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Building Safety's Age of Accountability: Limitation, Liability and the Direction of Travel for 2026

Introduction

The [Building Safety Act 2022](#) (BSA) continues its transformation of the liability landscape for fire safety defects, expanding remedial powers, widening the pool of potential respondents, and embedding a model of responsibility that is as ambitious as it is administratively taxing. This update examines three interconnected developments:

1. **The unresolved question of limitation for Building Liability Orders (BLOs);**
2. **The Court of Appeal's reinforcement of a liability hierarchy through the Remediation Contribution Order (RCO) regime; and**
3. **Forthcoming regulatory and legislative changes in 2026.**

Together, these developments mark a decisive shift towards enhanced accountability and a financial "follow the money" principle that shows no sign of narrowing.

1. Building Liability Orders: Limitation in Uncharted Territory

Statutory Framework

Section 130 BSA permits the High Court to make a BLO attributing a "relevant liability" of one body corporate to an associated body corporate. Notably, the BSA:

- **does not prescribe a limitation period** for BLO applications;
- **does not define when a BLO "cause of action" accrues;** and
- is **silent** on procedural time bars.

Unlike sections 148 and 149 BSA, which expressly tie construction product liabilities to the [Limitation Act 1980](#) (LA 1980), BLOs receive no equivalent treatment.

Cause of Action vs. Remedy

Under the LA 1980, limitation generally bars the remedy, not the right. Liability continues to exist even after the expiration of a limitation period. The BSA's reference to "relevant liability" (s.130(3)) does not qualify this as "relevant liability not subject to a limitation defence".

This gives rise to two interpretations:

Possibility A: BLOs Are Time-Barred with the Underlying Liability

If the underlying claim (e.g. DPA or negligence) is statute-barred, a BLO cannot be pursued.

Possibility B: BLOs Are Not Subject to Limitation

The underlying liability exists theoretically; the limitation defence is simply a factor within the Court's "just and equitable" discretion.

Likely Construction

The second interpretation appears more consistent with the structure and purpose of the BSA:

- Parliament amended the LA 1980 for other BSA rights but chose not to do so for BLOs;
- The BLO regime is explicitly a remedial mechanism contingent on existing liability;
- Limitation defences can be waived, making them unsuitable as an implied jurisdictional bar.

The Just and Equitable Test

Where the limitation has expired, the respondent will rely heavily on prejudice arising from delay. However:

- expiry of limitation is **relevant but not determinative**;
- the Court may expect **specific evidence of prejudice**;
- long periods (e.g. 20–30 years) were always contemplated under the DPA extensions.

The result is a regime where respondents face uncertainty but where the Court retains broad discretion to prevent unfairness.

2. Remediation Contribution Orders: Deep Pockets and Deeper Duties

The Court of Appeal in *Triathlon Homes LLP v SVDP & Others* [\[2025\] EWCA Civ 846](#)

The Court of Appeal affirmed the First-tier Tribunal ([Property Chamber](#))'s (FTT) approach to RCOs, endorsing a clear hierarchy of responsibility for remediation of historical defects. Key findings included:

1. **Developers and landlords with means should ordinarily fund remediation before public money is used.**
2. The Building Safety Fund is a "last resort", not a first port of call.
3. The availability of funding does not displace the statutory objective of assigning costs to those connected with the original development.
4. While avoiding the term "presumption", the Court accepted that the FTT had acted correctly in treating well-resourced developers/associates as first in line to pay.

Scope of "Associated Persons"

The statutory definition in s.121 BSA is intentionally wide. Associations may arise through:

- common directors;

- control relationships;
- historic ownership changes;
- partnership structures; or
- trust arrangements.

Cases such as *Helpfavour Limited & Others v (1) Rosco Ingo Limited & (2) Rosco & Perlini Limited* ([Lon/00BH/BSB/2024/0500](#)) illustrate the breadth of this reach. Even companies with **no operational connection to the development** may fall within scope if governance or ownership overlaps existed during the statutory period.

Practical Implications

The combined effect of Triathlon and subsequent FTT decisions is that:

- financial capacity is a substantive factor in the “just and equitable” analysis;
- SPVs offer limited insulation, as associated entities remain exposed;
- corporate transactions involving developers now require **enhanced due diligence on legacy liabilities**;
- contemporaneous document retention becomes mission-critical, even for projects completed decades earlier.

3. Building Safety Developments for 2026

[The Building Safety Levy \(England\)](#)

Effective (anticipated) **1 October 2026**, applying to:

- major residential developments of **10+ dwellings**, or
- purpose-built student accommodation of **30+ bedspaces**.

A surge in building control applications is anticipated prior to implementation. A separate Scottish levy is proposed from **1 April 2027**.

Reform of the Building Safety Regulator (BSR)

From **27 January 2026**, the BSR’s Higher-Risk Building (**HRB**) functions will transfer to a new Executive Agency under the Ministry of Housing, Communities and Local Government (**MHCLG**). This follows concerns that Gateway 2 approvals were taking **43-48 weeks**, far exceeding statutory periods.

Improvements are emerging via the BSR’s Innovation Unit, but sustained reform is expected.

Grenfell Tower Inquiry Recommendations

By 2029, the Government aims to implement:

- a permanent Chief Construction Adviser;
- updates to Approved Document B;
- a construction products white paper (Spring 2026);
- proposals for reform of the fire engineering profession;

- strengthened the duty holder declaration requirements for HRB works.

Cladding Remediation and Criminal Liability

Proposed statutory deadlines:

- **18+ metre buildings:** remediation by **the end of 2029**;
- **11-18 metre buildings:** remediation by **the end of 2031**.

Failure without a “reasonable excuse” may lead to **unlimited fines or imprisonment**.

Second Staircases and Evacuation Regulations

- Second staircases required for buildings >18m from **30 September 2026**, unless works are “sufficiently progressed”.
- [The Fire Safety \(Residential Evacuation Plans\) Regulations 2025](#) come into force on **6 April 2026**, requiring Personal Emergency Evacuation Plans (**PEEPs**) for applicable residents.

Forthcoming Case Law

- **Supreme Court (2026):** appeals in [Adriatic Land](#) and [Triathlon](#) (limited to retrospectivity of the BSA).
- **Court of Appeal (2026):** [appeal](#) in [Almacantar Centre Point Nominee No.1 Ltd and another v De Valk and Others \[2025\] UKUT 298 \(LC\)](#) on Schedule 8 BSA and service charge recoverability.
- BLO-related High Court decisions are expected to clarify the procedure and possibly the limitation.

Key Takeaway

1. **BLO limitation remains unresolved**, but the statutory structure strongly suggests BLOs are not subject to traditional limitation periods.
2. **The hierarchy of liability is now firmly entrenched**, with developers and their associates sitting at the top.
3. **The pool of “associates” remains broad**, capturing corporate structures that may never have anticipated building safety exposure.
4. **2026 will intensify regulatory pressure**, with levies, criminal consequences, duty holder reforms, and multiple appellate decisions.
5. **Document retention is no longer optional** — entities involved in development, however tangentially, must retain project records indefinitely.

**#BuildingSafetyAct #BuildingSafety #BSA2022 #ConstructionLaw #PropertyLaw
#LegalUpdate #CaseLaw #BuildingLiabilityOrders #RemediationOrders #RCOs
#CorporateLiability #LimitationAct1980 #DisputeResolution #BuildingSafetyReform
#BuildingSafetyLevy #FireSafety #CladdingRemediation #ConstructionIndustry
#DeveloperLiability #RiskManagement #DueDiligence #BuiltEnvironment
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ICE DRC CPD Committee Chairman

Adjudicator Exam Question Setter for the ICE

CI Arb Adjudication Panel Member since 2006

CI Arb Arbitration Panel Member since 2006

CIC Adjudication Panel Member since 2010

FIDIC Adjudication Panel Member since 2021

ICE Adjudication Panel Member since 2021

Law Society Panel Arbitrator

RIBA Adjudication Panel Member since 2018

RICS Adjudication Panel Member since 2006

RICS Dispute Board Registered since 2013

TECSA Adjudication Panel Member since 2012

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