 (the “BSA”).

2. The application relates to Hallings Wharf Studios, Channelsea Road, London E15 2SX (the “Property”). The Property comprises two residential blocks connected by balcony deck access walkways - although it is common ground that the Property comprises one ‘relevant building’ for the purposes of s.117 of the BSA.
3. The head leasehold interest in the Property is registered at the Land Registry under title number EGL464502, and the registered proprietor is Hallings Wharf RTM Company Limited. The RTM Company is not a party to these proceedings.
4. The application relates to the costs of remedying alleged fire safety defects at the Property. The Secretary of State (“SoS”) had agreed to provide funding to the RTM Company to enable it to execute remedial works in respect of the alleged defects.
5. At the time the application was first brought, the position was that the *“Remedial Works have not yet been undertaken and their cost (or likely cost) will be a matter of evidence; but at the date of this statement of case the likely cost of the Remedial Works is £3,382,231.43”* However, by the time of the hearing, the works had been completed and the above figure revised slightly to £3,682,997.78. As such, the sum now sought relates to actual costs incurred for works to remediate alleged relevant defects.
6. The SoS is an “interested person” within the meaning of section 124 of the BSA, by reason of section 124(5)(a) of the BSA. The First Respondent (formerly incorporated as Hollybrook Limited) acted as “developer” within the meaning of section 124(5) of the BSA. The Second Respondent is “associated” (as defined in section 121 of the BSA) with the First Respondent.
7. It should be noted that the First Respondent has been in liquidation since 2018 and does not have any continuing involvement with the Property. The tribunal has previously confirmed by order dated 11 April 2025, at the request of the SoS, that the claim against the First Respondent is stayed. In any event, the First Respondent has played no part in these proceedings.

8. At a pre-trial review held on 9 February 2026, the tribunal gave permission to the SoS to amend its claim to include a claim for its legal costs in these proceedings, together with the costs of its experts. Further to that amendment, the SoS has served a summary costs schedule totalling in excess of £1 million.
9. The Second Respondent has sought permission to appeal the tribunal's decision to allow that amendment, albeit suggested that consideration of the application for permission to appeal be deferred until conclusion of the main hearing. For the reasons set out below, we have not allowed the SoS's claim for litigation costs and so it may be that the application for permission to appeal the tribunal's decision to allow the amendment falls away. However, if the Second Respondent nevertheless still requires a decision on its application for permission to appeal, it should notify the tribunal, and we will provide the same.
10. As to the main substantive claim, the Second Respondent opposes the making of an RCO. In essence, the Second Respondent's case is that the project was overengineered. It is said that for various reasons it would not be just and equitable to make an RCO. Alternatively, any RCO should be for a lower sum than that contended for by the SoS.
11. A seven-day hearing took place on 9-17 March 2026. The tribunal carried out an inspection of the property on the first morning.
12. At the hearing, the SoS was represented by Mr Dutton KC and Mr Burrell of counsel and the Second Respondent by Mr Bowker of counsel. We are grateful to all for their assistance.
13. The tribunal heard evidence from the following witnesses and experts:
 - (1) Mr Matthew Missenden of Stiles Harold Williams Partnership LLP ("SHW"), advisers to the RTM Company;
 - (2) Fire safety expert evidence from Mr Al Brown (SoS) and Mr Neal Butterworth (R2);
 - (3) Design expert evidence from Mr Richard Morton (SoS) and Mr Tom Rhys Jones (R2); and

- (4) Quantum expert evidence from Mr Steven Lynch (SoS) and Mr Tom Taylor (R2).

The legislative framework

14. 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.”

15. 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.”

The tribunal’s jurisdiction to make an RCO

16. The parties were not agreed as to the framing of the tribunal’s jurisdiction to make an RCO.

17. The SoS’s analysis of the jurisdiction can be summarised as follows:

(1) Section 124(2) identifies the objective of an RCO as being (either on its own or, possibly in conjunction with other RCOs or putative RCOs) to “meet” the costs identified in that subsection.

(2) Once the Tribunal has identified the relevant defects in relation to which an RCO is to be made, the quantum of the costs which are to be “met” is dictated by the terms of s.124(2) itself which identifies those costs by reference to two criteria:

(i) Costs which are (or will be) incurred “*in remedying*” those relevant defects; and

(ii) Costs which are (or will be) incurred “*otherwise in connection with*” those relevant defects;

(3) The question whether particular costs satisfy these criteria may involve a dispute about the correct interpretation of the expressions “*in remedying*” and/or “*otherwise in connection with*”, and will require the Tribunal to make findings of fact; but the quantification of the costs which are to be “met” under s.124(2) does not include any discretionary element. However, it should also be said that in submissions, it was suggested on

behalf of the SoS that such costs will only be recoverable to the extent that they are ‘reasonable’;

- (4) The Tribunal has a discretion to make an RCO “*if it considers it just and equitable to do so*”. According to the SoS, while the just and equitable discretion is undoubtedly a wide one, it should not be exercised so as to defeat the purpose of the legislation and further, should not involve re-opening matters that have already been considered at the earlier stage (3).

18. In contrast, the Second Respondent submitted that the just and equitable discretion is wider than the SoS has argued and features in the evaluation of the remedial works undertaken. In particular, it was contended that the quantification of costs to be ‘met’ under section 124(2) does involve an element of discretion. This is consistent with the Second Respondent’s broader position that determination of an RCO claim is to a large extent backward looking – scrutinising the decision taken by the party that carried out works for which an RCO is now being sought.

19. These matters are addressed further below.

Existence of relevant defects

20. The parties prepared a Scott Schedule setting out the alleged various relevant defects, categorised by reference to the various wall types at the Property. The wall types in respect of which it was contended relevant defects existed were as follows:

- (1) Wall Type 1A – EPS Render (General);
- (2) Wall Type 1B – EPS Render (Picture Frame);
- (3) Wall Type 1C – EPS Render (Metal Spandrels);
- (4) Wall Type 1D – EPS Render (Top Storey);
- (5) Wall Type 2A – Timber (adjacent render);
- (6) Wall Type 2B – Timber (adjacent metal spandrels);
- (7) Wall Type 2C – Timber (continuous);

- (8) Wall Type 3 – Walkways;
 - (9) Wall Type 4 – Metal Spandrels.
21. In advance of the hearing, it had been agreed that relevant defects existed in relation to many of the wall types above. The Second Respondent's pleaded position had, however, been to dispute the existence of relevant defects for several wall types:
- (1) Wall Type 1D (EPS render (top storey)); and
 - (2) Wall Types 2A (timber (adjacent render)) and 2C (Timber (continuous)).
22. As to Wall Type 1, Mr Brown's contention was that the EPS render contained the following relevant defects, which provided a medium for fire spread:
- (1) The use of a thin (3mm) polymeric render coat (BR135 1988);
 - (2) The use of EPS insulation, which is combustible (ADB (2003));
 - (3) The lack of additional mechanical (steel) fixings for the EPS insulation and render mesh to prevent the render from bowing outwards in a fire (BR 135 DAS 132);
 - (4) unprotected penetrations (e.g. vent ducts and flues) through the EPS insulation;
 - (5) Omission of Horizontal Fire Barriers at junctions with internal compartment floors;
 - (6) Omission of Vertical Fire Barriers at junctions with internal compartment walls;
 - (7) Omission of Cavity Barriers at cavity edges (including at windows); and
 - (8) The installation of an external wall system which did not satisfy the performance criteria in BR 135 (2003) based on full-scale fire testing.
23. In relation to the timber, Mr Brown's evidence was that Wall Type 2 generally contained numerous relevant defects, including:

- (1) installation of timber cladding panels, which are combustible;
- (2) installation of combustible insulation;
- (3) installation of a combustible timber framework;
- (4) installation of CP boards with gaps between the sheets and cavities behind;
- (5) omission of horizontal and vertical fire barriers; and
- (6) omission of cavity barriers.

24. The term ‘relevant defect’ is defined in section 120 of the BSA:

“(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.*

“(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.”*

25. As such, it must have arisen in connection with relevant works and must cause a risk to the safety of people in or about the building arising from the spread of fire and/or the collapse of the building. It will be noted that there is nothing in the BSA specifying or quantifying the level of risk that must exist for something to be a building safety risk, and consequently a relevant defect.

26. The assessment of whether a risk is a ‘Building Safety Risk’, was addressed by the Upper Tribunal in *Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower)* [2026] UKUT 18 (LC), in which Edwin Johnson J came to the following conclusion at paragraph 253:

“In my view the reference to “a risk” in Section 120(5) means what it says. It refers to any risk, subject to the point that the relevant risk will only qualify as a building safety risk if it satisfies all the other conditions, which I have identified above, for the risk to qualify as a building safety risk. The reference to “a risk” does not refer to any particular level of risk and is not gradated. It refers to any risk.”

27. Consequently, it was said on behalf of the SoS that the following propositions apply:

- (1) The way in which relevant defects are assessed, is to consider whether there is a Building Safety Risk only (because of something done or not done, or something used or not used, during Relevant Works), not to determine the 'defect' first then assess whether it is a Building Safety Risk, as if a 'thing' gives rise to a 'Building Safety Risk', it will be defective;
- (2) The threshold for finding whether there is a Building Safety Risk is very low, it is 'any risk', there is no 'level of risk' and it is 'not gradated'; and
- (3) Even if a relevant defect is found, this does not mean a RCO would be made. In respect of RCOs there would still be a question over whether it is just and equitable to make an order if the costs were found to be unnecessarily incurred.

28. In contrast, in his report, Mr Butterworth had adopted a different approach to determining the existence of a relevant defect. In essence, the test proffered involved consideration of three criteria:

- (1) The first stage involves assessing the presence of a 'defect', i.e. something had to be done (or not done) that should not have been done (or should have been done), or something had to have been used (or not used) that should not have been used (or should have been used). According to the report, this is to be determined by assessing compliance with the Building Regulations (and associated ADB, 'ADB 2000') relevant at the time of construction;
- (2) Second is an assessment of the possibility of fire-spread from one part of the building to another. According to the report, criterion 2 will be 'satisfied' if fire spreads from one storey to another storey or from one flat to another via the external wall construction in less than around 15 minutes; and

- (3) Finally, the spread of fire must result in the potential to cause a risk to the safety of people in or about the building. This involves an assessment of the wall construction and whether this gives rise to a level of risk which is “intolerable” or “unacceptable”.
29. However, at the start of his evidence, Mr Butterworth accepted that in light of the Upper Tribunal’s decision in *Vista Tower*, on the basis of the law as it currently stands, it was not sustainable to maintain that the disputed elements (Wall Types 1D, 2A and 2C) did not constitute relevant defects for the purposes of the BSA.
30. In the circumstances and for the avoidance of doubt, we find that all of the Wall Types set out in column 3 of the Scott Schedule contained/constituted relevant defects for the purposes of the BSA.
31. It should be noted, however, that the Second Respondent sought to preserve its position on an appeal that *Vista Tower* was wrongly decided by the Upper Tribunal. In the circumstances, we would add briefly that even aside from the Upper Tribunal’s decision in *Vista Tower*, we would not have accepted the test for determining a relevant defect as advanced by Mr Butterworth.
32. First, we do not accept that whether something is a ‘defect’ is to be assessed by reference to Building Regulations in existence as at the time of construction. There may be situations where Building Regulations (applicable at construction) were complied with, but there is still deemed to be a ‘risk’ to the health of people in or around the building. As the FTT stated in *Vista Tower* at first instance (CAM/26UH/HYI/2023/0003) at paragraph 68:

“if “defect” meant only non-compliance with building regulations, the Act would say so...It would be surprising if the Act limited “defect” to non-compliance with the pre-Grenfell version of the building regulations, which the independent review by Dame Judith Hackitt (published in December 2017) had found not to be fit for purpose...we consider that non-compliance with those building regulations is merely one way, not the only way, in which something can be a “defect” for these purposes.”

33. Secondly, notwithstanding that Mr Butterworth was able to point to various references, particularly in previous Building Regulations, to delaying the spread of fire over 15 minutes, it would be extremely odd if a case where fire could spread in, say, 20 minutes, meant that there was not a building safety risk. Indeed, in cross examination, Mr Butterworth accepted that although something might not be classed as a relevant defect, this did not mean that a building is sufficiently safe (for example if a PAS:9980 assessment were undertaken) or that work did not need to be done. Further, it was said in evidence that the question whether fire spreads from one storey to another (or from one flat to another) in less than 15 minutes is to be decided on balance of probabilities. In other words, this will only identify the existence of a relevant defect if the risk of fire spread is greater than 50%. In our view, on both points, it would be surprising if the BSA were to be construed in this way.
34. Finally, and more generally, we do not accept the notion that a multi-stage approach is appropriate or correct. Rather, having regard to the wording of s.120 of the BSA, the approach to assessing a relevant defect involves only one stage – i.e. consideration of whether a Building Safety Risk has arisen from Relevant Works. We agree with the SoS that it is not necessary/appropriate to determine the presence of some other ‘defect’ first, before assessing Building Safety Risk.

Approach to remediation

35. At one level, the items of remediation for which the extent of works remained a matter of dispute were relatively narrow:
- (1) Wall Types 2A, 2B and 2C – particularly whether the defects could have been remediated without having to replace the timber cladding;
 - (2) Wall Type 4 - whether the remediation could or should have been done in a different and cheaper way.

36. Focussing solely on the above betrays the much more fundamental dispute between the parties – which ultimately, on the Second Respondent’s case, leads to the argument that no RCO should be made at all.

37. As noted above, the parties approached the case from significantly differing perspectives. The SoS’s case, in essence, is that a margin of appreciation should be allowed to the party carrying out the works, and that on the facts of the present case, the scheme of works undertaken was within the band of reasonable responses. In contrast, the Second Respondent’s position is summarised in Mr Bowker’s skeleton argument at para.51:

“ ... R2’s position does not subvert the hierarchy of responsibility or the legislative purpose of Part 5 and Schedule 8. On the contrary, R2 is simply saying this: it is not fair for the Govt to sponsor an over-engineered project based on a flawed assessment methodology, to withdraw that methodology, to introduce a new methodology, and then seek to recover the cost of the over-engineering. This is why this case is important. It explains precisely why CAN was withdrawn and replaced by PAS:9980. The Govt is hoist with its own petard.”

38. In support of its claim, the Second Respondent invited the tribunal to make three findings:

- (1) That the RTM Company (and by extension, the government, who funded the project) chose not to carry out a risk-based assessment;
- (2) That the Tennyson Suite reports (the first being the foundational document) were not fit for purpose; and
- (3) In late 2022, the RTM Company was invited to switch from CAN to PAS:9980 and at the time the government considered PAS:9980 to be a legitimate approach to the project.

39. It should be noted that a fourth finding of fact was sought in relation to the issue of betterment/lifespan. This is addressed further below in relation to the application of the just and equitable test. For the avoidance of doubt, the above three matters are also considered again in relation to that question.

40. Broadly, the SoS's position was that the scheme of remedial works undertaken was within the range of reasonable responses. Further, and in any event, Mr Morton cast doubt on the viability of the Second Respondent's alternative schemes.
41. There are, in essence three questions to consider, which flow from the parties' submissions:
 - (1) Ought the project to have been reviewed/halted so as to carry out a PAS:9980 assessment (or an assessment based on a risk-based approach) prior to works being carried out?
 - (2) If a scheme of works is within the range of reasonable responses, should a RCO nevertheless be limited if and to the extent that works could have been carried out more cheaply?
 - (3) Was the scheme within the range of reasonable responses?

Impact of PAS:9980

42. PAS:9980 was published on 11 January 2022 and came into effect on 31 January 2022. This followed the withdrawal of the Consolidated Advice Note ("CAN") on 10 January 2022.
43. As to the status and importance of PAS:9980, in our determination, we agree with the Second Respondent that PAS:9980 should not be disregarded and is clearly a relevant factor. As Mr Bowker illustrated, there were numerous statements by the government highlighting its importance as a tool for assessing risk – as well as emphasising its difference from its predecessor, the Consolidated Advice Note ("CAN"). For example, in an explanatory speech on 10 January 2022, the Secretary of State said (amongst other things):

“We must also restore common sense to the assessment of building safety overall ... There must be far greater use of sensible mitigations, such as sprinklers and fire alarms, in place of unnecessary and costly remediation work. To achieve that, today I am withdrawing the Government's consolidated advice note. It has been wrongly interpreted and has driven a cautious approach to building safety in buildings that are safe that goes beyond what we consider necessary...”

44. Similarly, a letter from the then Secretary of State to the Chair of the G15 group of London housing associations dated 11 January 2022 (the day after the withdrawal of CAN), contained the following:

“The current position on building safety remediation is not working, as I am sure you would agree. The current market response is not based on a properly granular assessment of the real risk of life-threatening fires in medium and high-rise buildings and is driving an overcautious approach to assessment and remediation. Blameless leaseholders who have worked hard to get on the home ownership ladder, are left trapped with expensive bills and flats they cannot sell.

...

We have withdrawn the Consolidated Advice Note, which has been misinterpreted and thus driven an over-cautious approach to building safety. I have taken steps to provide a clear framework for proportionate risk assessments and we are supporting the Publicly Available Specification 9980 (PAS9980), which will be published by the British Standards Institution later this week. PAS9980 will provide proportionate guidance for those making assessments of external wall systems.”

45. It is not tenable to dismiss it as being irrelevant. At the same time, we accept the argument that PAS:9980 is a methodology and will not of itself provide a qualitative answer to whether a relevant defect exists. We also note Mr Brown’s evidence that in the early days of PAS:9980, its application was not always consistent.
46. However, the question of whether the RTM Company ought to have paused the project to carry out a PAS:9980 assessment (or should the government have insisted on one) is a more nuanced one.
47. It is clear from Mr Missenden’s evidence that the issue of whether to change to PAS:9980 was raised by the Building Safety Fund towards the end of 2022. In cross examination, Mr Missenden recalled the issue of PAS:9980 being raised by the case officer for the BSF in late 2022 and whether this had been considered by the project team. However, his evidence was that this was very much ‘light touch’ and was done by way of an enquiry - and that there was no pressure to switch to a PAS:9980 assessment.

48. In our view, the issue of whether the remediation ought to have been changed so as to proceed under a 'PAS approach' is something that must be considered in the context of the case. In particular, it is important to have regard to the chronology, which does not appear to have been controversial:

- (1) November 2020 – first Tennyson Suite Report concerning fire safety at the Property;
- (2) May 2021 – schedule of works
- (3) June 2021 – tender analysis
- (4) 30 June 2021 – deadline for funding application
- (5) July 2021 – pre-tender support
- (6) November 2021 – application for planning permission for the proposed works (approved in August 2022)
- (7) January 2022 – introduction of PAS:9980 and withdrawal of CAN
- (8) November 2022 – grant funding agreement signed
- (9) May 2023 – JCT contract entered into
- (10) November 2023 – works commenced

49. We are mindful of Mr Brown's evidence that there was some initial uncertainty in the industry following the introduction of PAS:9980 in January 2022 and Mr Butterworth accepted that its application was initially not always consistent – although this of itself would not have been a reason not to adopt PAS:9980. We are, however, conscious of the point that it is not clear that had a PAS:9980 assessment been carried out that it would have made a material difference to the outcome. As both fire safety experts acknowledged, PAS:9980 provides a methodology, but the outcome of assessment will, at least in part, be influenced by subjective opinion. By way of example, in relation to the level of risk presented by Wall Type 1D, Mr Butterworth considered it to be 'medium tolerable', but accepted that others might consider it to be 'medium intolerable'.

50. However, and in any event, by the time PAS:9980 came into effect, the project was well underway: a specification of works had been drawn up and applications for funding and planning permission had been made (planning permission was granted in August 2022). In this regard, it also must be borne in mind that the RTM Company and residents were faced with an unsafe building which required remediation. Moreover, there is no dispute that it acted at all times in accordance with professional advice.
51. Taking everything into account, we accept the SoS's submission that it was not unreasonable for the RTM Company not to start again and re-evaluate the project by reference to PAS:9980 in circumstances where there does not appear to have been any obligation to do so – and to do so would inevitably have resulted in further delay.
52. With regard to the issue of delay, as per Mr Missenden's evidence, in addition to the time taken for obtaining PAS:9980 assessment, this might also have involved drawing up a new specification of works, re-tendering, re-applying to the BSF and possibly the need for further planning permission. We accept Mr Missenden's evidence that there would inevitably have been delay were the project to have been paused to carry out a PAS:9980 assessment. Although Mr Bowker is correct that by late 2022, the door on a PAS:9980 assessment was not closed, it does not follow that the RTM Company (and the government) were wrong in not undertaking one. Although Mr Bowker was able to demonstrate in cross examination that the final compliance report post-works was able to be produced in approximately one month by Tennyson Suite, it does not follow, as Mr Missenden maintained, that the same timescale would have been realistic for the purposes of preparing a PAS:9980 report in late 2022. As Mr Missenden explained, when preparing the post-works compliance report, the representative for Tennyson Suite had been doing assessments for 6 months, they had the majority of the information they needed and no further opening up was required.
53. Each case will turn on its own facts. It may be that in another case, where PAS:9980 came into force at a time when a remediation project was in its infancy or some point less advanced than on the facts of the present case,

that it might not be considered reasonable or appropriate to proceed without first carrying out a PAS:9980 assessment. However, in the present case, for the reasons set out above, we do not consider that failure to obtain a PAS:9980 assessment fatally undermines the SoS's case in these proceedings.

54. We would comment briefly that the Second Respondent was critical of Mr Brown in particular, suggesting that he did not give sufficient prominence of PAS:9980 in his report and treated it very much as a subordinate issue. While PAS:9980 was clearly not central to the SoS's case, we do not consider anything improper in the way that it was addressed in Mr Brown's evidence. In particular, in his Supplemental Report, he specifically sought to answer the question of what remedial works are necessary to remedy any such defects in accordance with the guidance in PAS:9980 (at paragraph 1.13.1) – although as set out in his report, he remained of the view that PAS:9980 was “*not directly relevant to the remedial works that were undertaken*”.

Is it sufficient that for a remediation scheme to fall within the range of reasonable responses?

55. On this issue, we agree with the SoS that the fact that the remediation could have been done more cheaply, does not mean that it should have been. In other words, we take the view that provided the remediation carried out was within the band of reasonable responses, the fact that it could have been done more cheaply is not of itself a basis for reducing the amount of an RCO.
56. In the SoS's submission, where an obligation to pay money is framed by reference to the cost of works done to achieve an objective then, if there is more than one reasonable manner in which that objective might be achieved, the choice between those alternatives is left to the person who does (or commissions) the works. In support of this proposition, reliance was placed on the decision of Scott J (as he then was) in *Plough Investments v. Manchester CC* [1989] 1 EGLR 244 (at 247M):

*“The landlord’s fifth schedule repairing obligation is, although nominally an obligation, in a sense also a right. If it were simply an obligation, then, presumably, the three tenants of the building could choose to release the landlord, in whole or in part, from that obligation. But the provision is not, in my view, simply, or even mainly, for the benefit of the tenants. It is also a provision for the benefit of the landlord. It enables the landlord to keep its building in repair at the tenants’ expense. If the obligation had been imposed on the tenant, the tenant would have been entitled to decide on the manner in which it would be discharged. Provided remedial works were sufficient to discharge the obligation, the landlord could not require a different type of repair to be effected. Under these leases, however, the relevant decisions regarding repairs to the exterior are to be taken by the landlord. **If reasonable remedial works are proposed by the landlord in order to remedy a state of disrepair for the purposes of its fifth schedule obligation, the tenants are not, in my judgment, entitled to insist that cheaper remedial works be undertaken**” (emphasis added).*

57. Reference was also made to Blackburne J in *Fluor Daniel v. Shortlands* [2001] 2 EGLR 103 at 110G

*“I do not accept [counsel’s] submission that where the repairing or other obligation is cast upon the landlord as covenantor but it is the tenant covenantee who has to pay for the works, the normal rule as between covenantor and covenantee (ie that it is for the covenantor to choose the mode of performance provided he acts reasonably), does not apply or that properly understood *Plough Investments v. Manchester City Council* does not so require or, if it does, that it was wrongly decided”.*

58. It is, of course, correct that the above authorities did not concern interpretation of the BSA, but we agree with the SoS that the principle can be applicable here. When considering the purpose referred to in s.124(2) of the BSA, i.e. meeting costs incurred or to be incurred in remedying or otherwise in connection with relevant defects, unless the works in question can properly be branded as unreasonable, it does not matter for the purposes of s.124 whether an alternative scheme might have satisfactorily addressed the fire safety risk at a lower cost. This is consistent with the wider policy of Part V of the BSA given that the works in question are to remedy relevant defects which, by their nature, pose a risk to the safety of people in/about the building, and which, therefore, need to be addressed.

Was the scheme in the present case within the range of reasonable responses?

59. There is no dispute that the Second Respondent has proposed a scheme which was less extensive and, consequently, cheaper than that undertaken by the RTM Company. The differences between the schemes resulted in a difference in overall costs of approximately £1.4 million. The main differences in terms of works were as follows:

- (1) Wall Type 1D (EPS render top storey): the SoS's claim was for approximately £50,000 compared to £20,000 under the Second Respondent's scheme – a difference of approximately £30,000;
- (2) Wall Type 2A (timber adjacent render) - £60,000 against £3,000 (a difference of £57,000);
- (3) Wall Type 2B (timber adjacent metal spandrels) - £300,000 against £6,000 (a difference of £294,000); and
- (4) Wall Type 2C (timber continuous) - £250,000 against £6,000 (a difference of £244,000).

60. In addition, the Second Respondent disputed fire stopping costs of approximately £100,000. There were also differences to below-line costs and several other points on quantum. These matters are addressed further below.

61. In support of the submission that relevant defects could have been remediated more cheaply had a risk-based approach been considered, Mr Bowker gave the example of balconies. The timber balconies were highlighted in the Tennyson Suite reports and were listed as an item for remediation by way of replacement in the initial scope of works. However, it subsequently became apparent that the balconies were within the flat demises and, as a result, fell outside of the scope of funding from the BSF. As a result, there was a change in the proposed works as regards the balconies such that the timber decking remained in place and far less extensive works were ultimately carried out (and apparently were paid for from the reserve fund). The implication of this submission was that if the

programme of works could be varied at a late stage so as to leave the timber decking in place, why not adopt a similar approach for the remaining defects?

62. As noted above, the SoS maintained that the scheme adopted was within the range of reasonable responses and in any event, cast doubt on the viability of the Second Respondent's proposed scheme.
63. Before turning to consider the respective schemes, it is worth pausing to consider the Second Respondent's submissions regarding the adequacy of the Tennyson Suite reports. The fire safety experts joint statement identified 8 deficiencies:
 - (1) It was unclear where the intrusive inspections were carried out;
 - (2) An inadequate number of inspection locations were inspected to provide satisfactory evidence of widespread defects;
 - (3) No Fire Strategy drawings or indications of the location of horizontal or vertical compartmentation were provided in the inspection reports, which would have confirmed where Horizontal and Vertical Fire Barriers or Cavity Barriers would be required;
 - (4) The EPS Render system was only inspected by core samples, which does not provide documentary evidence about additional mechanical fixings required by BRE Defect Action Sheet 132, the presence or absence of cavities behind the EPS, or reliable documentary evidence about Fire Barrier provision;
 - (5) The presence or absence of vertical and horizontal cavity barriers and cavity barriers around windows and doors does not appear to have been investigated;
 - (6) The experts have not been provided with a risk assessment to support the presence of relevant defects or the original remediation proposals;

- (7) The Tennyson Suite Reports do not provide a full suite of photographs of the elevations resulting in gaps in the reporting of the construction materials; and
 - (8) Neither the author of the Tennyson Suite Reports, nor the reviewer were chartered engineers and members of the Institution of Fire Engineers, nor does the report set out the basis of their relevant competence and experience in building construction assessments.
64. Mr Morton confirmed in his evidence that he did not disagree with the list and Mr Brown stated in evidence that he would not have put his name to the Tennyson Suite reports.
65. Nevertheless, it is also fair to say that several of the criticisms related to lack of information/explanation in the report rather than errors or deficiencies in the conclusions themselves.
66. In Mr Bowker's submission, these agreed criticisms were significant. Insofar as the Tennyson Suite report was the 'foundational document' – and Mr Bowker carefully highlighted reference to it in subsequent documents including the schedule of works and tender analysis – this meant that the entire project was tainted.
67. There are several points to make in response to this submission.
 - (1) Although Mr Brown accepted that he would not have put his name to the Tennyson Suite report, he also remarked that it was not out of the ordinary for its time. Moreover, he maintained that it captured the key points – albeit other matters might have come to light in due course.
 - (2) The second, and in our finding more significant, point is the evidence of Mr Rhys Jones. While he maintained that the scheme of works undertaken was too extensive and adequate remediation could have been achieved more cheaply, Mr Rhys Jones confirmed in evidence that, subject to two points, the scheme of works undertaken was a reasonable one. The two exceptions were as follows: The first related to horizontal fire

barriers at the EPS/soffit junction. However, it is understood that such works were not actually carried out so this exception does not arise. The second relates to metal spandrel damage. However, for the reasons set out below, we do not consider that the works undertaken were unreasonable.

(3) The intrusive surveys carried out by Tennyson Suite relate to the identification of relevant defects rather than the nature of a remedial scheme. Even if the initial surveys had been more extensive, it does not follow, and has not been demonstrated, that the remedial works undertaken would necessarily have been different,

(4) The RTM Company at all times acted on the basis of professional advice and there is no suggestion that the advice of what works were to be carried out was negligent.

68. Taking all these matters into account, we find that the scheme of works carried out was within the range of reasonable responses.

69. However, before proceeding, it is important to consider the Second Respondent's alternative scheme.

The Second Respondent's alternative scheme(s)

70. The Second Respondent put forward alternative schemes for five different Wall Types: 1D, 2A, 2B, 2C and 4.

71. The issue with regard to Wall Type 1D concerned the EPS render on the top storey at the rear of the building. There is a timber soffit above the external wall and privacy screens between each flat. It had been common ground between the fire safety experts that there were multiple fire safety defects, including the inclusion of thin polymeric render, combustible polystyrene insulation and omission of fire barriers. Further, the EPS Render crossed compartment lines between apartments without Vertical Fire Barriers. The soffit above was formed of timber, which would contribute to horizontal fire spread across party wall lines.

72. Mr. Butterworth considered the defects to Wall Type 1D could be remediated by cutting in vertical Fire Barriers to the EPS render at

compartment lines and upgrades to privacy screens. Further, Mr. Rhys Jones was of the view that the insertion of vertical fire barriers at the junctions of Wall Type 1D with internal compartment walls, and the insertion of Fire Barriers in the overhang canopy, would have been practicable and a reasonable and proportionate means of mitigating the risk presented by this wall type. While Mr Butterworth maintained his position that the risk was ‘tolerable’ he accepted that another expert might regard it as ‘intolerable’.

73. In the SoS’s submission, the scheme was not viable. In particular, EPS render was required to be removed and replaced as part of the complete remediation of Wall Type 1 (including the need to carry out the Party Wall Remedial Works to this wall type), and reinstatement of EPS render after removal would contravene Building Regulation 7(2).
74. Further, Mr Brown considered that the timber soffit running alongside the EPS in Wall Type 1D was a relevant defect and that even if fire barriers and privacy screens were installed, due to the presence of the soffit, a fire on the EPS wall could bypass the fire barriers.
75. Turning to the various Wall Type 2 works, there were various defects with regard to the timber identified by Mr Brown:
 - (1) Installation of timber cladding panels, which are combustible;
 - (2) Installation of combustible insulation;
 - (3) Installation of timber framework, which is combustible, to support the timber cladding;
 - (4) Installation of CP board with gaps between sheets and cavities behind;
 - (5) Omission of horizontal and vertical Fire Barriers; and
 - (6) Omission of Cavity Barriers.
76. While Mr Brown considered the timber itself to be a defect, Mr. Butterworth was of the view that if the timber panels were below 18m, they complied with ADB, whereas if they were over 18m, they would have

complied with ADB if they had been treated (and maintained) with fire retardant.

77. Turning to the specific remediation schemes, with regard to Wall Type 2A, the key point of difference was that Mr. Butterworth suggested that any remediation could have been limited to applying fire retardant to areas of the timber above 18m. Similarly, Mr Rhys Jones considered that it would be possible to apply Thermoguard “Thermoproof” or similar product to the external faces of eight timber panels on the top two floors.

78. In the SoS’s submission this was unworkable for various reasons:

(1) First, this section of Wall Type 2, as was the case for all sections of Wall Type 2, would require removal of the timber panels which then could not be reinstated as this would contravene Building Regulation 7(2). The timber panels could not be adequately treated with a fire retardant without removing or dismantling all or part of the timber cladding. In any event, the SoS stressed that, such treatment does not affect combustibility, only the propensity to ignition from low-energy sources.

(2) Further, Mr. Morton’s evidence was that it would have been necessary to remove the timber when the adjacent EPS render was removed, to give certainty of forming a waterproof junction between the two materials. Again, once removed, its reinstatement (or replacement) would contravene Building Regulation 7(2).

(3) Finally it was said that should any timber panels have needed to be removed, either in a section of Wall Type 2A or in sections of 2B/2C, this would justify removal of all timber panels, as the removed timber panels could not be replaced, resulting in some timber cladding and some alternative materials, leading to a patchwork of different materials which would not satisfy the original design intent. In this regard, it should be noted that it was broadly common ground that that if timber panels were to

be removed, there is a high chance that they would be damaged in the process. In our view, this ground of objection carries less weight as it goes largely to questions of aesthetics as opposed to building safety, although the point is nevertheless noted.

79. Turning to Wall Type 2B, Mr Rhys Jones proposed two alternative remediation schemes: (i) installing compressible mineral wool cavity barriers to seven panels on the northwest elevation; or (ii) if fire barriers were originally installed, no works would be required, just an intrusive survey.
80. However, in the SoS's submission neither alternative was viable as each would require the removal of timber panels, which could then not be replaced as this would contravene Building Regulation 7(2).
81. The position was broadly the same with regard to Wall Type 2C: on the Second Respondent's case, it was proposed to install a new polythene sleeved mineral wool compressible fire barrier at each floor level and vertically at each compartment wall line. Alternatively, no works would be required if fire barriers were originally installed – so all that would be needed would be an intrusive survey.
82. Again, the SoS's position was that neither option was viable. Each would require the removal of timber panels, which could then not be replaced as this would contravene Building Regulation 7(2).
83. The above matters are linked to a wider issue as to whether the timber framing could act as a cavity barrier. This would depend on whether the timber was of sufficient thickness (38mm) so as to comply with ADB. However, Mr Brown considered the timber framing to be 20-25mm and moreover, that the type and size of timber appeared to be inconsistent. While Mr Butterworth's evidence had been that the edges of the cavity are protected by timber battens of at least 38mm thickness, in cross examination he accepted that there was uncertainty and potentially inconsistency. As such, insofar as the thickness is uncertain, the natural conclusion would be that this justifies a more cautious approach to remediation.

84. Finally, as regards Wall Type 4 (metal spandrels), as set out above, this was one of the exceptions identified by Mr Rhys Jones to his conclusion that the scheme of works undertaken was a reasonable one. It was agreed by the parties that combustible insulation within the spandrels needed to be removed.
85. The issue, however, centred around the Second Respondent's proposal which would have involved 're-use' of the metal spandrels following replacement of the insulation. On the SoS's case, the replacement of the panels was necessitated by unavoidable damage during the course of the works. This was explained in the evidence of Mr Missenden: scaffolding fixes were cut into the spandrels on the tall block (whereas on the short block the spandrel was fully removed). Mr Missenden's evidence was that the reason for this is that at the time it was not understood that the spandrels would need remediating themselves, as there was no awareness of the combustible insulation or lack of barriers. In this circumstance, the SoS maintains that cutting these fixes with the intention of a limited repair was reasonable as it would involve less work than removing the spandrel. When it was discovered that there was combustible insulation, this necessitated wider remedial works.
86. In our view, the approach taken, having regard to Mr Missenden's evidence was not unreasonable. In any event, even on Mr Lynch's evidence, the total potential saving would have been £11,563 out of a total spend of £73,830 – in other words, a relatively modest amount.

Building Regulation 7(2)

87. As will be apparent from the matters set out above, a significant issue as to the viability of the alternative scheme(s) proposed by the Second Respondent involved the applicability or otherwise of Building Regulation 7(2) of the 2010 Regulations. The central contention by the SoS was that if timber panels were removed for works to be carried out, they could not then be replaced as this would be in contravention of Regulation 7(2). The Second Respondent did not accept this argument.
88. The relevant parts of the Building Regulations ("BR") provide as follows:

“3. (1) In these Regulations “building work” means—

- (a) the erection or extension of a building;*
- (b) the provision or extension of a controlled service or fitting in or in connection with a building;*
- (c) the material alteration of a building, or a controlled service or fitting, as mentioned in paragraph (2);*
- (d) work required by regulation 6 (requirements relating to material change of use);*
- (e) the insertion of insulating material into the cavity wall of a building;*
- (f) work involving the underpinning of a building;*
- (g) work required by regulation 22 (requirements relating to a change of energy status);*
- (h) work required by regulation 23 (requirements relating to thermal elements);*

(2) An alteration is material for the purposes of these Regulations if the work, or any part of it, would at any stage result—

- (a) in a building or controlled service or fitting not complying with a relevant requirement where previously it did; or*
- (b) in a building or controlled service or fitting which before the work commenced did not comply with a relevant requirement, being more unsatisfactory in relation to such a requirement.*

...

7(2) Subject to paragraph (3), building work must be carried out so that materials which become part of an external wall, or specified attachment, of a relevant building are of a minimum European Classification A2-s1, d0 or A1, classified in accordance with BS EN 13501-1:2018 entitled “Fire classification of construction products and building elements. Classification using test data from reaction to fire tests” (ISBN 978 0 580 95726 0) published by the British Standards Institution on 14th January 2019.

7(3) Paragraph (2) does not apply to—

- (a) cavity trays when used between two leaves of masonry;*
- (b) any part of a roof (other than any part of a roof which falls within paragraph (iv) of regulation 2(6)) if that part is connected to an external wall;*
- (c) door frames and doors;*

...

- (e) insulation and water proofing materials used below ground level F534or up to 300mm above that level;*
- (f) intumescent and fire stopping materials where the inclusion of the materials is necessary to meet the requirements of Part B of Schedule 1;*
- (g) membranes;*
- (h) seals, gaskets, fixings, sealants and backer rods;*

(ha) components associated with a solar shading device excluding components whose primary function is to provide shade or deflect sunlight such as the awning curtain or slats;

(i) thermal break materials where the inclusion of the materials is necessary to meet the thermal bridging requirements of Part L of Schedule 1;

(j) window frames and glass; or

(k) materials which form the top horizontal floor layer of a balcony which are of European Classification A1fl or A2fl-s1 (classified in accordance with BS EN 13501-1:2018 entitled “Fire classification of construction products and building elements. Classification using test data from reaction to fire tests” (ISBN 978 0 580 95726 0) published by the British Standards Institution on 14th January 2019) provided that the entire layer has an impermeate substrate under it.”

89. Two questions arise from the parties’ respective submissions:

(1) Does the removal of timber panels constitute building works?

(2) What is meant by the phrase ‘become part of an external wall’ for the purposes of Regulation 7(2)?

90. Considering the first question involves assessing whether “building work” means a single item of work or the entirety of the project. In the SoS’s submission, regulation 3(2) in setting out the sub-definition of when an “alteration” is “material” references “...the work, or any part of it...”. If “building work” was broken down into individual areas of work, there would be no need to reference “any part of it”. In other words, this reference indicates that “building work” in Regulation 7(2) is intended to relate to the entirety of the project. Moreover, it was submitted that it would make no practical sense to break down the work into individual items. The application to building control would involve an application for the entirety of a project, and by practical necessity, building control would apply the Building Regulations to the entirety of it. From the contractor perspective there also needs to be certainty on what the Building Regulations applied to, which is only achieved if works are considered one project.

91. As to its applicability to the present case, the SoS noted that regulation 3(1)(c) provides that a “material alteration” is “building work”, and BR 3(2)(b) confirms that an alteration is material if any part of the works at any stage means the building would be more unsatisfactory (than before

the works) in respect of a “*relevant requirement*” (including paragraph B3 and B4 relating to internal and external fire spread). Accordingly,

- (1) given the removal of the EPS wall system, which would expose the combustible EPS insulation, Mr. Brown’s evidence was that this would mean the “*relevant requirements*” of B3/B4 would be more unsatisfactory than before the works had taken place (having regard to BR 3(2)(b) and BR 3(3)). On this basis this would mean the project as a whole would constitute a “*material alteration*” under BR 3(1)(c). As such, even if individual timber panels were being removed as part of the same project, such removal forms part of the same “*building works*” and could not be reinstated; and
 - (2) Even if removal of the timber panels were to be considered separate from the EPS remediation, as this would expose a membrane, which may be more easily ignited than the timber panels, which could themselves then be ignited by the membrane, this may increase the likelihood of fire and mean BR 3(2)(b) and BR 3(3) are not satisfied.
92. It was also confirmed by Mr Rhys Jones that both the works to Wall Type 1 (possibly excluding Wall Type 1D), and any works which required removal of panelling in any of the Wall Type 2 sub-types, would activate Building Regulation 23 (requirements relating to thermal elements). In this circumstance, whether considered together with the remainder of the works, or separately, works removing (and reinstating or replacing) the timber panels, would be considered “*work required by regulation 23*” and be considered “*building work*” pursuant to BR 3(1)(h).
93. Finally, on the question of what is meant by “becomes part of the external wall”, the SoS submitted that:
- (1) if other elements of the external wall are being remediated, the external wall is changing, in this sense, if panelling is removed and sought to be put back on, it would “become” part of that updated external wall; and

(2) it makes no logical sense for this to only apply to new materials. Were it otherwise, this regulation would permit the reinstallation of dangerous ACM cladding, simply because it previously featured as part of the external wall, something which cannot have been the intention of regulation 7(2).

94. Mr Bowker submitted that it would strain the language of Regulation 7(2) to find any concept of ‘whole project’. Works are either fully within the Regulations or not. In the present case, there was simply renewing or replacing: not material alteration.
95. In our view, there is some force in the SoS’s submissions as to the proper interpretation of Regulation 7(2) as set out above. Moreover, from an industry perspective, it appears that at the very least, there is at best uncertainty as to whether replacement of timber panels in a case such as the present would constitute a breach of Regulation 7(2). As agreed by experts on both sides, different local authorities approach the matter differently. As such, at a minimum, there is doubt as to whether the Second Respondent’s scheme would have been viable – and indeed the very real possibility that a local authority might have concluded that it was not. Such a decision could of course be challenged but there would be no guarantee as to the outcome of such litigation.
96. Taking these matters into account – and having regard to the matters raised by the SoS as to the adequacy of the Second Respondent’s proposals – there are clearly doubts as to the adequacy and/or viability of the Second Respondent’s alternative scheme(s). In light of this uncertainty, it would therefore be appropriate to adopt a more cautious approach. Moreover, the key point remains that the SoS’s scheme was of itself a reasonable one in any event.

Quantum

97. The parties were agreed that the costs claimed were incurred. The amount of the expenditure was also agreed.

98. There nevertheless remained several discrete costs, which the Second Respondent maintained should not fall within an RCO, should the tribunal choose to make one, in any event. The disputed costs were as follows:

- (1) The cost of fire stopping service penetrations;
- (2) An invoice raised by London Underground;
- (3) Two invoices raised by Tennyson Suite;
- (4) The cost of installing access panels;
- (5) Costs charged by Bridge Fire and Alarm Services; and
- (6) VAT.

Fire stopping

99. A further element of the remedial works in dispute related to the fire stopping of service penetrations. This matter spanned a number of the Wall Types referred to above. In relation to this, the issue was whether these works are properly to be regarded as being a natural incident of other remedial works – i.e. did they properly fall within section 124(2) of the BSA and/or need to be done to comply with the law and/or good practice.

100. The Second Respondent disputed the costs of fire stopping of service penetrations. The sum in issue is £95,520.50 and concerns the cost of sealing service penetrations following the remedial works.

101. On the SoS's case, Regulation 23 of the Building Regulations would apply to much of Wall Type 1 and all of Wall Type 2 (where panels being removed), and as a result L1(a)(i) of Schedule 1 of the Building Regulations applies, requiring conservation of fuel and power limiting heat gains and losses through thermal elements. Although it was suggested – at least in the course of cross examination – that this requirement concerned environmental health considerations rather than fire safety, Mr Brown's evidence was that these works were necessary to close off all cavities to stop the internal spread of smoke, regardless of adequate compartmentation within the external wall.

102. We are satisfied that the fire stopping of the services through each Wall Type was necessary as part of ‘making good’ works and must be considered a cost incurred in the remedy of the relevant defects within those Wall Types. We also note that Mr Rhys Jones confirmed that any services passing through the external wall would need to be adequately sealed.
103. We therefore determine that such costs should be included within any RCO.

London Underground invoice

104. The dispute concerns invoice 1800056288 for the sum of £2,196.00. This was excluded by Mr Taylor on the basis that there was no supporting information (unlike the position for other London Underground invoices, which were accepted).
105. In cross-examination Mr. Taylor agreed that this invoice must have related to the cladding remediation project (it had the same reference number, 1823432 as other invoices from London Underground)), but he was unable to confirm what the costs related to and as such whether they related to the remedy of relevant defects. In our view, on the balance of probabilities, it is more likely than not that this cost would not have been incurred but for the need to remedy relevant defects. It seems likely that the costs would have related to access or permitting for the works being carried out near their adjoining boundary – Hallings Wharf is adjacent to a number of rail lines. There does not appear to be any other reason why London Underground would issue the RTM Company with an invoice relating to the project.

106. We therefore determine that such costs can be included within any RCO.

Tennyson Suite invoices

107. The Second Respondent challenged these costs (totalling £4,905 plus VAT). The issue was whether such costs were incurred as a result of the relevant defects, given the potential need for such investigations in any event as a result of CAN in the aftermath of the Grenfell Tower fire. In response, the SoS contended that had it been clear that Hallings Wharf

suffered from no relevant defects, these costs would not have needed to be incurred.

108. We agree with the SoS and accordingly consider that the costs were incurred “*in connection with*” the relevant defects they identified. We therefore determine that such costs can be included within any RCO.

Access hatches

109. Mr Taylor challenged this cost (totalling £7,975) as previously there were no access hatches. The SHW funding variation report of May 2024 stated that:

“When the timber soffit cladding was removed, various gas stop cocks and isolation valves were found for flat services.

It is necessary for H&S to provide access to these isolation points so that services can be shut off in the event of an emergency. Failure to provide these access points would mean that the new cladding would be damaged when trying to remove panels etc and could delay the emergency services.

Therefore 55 No. (11 per floor) new aluminium PPC hatches 425 x 425 are required at a cost of £145 + VAT per item.”

110. As such, Mr Taylor could not conclude whether these costs related to the relevant defects, i.e. because the hatches were not originally installed, or whether the requirement to provide these access hatches only arose because the remedial works were being undertaken.
111. On the SoS’s case, the installation of the access hatches would be considered good practice as part of the remedial works. As such, when the remedial works were being carried out, it was reasonable for this cost to be incurred, and it would not have been incurred but for the works remedying of relevant defects. It is a sum incurred in or in connection with the relevant defects.
112. The sum in question is relatively small part of the wider dispute. On balance, and in the absence of further submissions from the Second Respondent, we agree with the SoS’s contention that it was reasonable for these costs to be incurred and that they were incurred in connection with works remedying of relevant defects.

113. We therefore determine that such costs can be included within any RCO.

Bridge fire and alarm services

114. The Second Respondent's stated position had been that the SoS had not led sufficient evidence to substantiate such claim.

115. However, the background to this head of costs was set out in Mr Missenden's second witness statement and the justification for such costs was set out in the Tennyson Suite report:

"The combined fire safety measures are considered to warrant a waking watch in the 'Large' building until such time as a wireless heat detection and warning system is provided adjacent to all openings into the render and timber cladding. The fire evacuation policy should be changed with immediate effect to one of simultaneous evacuation for this block.

A similar automatic fire detection system is required for the 'small block' and the fire evacuation policy should be changed to one of simultaneous evacuation. Three months is considered to be a reasonable time scale for the installation of the system.

Once all the remedial works to the external walls and the internal risers have been completed, the wireless detection system can be removed and re-deployed to other premises and the fire evacuation policy revert to one of defend in place."

116. Further, in cross examination, Mr Butterworth did not dissent from the above advice. He was of the view that there were clearly risks associated with the EPS render that warranted consideration of interim measures and as far as is common practice, an automatic fire detection alarm system would be a way of reducing those risks.

117. In conclusion, we consider that these costs were adequately evidenced and can be included in any RCO.

VAT

118. According to the Scott Schedule, the amount of VAT in question was £624,557.83, based on the figures for the remedial scheme contended for by the SoS. As such, although a small discrete point, it has significant consequences for the total sum claimed.

119. There is no dispute that:

- (1) the costs incurred by the RTM Company included VAT;

- (2) Those costs (including the VAT) were paid to the contractors who would have accounted for that VAT to HMRC in the usual way; and
 - (3) The payment of costs (including the VAT) was funded by the Building Safety Fund.
120. The Second Respondent raised an argument that if a VAT element were included in an RCO, this would lead to double recovery and therefore should not be included within an RCO in these proceedings.
121. This was refuted by the SoS: the BSF has paid out to the RTM Company sums which include the VAT element of the costs. The contractors have in turn accounted to HMRC for that VAT element. The key point, however, is that the net effect of those two payments is neutral. The government has not yet received the VAT element of the costs, to which it is entitled, because it has provided funding for those costs to the RTM Company. As such, it follows that if the RCO requires payment of that VAT element, this will amount to recovery for the government but not double recovery.
122. In the course of cross-examination Mr Taylor suggested that there might be double-recovery if the RTM Company had been registered for VAT. However, there was no evidence to support this and indeed Mr Missenden's evidence that he understood it was *not* VAT-registered.
123. In the circumstances, we consider that these costs can be included in any RCO.
124. Finally, we record that it was also agreed that the costs of balconies should not be included as they had been sourced from the reserve fund. As such, the costs have not been included within the Scott Schedule.

Litigation costs

125. By application dated 6 February 2026, the SoS sought to amend the claim for an RCO to include litigation costs (the fees of its lawyers and experts in these proceedings). The tribunal gave permission for such amendment at the pre-trial review, although making clear that the fact of giving

permission to amend did not amount to acceptance that such costs were recoverable under the provisions of section 124 of the BSA.

126. As well as amending its pleading, the SoS also served a Form N260 (used in court proceedings) outlining the costs claimed. The total sum sought is in excess of £1 million.

127. There are, in essence, two questions of principle before the tribunal:

(1) Does the FTT have jurisdiction to include litigation costs as part of an RCO?

(2) If so, how would the amount of such costs be assessed/determined?

128. Taking the above questions in reverse order, on the question of process, the SoS's submission was as follows.

129. There is no requirement that an RCO must specify how much the respondent is to pay. Section 124(4)(aa) expressly provides that an RCO may "*determine that a specified body corporate or partnership is liable for the reasonable costs of specified things done or to be done*".

130. The legal effect of such an RCO will be that, to the extent the RCO (rather than specifying an amount) determines that a respondent is liable for the reasonable costs of specified things done or to be done, the order will confer a cause of action upon the person who is entitled to payment. Any question of liability thereafter will be *res judicata*. Further, it was submitted that following the making of an RCO in the terms of section 124(4)(aa), the tribunal's jurisdiction is at an end and the assessment of the amount of costs payable will be carried out by the court. This reflects the order that was made by the FTT in *Empire Square* (referred to below).

131. The Second Respondent disagreed with this analysis. It was contended that the SoS had failed to provide details of the costs such that it is not possible for the Tribunal to apply the just and equitable test, let alone assess or determine those costs. The Form N260 does not provide proper basis to do so. Further, the Second Respondent would have no opportunity to conduct full cross examination.

132. We agree that the SoS's suggestion seems wholly impractical. If litigation costs are to be included within an RCO, how can the amount of such costs to be paid be determined in a forum which has no knowledge of the substantive dispute or proceedings. While the FTT's order could in theory address this in part – for example making an order that a respondent pay 50% of the reasonable costs of an application, so as to take into account particular features of outcome of the litigation/parties' conduct – it still begs the question of how a court could determine what the 'reasonable costs' are when it has no knowledge of the underlying proceedings.
133. The uncertainty as to process feeds into the wider question of whether the FTT has jurisdiction to include costs in the first place.
134. As set out above, section 124(2) of the BSA provides as follows:
- “(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.”*
135. Section 124(2A) gives examples of categories of costs falling within section 124(2). It is common ground that the list does not include litigation costs. However, it was also accepted that the list is not exhaustive.
136. In the SoS's submission, the jurisdictional basis for including litigation costs was as follows:
- (1) The costs which are to be taken into account when deciding how much is payable under an RCO are the costs identified in s.124(2) of the BSA, so far as those costs were incurred in connection with the relevant defects identified in the order;
 - (2) The SoS's litigation costs are of the nature identified in s.124(2) because, although they have not been incurred in “remedying” those relevant defects (since these were remedied before the application to this Tribunal was issued), they have clearly been incurred “in connection with” those defects.

137. Further, the SoS made reference to the FTT's decision in *Empire Square* (LON/00BE/HYI/2023/0013 and LON/00BE/BSB/2024/0602). In that case, which is not binding on us, litigation costs were included within an RCO. It should be noted that *Empire Square* concerned applications for both a remediation order under section 123 of the BSA and a remediation contribution order under section 124. In reaching its decision, the FTT analysed the jurisdiction to make an RCO under section 124 of the BSA and concluded that it could include legal costs within the RCO (see paragraphs 172-198).
138. The Second Respondent's position is simple: the tribunal does not have jurisdiction to include litigation costs within an RCO.
139. Save for the provisions of rule 13 of the Tribunal Rules (First-tier Tribunal) (Property Chamber) Rules 2013, the FTT is a no-cost jurisdiction. Rule 13 provides instances where costs may be awarded. So far as is relevant here, they are:
- (1) under section 29(4) of the Tribunals, Court and Enforcement Act 2007 (wasted costs) and the costs incurred in applying for such costs; or
 - (2) if a person has acted unreasonably in bringing, defending or conducting proceedings.
140. However, it is common ground that none of the grounds set out in Rule 13 are applicable in the circumstances of the present case.
141. In Mr Bowker's submission, Parliament has prescribed that the jurisdiction to make remediation contribution orders lies with the FTT, ostensibly a no costs jurisdiction. Were it Parliament's intention to include litigation costs this could have easily been spelt out, particularly as Parliament has given examples of costs arising 'in connection with relevant defects' in section 124(2A). Although the list is non-exhaustive, it is striking that it does not include litigation costs. In any event, in Mr Bowker's submission, the words 'in connection with relevant defects' properly construed, do not cover litigation costs.

142. In the alternative, it was submitted that a case such as the present can be distinguished from *Empire Square*. In that case, the FTT made the following observations:

“195 ... it is only this litigation that has driven any progress. ... The legal proceedings have been brought about because of the poor construction; we would not be here but for those defects. We find it would be absurd to interpret section 124 in any other way than to include a power to make an RCO for legal costs that would otherwise fall to innocent parties, since those costs are in connection with remediation of the Building as envisaged in section 124(2). We find that term is deliberately wide in echo of the matching schedule 8 provisions.

197. In the alternative, if we are wrong that the costs of the RO proceedings are ‘in connection with’ remediation of the Building (wide though that term is), on grounds Fairhold was the Respondent in that case (and so that part of the litigation was not an active step taken by it in connection with remediation of the Building), we would nevertheless have found that the costs associated with the RCO are costs that are incurred in connection with remediation of the Building as per section 120(2). ... In other words, Fairhold had to make the application to achieve appropriate remediation of the Building because if an RO was made, it would have to carry out works that at that time Berkeley refused to accept were required, and to the standard to which Berkeley continues to insist it will not commit. The RCO is clearly a measure taken for the purpose of remediation, and the litigation costs would not have been incurred but for it.”

In summary, it was a feature of that decision that the costs were incurred in connection with the remediation of the building – it was found that the application had to be made to achieve the appropriate remediation and the litigation costs would not have otherwise been incurred.

143. In Mr Bowker’s submission, the present case is distinguishable as here the costs were not incurred in connection with getting the works done as they have already been completed.
144. Consistent with such analysis, he submitted that when the various examples of costs specified in section 124(2A) are considered, they are principally concerned with getting the works done – the central policy behind Part V of the BSA – and will likely be incurred prior to or in the course of remediation works being carried out.
145. Mr Dutton made the point that it would be odd if such a temporal distinction were to exist. In other words, why should a party be able to recover litigation costs in a case where the works are yet to be carried out,

but not in a case where they have been completed? More generally, why should a party – in some cases this may be a wholly ‘innocent party’ such as an RTM company, which on no view is responsible for the defects – have to incur significant legal costs to obtain an RCO? It was also submitted that if finance costs can be included within an RCO as costs incurred ‘in connection with remedying relevant defects’, why not legal costs?

146. While the above arguments on policy are noted, ultimately the legislation must be construed on its terms as drafted. Having considered the parties’ submissions and having regard to the terms of the legislation, we are doubtful that section 124(2) can be construed so as to include litigation costs. As the Second Respondent submitted, it is striking that while Parliament has chosen to give illustrative examples of the type of costs recoverable – albeit non-exhaustive – it has made no reference to litigation costs in circumstances where the jurisdiction to make an RCO has been given to a body which is for the most part a no costs jurisdiction. While the words ‘in connection with’ in section 124(2) of the BSA undoubtedly allow for a broad range of costs, it seems unlikely that properly construed they could extend to litigation costs of the type now sought. In any event, applying the reasoning in *Empire Square* that costs may be recoverable where it can be said that the proceedings themselves have been brought ‘in connection with’ remediating the building – for example where the building would not have been remediated without the proceedings having been brought – that does not apply on the facts of the present case for the reasons set out above. In the circumstances, on either view, we do not consider that litigation costs are recoverable as part of an RCO in a case such as the present.

147. In the alternative, even if we are wrong as to the tribunal’s jurisdiction to award litigation costs (whether in any RCO application or in an *Empire Square*-type case where it can be said that the proceedings were necessary to achieve the remediation of the building), having regard to the facts of the present case, we would not have considered it just and equitable to include litigation costs within the RCO in any event. This is so

notwithstanding that the SoS has in essence succeeded in the substantive application.

148. In particular, we agree with the Second Respondent's submissions regarding the lateness of the application to include legal costs. As set out in the Second Respondent's re-amended pleading:

- (1) The SoS first informed the Second Respondent that it intended to include in its application for a remediation contribution order its legal and professional costs on 5 February 2026;
- (2) Prior to 5 February 2026, the Applicant had not indicated any such intention;
- (3) during the proceedings, prior to 5 February 2025, the Second Defendant, reasonably, conducted the litigation on the clear understanding that costs recovery was not in issue between the parties;
- (4) even after the FTT's decision in *Empire Square* (dated 5 June 2025), the SoS gave no indication of an intention to seek litigation costs until the pre-trial review – some 7 months later.

149. As such, the parties had conducted the litigation on the basis that there was no adverse costs risk. In the circumstances, we do not consider that it would be just and equitable to award litigation costs in the present case in any event.

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

150. The remaining question is whether it is just and equitable to make an RCO. Pursuant to section 124(1) of the BSA, the tribunal may make an RCO where it “*considers it just and equitable to do so*”.

151. The Court of Appeal has recently considered the purpose of the BSA in *Triathlon Homes LLP v Stratford Village Development Partnership & Ors* [2025] EWCA Civ 846.

“9. ... *the remediation provisions were designed to deal with a one-off problem, referred to as the building safety crisis, which saw many*

leaseholders of flats in high-rise blocks facing unprecedently high, and often unaffordable, service charge bills to pay for the costs of existing fire safety and structural safety defects in their blocks. As explained in more detail in Adriatic, a central purpose of the remediation provisions was to provide a substantial measure of protection against such service charges for leaseholders.”

152. This followed statements by the Supreme Court in *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21:

“84. The BSA is part of the Government’s response to the need to identify and remediate historic building safety defects as quickly as possible, to protect leaseholders from physical and financial risk and to ensure that those responsible are held to account.

104. A central purpose and policy of the BSA in general, and section 135 in particular, was to hold those responsible for building safety defects accountable. As was stated in the Secretary of State’s written submissions, at para 15: “The BSA makes a number of important changes to the law including, at Part 5, several mechanisms that achieve the central aims of the BSA in relation to historical building safety defects. These mechanisms are designed to ensure that ... those responsible for defects can be held to account”

153. In the SoS’s submission the purpose of the RCO regime is to provide the tribunal with the discretion to make orders providing for the recovery and/or reallocation of costs arising from building safety defects. However, the tribunal, when exercising that discretion, is not acting in a vacuum:

- (1) The purpose of an RCO is to arrive at a situation where the costs identified in section 124(2) are “met”;
- (2) In identifying those costs, the tribunal will have gone through a process which involves the following steps:
 - (a) Drawing a distinction between those relevant defects which are sufficiently trivial as not to warrant any remedial steps and those which do warrant such steps, and
 - (b) Identifying whether the costs falling within s.124(2) were reasonably incurred and are reasonable in amount.

154. In these circumstances, it is said that although the “*just and equitable*” discretion is a wide one, its proper application does not involve deciding matters in such a way as to defeat the purpose identified in s.124(2) nor reopening the matters outlined in sub-paragraph (b) above. Rather, in

practice its main role is to ensure that, in cases where more than one person of the type identified in s.124(3) is “in the frame” to be at the wrong end of an RCO, the burden of bearing the s.124(2) costs is shared between those people in a way which is just and equitable as between them.

155. In our view, this is an overly narrow interpretation of the just and equitable test and we are not persuaded that such framing adds to the understanding of how it should be applied. While we agree that, at a broad level, the exercise of the discretion should not be used to defeat the purpose of section 124(2), by its very nature, there will be cases where the tribunal considers that it is not just and equitable to make an RCO for whatever reasons. In those cases, the inevitable consequence of refusing to make an order is that remediation costs will not be ‘met’ by the relevant respondent. Similarly, while we accept that a tribunal will have considered whether costs falling within section 124 are reasonable, that does not mean that is the end of the matter and that just and equitable considerations play no part.
156. Section 124(1) states simply that an RCO may be made where the tribunal “*considers it just and equitable to do so*”. In other words, the tribunal’s discretion is framed by reference to the test of ‘just and equitable’ – it is not clear that it is necessary to limit or redefine it further.
157. Such an approach is also consistent with the Upper Tribunal in *Edgewater (Stevenage) Limited & Ors v Grey GR Limited Partnership (Vista Tower)* [2026] UKUT 18 (LC) at paragraph 180:

“... I do not think that it is either possible or sensible to seek to catalogue the factors upon which the FTT may rely in determining, in any particular case, whether it is just and equitable to make the order sought against any particular respondent. I say this essentially for two reasons. First, the breadth of the discretion conferred upon the FTT, namely whether the FTT “considers it just and equitable” to make the order sought, is very wide. The factors which may be taken into account in any particular case are not limited by the terms of Section 124(1) and are not, in my view, capable of exhaustive classification. Second, and if I was to attempt this task, it seems to me that I would be at risk of committing the basic error of attempting to re-write Section 124(1). In Section 124(1) Parliament has chosen not to list or limit the factors which can be taken into account in the exercise of the just and equitable discretion. In these circumstances it is not appropriate for me to attempt to do so.”

158. Turning to the facts of the present case, there has been no dispute that a remediation contribution order could, in principle, be made against the Second Respondent.
159. As set out in the Second Respondents' statement of case, it was accepted that the Second Respondent was associated with the developer of the building (the First Respondent) within the meaning of s.121(5) and s.124(5) of the BSA.
160. The SoS's pleading sets out, at paragraph 31 of the Re-amended Statement of Case, the basis why it is said to be just and equitable to make an RCO against the Second Respondent. In essence, it was pleaded that at all material times the association between the Second Respondent and the First Respondent has been (and continues to be) a close one, with the companies being owned and controlled by members of the Cox family.
161. In response, the Second Respondent pleaded:
- (1) (at paragraph 30(8)), that "the respective positions of the First and Second Respondents are materially distinguishable"; and
 - (2) (at paragraph 30(11)), that "the Second Respondent does not have any contractual claims that would enable it to pass down any liability."
162. However, no evidence was called in support of the above propositions and no further submissions on these matters were made at the hearing. As such, we are unable to conclude that the two matters pleaded by the Second Respondent provide a basis to negate the SoS's arguments that by virtue of the connection between the First Respondent and Second Respondent, it would be just and equitable to make an RCO against the Second Respondent. For the avoidance of doubt, we therefore determine that it *is* just and equitable to make an RCO against the Second Respondent having regard to its connection with the First Respondent for the reasons set out in the SoS's statement of case – subject to arguments about why it is said that it would not be just and equitable in the circumstances of the present case.

163. As set out above, we have found that relevant defects existed as argued by the SoS and that the remediation scheme was within the range of reasonable responses. We have also made findings as to the costs incurred.
164. Turning to the Second Respondent's principal arguments, we accept that the RTM Company chose to continue the remediation works under CAN rather than switching to PAS:9980 despite the matter being raised towards the end of 2022. However, for the reasons already given, we have found that this decision was within the band of reasonable responses. Similarly, while we accept that there were limitations with the Tennyson Suite reports, we accept Mr Brown's evidence that it set out the key points. Moreover, we note Mr Rhys Jones's acceptance that, subject to two points that have been addressed above, the remedial scheme undertaken was a reasonable one – notwithstanding that he maintained that it could have been done more cheaply. The fact that it might have been possible to do the project more cheaply does not mean that it would not be just and equitable to make an RCO for the full costs incurred where the scheme adopted was a reasonable one.
165. As such, we do not consider that any of the above matters give rise to a conclusion that it would not be just and equitable to make an RCO against the Second Respondent.
166. This leaves the Second Respondent's argument on betterment.

Betterment

167. Broadly, the Second Respondent has raised the point that the effect of the remedial works has been to postpone the date on which the render will need to be replaced. This gives rise to two questions:
- (1) Is the Second Respondent correct as a matter of fact and if so, by how long?
 - (2) How should this, if at all, be reflected in an RCO?
168. On the first question, the Second Respondent sought a finding of fact that the render and timber had reached the end of their serviceable life. This

in part derived from an article in Mr Missenden's name dated 9 February 2026. This described the remediation project at Hallings Wharf and included the line:

*“The project involved the careful removal of the existing facade elements, **which had reached the end of their serviceable life** and were no longer compliant with current fire safety regulations.”* (emphasis added)

169. In cross examination, Mr Missenden tried to resile from this statement. Although at one point he sought to suggest that it might have come from the PR consultants, he later accepted that he must have been the source for this statement.
170. Mr Bowker submitted that the statement in the article ought to be accepted, noting: Mr Missenden's industry experience, his specific experience on this project and the fact that he had been willing to talk publicly on behalf of himself and his employer.
171. On any view, the article is remarkable, coming shortly before the hearing of the SoS's application, in circumstances where Mr Missenden knew that he was an important witness and has apparently produced a statement at odds with the SoS's position in these proceedings. Nevertheless, a statement in a publicity article cannot of itself be grounds for the tribunal to reach a conclusion as to the lifespan of the render. The difficulty, however, is that there is little authoritative evidence on this point. Publicity from the manufacturer of the render suggests the expected lifespan to be “at least” 30 years (see page 3535 of the trial bundle) but, again, this is not sufficient to reach a conclusion that the render had reached the end of its natural life. Ultimately, we are left with an absence of clear evidence on the point.
172. Turning to the second question, an initial point to note is that the benefit of any betterment has been to the leaseholders, who would have had to pay for replacement of the render in due course. It has not benefited the RTM Company, nor the SoS. Further, the SoS contended that there is no relevant link between the render's lifespan and the need to undertake remediation works. Removal of the existing render was necessary to carry out remediation works and that lack of choice means that it would be

wrong as a matter of principle for any allowance for betterment to be made.

173. A further difficulty goes to the question of how should any betterment be calculated in terms of money value? Mr Taylor produced calculations based on an assumed lifespan of either 30 years or 50 years and. According to his report at paragraph 149):

“My estimate of the cost that would have been incurred for undertaking renewal of the render in Q3 2024 is £731,733.14. To the extent that the Tribunal may require an assessment of the value of this alleged betterment, it seems to me that an appropriate calculation might be $20/XX$ multiplied by the estimated cost of the render renewal, where XX is the number of years before the render would have needed to have been renewed. Using some assumptions to model these figures:

Based on an XX of 30 years, the benefit to the owner of the Building is £487,822.09;

Based on an XX of 50 years, the benefit to the owner of the Building is £292,693.26.”

174. However, this methodology was strongly criticised by Mr Dutton as it did not take into account what effect there would be if the cost of replacing the render were to be deferred by say 20 years, or, for example, whether the obligation to contribute towards the cost of replacing the render and the consequent postponement of such obligation is something that would affect the capital value of flats. Further, no adjustment was made for the fact that it would be a future debt and no capitalisation rate was identified.
175. In our view, we do not suggest that betterment can never be relevant to the application of the just and equitable test. However, on the facts of the present case, there is simply not sufficient evidence to make a finding either as to the extent of any betterment or the value to be attributed to it. We therefore make no deduction for betterment in calculating the amount of the RCO.

Conclusion

176. Taking all of the above matters into account, we consider it just and equitable to make an RCO. For the reasons already given, we have found in favour of the SoS on all issues save for litigation costs.
177. We therefore make the RCO in the sum of **£3,682,997.78** as set out in the 8th column of the Scott Schedule contained at pages 906-907 of the main Trial Bundle. Mr Dutton had advised during the hearing that any RCO should be made in favour of the Ministry for Housing, Communities & Local Government rather than the SoS personally, and this is reflected in the order.
178. A copy of the remediation contribution order is appended to this Decision.

Name: Judge Sheftel

Date: 21 May 2026

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



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

Case reference : **LON/00BB/BSB/2024/0011**

Property : **HALLINGS WHARF STUDIOS,
CHANNELSEA ROAD, LONDON E15**

Applicant : **SECRETARY OF STATE FOR HOUSING,
COMMUNITIES & LOCAL
GOVERNMENT**

Representative : **Walker Morris LLP**

Respondent : **EDR BUILDERS LIMITED (1)
HOLLYBROOK (UK) LIMITED (2)**

Representative : **Charles Russell Speechlys LLP (for the
Second Respondent)**

Type of application : **For a remediation contribution order
under section 124 of the Building Safety
Act 2022**

Tribunal : **Judge Sheftel
Judge Powell
Ms H C Bowers**

Date of Order : **21 May 2026**

REMEDICATION 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 9-17 March 2026

AND UPON the Tribunal being satisfied that Hallings Wharf Studios, Channelsea Road, London E15 2SX (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 a remediation contribution order against the Second Respondent for the reasons set out in the decision dated 21 May 2026 (the “**Decision**”)

IT IS ORDERED THAT:

1. This is a remediation contribution order 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 applies to the Second Respondent, Hollybrook (UK) Limited.
2. The Second Respondent shall make the payment identified in this Order to the Ministry for Housing, Communities & Local Government for the purpose of meeting the costs incurred in remedying or otherwise in connection with relevant defects relating to the Building.

Payment

3. The Second Respondent shall make payment to the Ministry for Housing, Communities & Local Government, by no later than 4pm on **2 July 2026**, in the sum of **£3,682,997.78** for the purpose of meeting the costs as referred to in paragraph 177 of the Decision and as set out in the 8th column of the Scott Schedule contained at pages 906-907 of the main Trial Bundle.
4. This Order is 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

21 May 2026