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Crest Nicholson Regeneration Ltd & Ors v Ardmore Construction Ltd (in administration) & Ors: Section 130 Grows Teeth

Crest Nicholson Regeneration Ltd & Ors v Ardmore Construction Ltd (in administration) & Ors [2026] EWHC 789 (TCC)

High Court (Technology and Construction Court)

Constable J, 1 April 2026

Key Words

Building Liability Orders (BLOs), Anticipatory BLOs, Adjudication BLOs, Building Safety Act 2022 (BSA), Fire Safety Defects, Corporate Restructuring, Administration, Insolvency, Just and Equitable Test, Joint and Several Liability, Relevant liability, Defective Premises Act 1972 (DPA), Relevant Liability, Construction Adjudication, Associated Companies.

1. **Headnote**
    1. The High Court has jurisdiction under sections 130–131 of the Building Safety Act 2022 to grant **anticipatory Building Liability Orders** before liability of the original body has been finally established, where it is just and equitable to do so [54, 61(3)].
    2. The “just and equitable” test is broad, fact-sensitive, and must be applied consistently with the statutory purpose of ensuring that those responsible for historical building safety defects bear the cost of remediation [35–36, 42–44, 61].
    3. An adjudicator’s decision, although temporarily binding, constitutes a “relevant liability” for the purposes of section 130, and the obligation to comply with such a decision (or failure to do so) is itself a liability incurred because of a building safety risk [135–140].
    4. A statutory claim under section 1 of the Defective Premises Act 1972 may fall within an adjudication clause referring disputes “under the contract”, applying the principles in Fiona Trust [150–157, 162].
    5. Where a corporate group restructures and places the contracting entity into administration to ring-fence building safety liabilities, it may be just and equitable to impose joint and several liability on associated companies [20, 25, 73, 125, 214].
2. **Facts and Decision**
    1. The claimant developer applied for Building Liability Orders against companies associated with its principal contractor, which had entered administration amid claims of extensive fire safety defects at a residential development constructed between 2007 and 2009 [1–4,

7–9].

2. Following post-Grenfell investigations, combustible insulation and other serious external wall defects were alleged to give rise to building safety risks and unfitness for habitation [10–11, 13, 68].
3. After the Building Safety Act 2022 extended limitation periods to up to 30 years, the contractor's group restructured to isolate historic liabilities within the contracting entity, which subsequently entered administration and could not meet any judgment [18–21, 20, 25].
4. An adjudicator determined that the contractor was in breach of section 1 of the Defective Premises Act 1972 and awarded approximately £14.9 million, which remained unpaid [16–18, 72].
5. The court granted both an anticipatory Building Liability Order and a further order enforcing the adjudicator's decision against the associated companies [125, 214].

3. **Reasoning**
    1. Section 130 contains no requirement that liability of the original body be finally established before a Building Liability Order may be made and permits contingent or indemnity-style orders where appropriate [54, 61(3), 81].
    2. The court's discretion must be exercised considering the legislative purpose of the Building Safety Act, rather than by reference to narrow considerations such as the claimant's wealth, interim cash-flow needs, or uncertainty as to quantum [42–44, 76–77, 86–88, 94–97].
    3. On the facts, the contractor entered administration because of exposure to building safety claims and would be unable to satisfy any judgment, while the group restructuring had the effect of ring-fencing those liabilities [20, 25, 73].
    4. An adjudicator's decision gives rise to a binding liability unless and until overturned and therefore constitutes a "relevant liability" within section 130, with any potential unfairness controlled by the just and equitable discretion [135–138, 136, 194].
    5. Applying Fiona Trust, disputes "under the contract" include statutory duties arising from the works undertaken pursuant to that contract, including claims under the Defective Premises Act 1972 [150–157, 162, 171].

4. **Authoritative Propositions for Citation**
    1. **Anticipatory BLOs are within the court's jurisdiction:** Section 130 of the Building Safety Act 2022 does not require liability of the original body to be established before a Building Liability Order may be made [54, 61(3)].
    2. **Purpose-driven discretion:** The "just and equitable" test must be applied considering the Act's purpose of ensuring that those responsible for historical building safety defects pay for remediation [42–44, 76–77].
    3. **Corporate restructuring and insolvency:** Group restructuring and administration undertaken to ring-fence building safety liabilities may justify imposing joint and several liability on associated companies [20, 25, 73, 125].
    4. **Adjudication as relevant liability:** A construction adjudicator's decision constitutes a "relevant liability" under section 130, notwithstanding its temporarily binding nature [135–138].
    5. **Non-compliance with adjudication:** Failure to comply with an adjudicator's decision is itself a liability incurred because of a building safety risk for the purposes of section 130 [140].
    6. **Scope of adjudication clauses:** Adjudication clauses referring disputes "under the contract" may encompass statutory claims under the Defective Premises Act 1972,

applying Fiona Trust principles [150–157, 162].

7. **Limited relevance of claimant wealth or quantum uncertainty:** The claimant's commercial status, lack of immediate cash-flow need, or uncertainty as to final quantum do not of themselves render a Building Liability Order unjust or inequitable [76–77, 86–88, 94–97].

Held

The High Court held that it has jurisdiction under sections 130–131 of the Building Safety Act 2022 to grant an ***anticipatory Building Liability Order*** *before liability of the original body has been finally established, where it is just and equitable to do so [54, 61(3)]. The court emphasised that the* ***"just and equitable" discretion*** *is broad and fact-specific and must be exercised considering the statutory purpose of ensuring that those responsible for historical building safety defects bear the cost of remediation [35–36, 42–44, 61]. On the facts, it was just and equitable to grant an anticipatory order where the principal contractor had entered administration because of exposure to building safety claims and the corporate group had restructured to ring-fence those liabilities from the wider group [20, 25, 73, 125]. The court further held that an* ***adjudicator's decision****, although temporarily binding, constitutes a "relevant liability" within section 130, and that the obligation to comply with such a decision (or the failure to do so) is itself a liability incurred because of a building safety risk [135–140]. Applying modern principles of contractual interpretation derived from Fiona Trust, the court held that an adjudication clause referring disputes "under the contract" may encompass statutory claims under section 1 of the Defective Premises Act 1972 arising from the works undertaken pursuant to the contract [150–157, 162]. Accordingly, the court granted both an anticipatory Building Liability Order and a further order making the associated companies jointly and severally liable for the sums awarded by the adjudicator [125, 214].*

Comment

This decision represents the most comprehensive High Court treatment to date of ***Building Liability Orders under section 130 of the Building Safety Act 2022****, building on the principles identified in Triathlon Homes and Click St Andrews but materially extending their practical application in the Technology and Construction Court [33–49, 61]. Whereas Triathlon and Click St Andrews confirmed the breadth of the "just and equitable" discretion and the policy of preventing liability evasion through corporate structures, this judgment squarely confirms that* ***anticipatory BLOs may be granted before liability is established****, resolving a point previously left open and grounding that conclusion firmly in statutory language and purpose [49, 54, 61(3), 125]. The judgment is also the first to hold authoritatively that an* ***adjudicator's decision constitutes a "relevant liability"*** *for the purposes of section 130, and that non-compliance with such a decision is itself a liability incurred as a result of a building safety risk, thereby integrating the adjudication regime into the BSA enforcement framework in a manner not addressed in earlier cases [130–140, 187, 214]. In contrast to Click St Andrews, where uncertainty as to group wealth constrained the scope of the order, the court here undertook a detailed examination of* ***corporate restructuring and administration undertaken to ring-fence historic liabilities****, treating those matters as powerful factors favouring the imposition of joint and several liability on associated companies [20, 25, 73, 202–203]. The judgment further clarifies that the* ***commercial status of the claimant, uncertainty as to quantum, and absence of immediate cash-flow need*** *will rarely carry significant weight against the making of a BLO, reinforcing a purposive and claimant-neutral approach to the statutory discretion [76–77, 86–88, 94–97]. Taken together, the decision positions the TCC as willing to deploy BLOs robustly and flexibly to give effect to the legislative intent of the Building Safety Act 2022, marking a clear doctrinal and practical development beyond Triathlon and Click St Andrews and establishing this case as a leading authority on the scope and operation of section 130 [42–44, 61, 125, 214].*

#BuildingSafetyAct2022 #BuildingLiabilityOrders #AnticipatoryBLOs #ConstructionLaw #Adjudication #DefectivePremisesAct1972 #FireSafetyDefects #CorporateRestructuring #Insolvency #JustAndEquitableTest #TCC #HighCourt

Authorities

Case Law:

1. ***Statutory Purpose and the "Just and Equitable" Discretion under the Building Safety Act 2022***
    1. ***Triathlon Homes LLP v Stratford Village Development Partnership & Ors*** [2024] UKFTT 26; upheld [2025] EWCA Civ 846; [2026] 1 All ER 574
        1. *This case is relied upon as the foundational authority on the breadth of the "just and equitable" discretion under the Building Safety Act, emphasising that the discretion is wide, fact-specific, and must be exercised by reference to the statutory purpose rather than fixed criteria [34–36].*
           The judgment is cited for the principle that the association provisions are intended to prevent wealthy parent companies or group entities from avoiding liability by relying on the separate personality of thinly capitalised or insolvent development companies [36, 41].
        2. *It is also relied upon for the proposition that the financial strength or weakness of the respondent will usually carry limited weight in the just and equitable assessment [37, 97].*
    2. ***BDW Trading Ltd v URS Corporation Ltd*** [2025] UKSC 21; [2025] 2 WLR 1095
        1. *This Supreme Court decision is cited as authoritative on the **central purpose of the Building Safety Act**, namely to ensure that those responsible for historical building safety defects are held accountable for remediation costs [42–44].*
        2. *The judgment relies on BDW v URS to support a purposive construction of Part 5 of the Act, including section 130, particularly in light of its retrospective effect and extended limitation periods [42–45].*
    3. ***Grey GR Ltd Partnership v Edgewater (Stevenage) Ltd & Ors*** CAM/26UH/HYI/2023/0003 (27 January 2025)
        1. *This authority is relied upon for rejecting attempts to prescribe rigid factors governing the just and equitable test, reaffirming that Parliament deliberately left the discretion broad and uncircumscribed [46–47].*
        2. *It is also cited for the proposition that group membership alone may be sufficient to justify shared responsibility for remediation where justice and equity so require [47].*
2. ***Building Liability Orders: Jurisdiction, Timing, and Anticipatory Orders***
    1. ***381 Southwark Park Road RTM Company Ltd v Click St Andrews Ltd & Anor*** [2024] EWHC 3569 (TCC)
        1. *This case is cited as the only prior reported High Court decision granting a Building Liability Order, and is relied upon to confirm that a BLO may be made **before liability has been quantified** [48–49].*
        2. *It is used to support the proposition that the court is not required to specify the monetary amount of liability when making a BLO, and that an order may instead mirror the statutory language of section 130 [49, 96].*
    2. ***Willmott Dixon Construction Ltd v Prater & Ors*** [2024] EWHC 1190 (TCC)
        1. *This authority is relied upon in relation to case management of BLO applications,*

confirming that BLO claims may properly proceed in parallel with the underlying liability proceedings [50–53].

2. *It is cited for the principle that applications for BLOs need not await the conclusion of the main claim and that timing is a matter of judicial discretion rather than jurisdiction [53].*

3. ***BDW Trading Ltd v Ardmore Construction Ltd*** [2025] EWHC 434 (TCC); [2025] 1 WLR 3101
    1. *This case is relied upon extensively for the analysis of section 130, particularly HHJ Keyser KC's reasoning that* ***nothing in the statute requires liability to be established before a BLO is made*** *[54–55].*
    2. *The judgment adopts and endorses the view that anticipatory BLOs make "good sense" as a form of contingent indemnity and are consistent with both the language and purpose of the Act [54–55, 81].*

3. ***Adjudication and "Relevant Liability" under Section 130***
    1. ***Aspect Contracts (Asbestos) Ltd v Higgins Construction plc*** [2015] UKSC 38
        1. *This authority is relied upon for the principle that sums paid pursuant to an adjudicator's decision may be recoverable in restitution if the final determination differs, thereby addressing concerns about interim injustice [136, 198].*
        2. *It is cited to support the conclusion that the temporary nature of adjudication does not preclude enforcement mechanisms attaching to adjudicated liabilities [136].*
    2. ***Carillion Construction Ltd v Devonport Royal Dockyard Ltd*** [2005] EWCA Civ 1358, [2006] BLR 15
        1. *This case is cited for the characterisation of adjudication as a temporarily binding and sometimes "rough justice" process, forming the backdrop to the defendants' argument against treating adjudication as a relevant liability [189].*
        2. *The judgment refers to Carillion only to explain and ultimately reject the submission that adjudication is incompatible with BLOs [189–194].*
    3. ***Meadowside Building Developments Ltd (in liquidation) v 12–18 Hill Street Management Co Ltd*** [2019] EWHC 2651 (TCC)
        1. *This authority is cited (via Bresco) to emphasise that adjudication serves broader purposes than short-term cash flow, including efficient dispute resolution and settlement [192].*
        2. *It is relied upon to rebut the argument that the absence of immediate cash-flow need renders enforcement unjust [192–195].*

4. ***Scope of Adjudication Jurisdiction and Statutory Claims***
    1. ***Fiona Trust & Holding Corporation v Privalov*** [2007] UKHL 40
        1. *This leading authority is relied upon for the modern approach to construing dispute resolution clauses, starting from the presumption that parties intend a single tribunal to determine disputes arising out of their contractual relationship [152, 157].*
        2. *The judgment applies Fiona Trust to conclude that disputes "under the contract" may include statutory claims arising from the contractual works, such as claims under the Defective Premises Act 1972 [150–157, 162].*
    2. ***Bresco Electrical Services Ltd (in liquidation) v Michael J Lonsdale (Electrical) Ltd*** [2020] UKSC 25
        1. *This case is relied upon for confirming the centrality and continuing utility of adjudication within the construction industry, even where insolvency issues arise*

[154–155, 192].

2. *It is cited in support of a purposive and non-restrictive approach to adjudication jurisdiction and enforcement [155].*

3. ***Fillite (Runcorn) Ltd v Aqua-Lift (Runcorn) Ltd*** (1989) 26 Con LR 66
    1. *This authority is cited as part of the historical distinction between disputes "under" a contract and those "in connection with" it, forming the backdrop to the development of the Fiona Trust approach [151–152].*
    2. *It is relied upon as an illustration of the pre-Fiona Trust position which the modern authorities have moved away from [152, 157].Top of FormBottom of Form*

Legislation:

1. ***Building Safety Act 2022 — Building Liability Orders, Remediation Regime, and Statutory Purpose***
    1. ***Building Safety Act 2022, Part 5 (in particular sections 130–131)***
        1. *The court relied on sections 130–131 as the statutory foundation for the power to make Building Liability Orders, including orders imposing joint and several liability on associated companies where it is just and equitable to do so [1–4, 28–29].*
        2. *Section 130 was construed purposively as conferring a broad discretionary power, unconstrained by any requirement that liability of the original body be finally established before an order may be made [54, 61(3)].*
        3. *The definition of "relevant liability" in section 130(3) was central to the court's reasoning, encompassing liabilities arising under the Defective Premises Act 1972 or as a result of a building safety risk [28, 130–140].*
        4. *Section 130(5) was relied upon to demonstrate that Parliament contemplated orders being made even where the original body had been dissolved, reinforcing the permissibility of anticipatory and contingent orders [54, 61(7)].*
        5. *The statutory definition of "building safety risk" in section 130(6) informed the court's conclusion that liabilities arising from fire safety defects in external walls fell squarely within the scope of the regime [28, 139].*
        6. *Section 131 was relied upon to define "associate" and to confirm that the Fourth to Tenth Defendants fell within that definition for the purposes of the application [4, 29].*
    2. ***Building Safety Act 2022, sections 123–124 (Remediation Orders and Remediation Contribution Orders)***
        1. *Sections 123–124 were considered by way of contrast to section 130 to explain the broader reach of Building Liability Orders, particularly in relation to who may apply and against whom such orders may be made [30–32].*
        2. *The court relied on these provisions to emphasise that the BSA contains multiple complementary mechanisms addressing both remediation and the allocation of financial responsibility, with section 130 addressing the "who pays" question beyond the landlord–tenant context [39, 75–76].*
2. ***Defective Premises Act 1972 — Statutory Duty and Relevant Liability***
    1. ***Defective Premises Act 1972, section 1***
        1. *Section 1 was relied upon as a primary source of "relevant liability" for the purposes of section 130 of the Building Safety Act 2022 [2, 16, 28].*
        2. *The adjudicator's finding that ACL was in breach of section 1 was treated as a*

binding determination of liability unless and until overturned, capable of grounding a Building Liability Order [16–18, 138].

3. *The court relied on section 1 to conclude that liability for fire safety defects rendering dwellings unfit for habitation constituted a liability arising from a building safety risk [68, 138–139].*

3. ***Housing Grants, Construction and Regeneration Act 1996 — Adjudication Jurisdiction***
    1. ***Housing Grants, Construction and Regeneration Act 1996, section 108***
        1. *Section 108 was relied upon as the statutory basis for the right to adjudication under a construction contract, informing the scope of the adjudicator's jurisdiction [145–146].*
        2. *The court interpreted the phrase "dispute arising under the contract" in section 108 broadly, applying modern principles of construction to conclude that statutory claims under the Defective Premises Act 1972 could fall within adjudication jurisdiction [145–157, 162].*

4. ***Building Act 1984 — Alternative Source of Relevant Liability***
    1. ***Building Act 1984, section 38***
        1. *Section 38 was identified within section 130(3) of the Building Safety Act 2022 as an alternative statutory source of "relevant liability", illustrating the breadth of liabilities Parliament intended to capture [28].*
        2. *Although not determinative on the facts, its inclusion reinforced the court's conclusion that "relevant liability" should be construed broadly and purposively [28, 61].*

5. ***Civil Liability (Contribution) Act 1978 — Contribution and Allocation of Responsibility***
    1. ***Civil Liability (Contribution) Act 1978***
        1. *The Act was referred to in the context of contribution claims between wrongdoers, reinforcing the legislative objective that liability should ultimately be borne by those responsible for the damage [45].*
        2. *Its interaction with the Building Safety Act was relied upon to support a coherent statutory scheme aimed at allocating financial responsibility for historical building safety defects [45].*

6. ***Building Regulations (Approved Document B)***
    1. ***Building Regulations (Part B)***
        1. *Part B of the Building Regulations was relied upon indirectly through the adjudicator's findings that the external wall defects constituted non-compliance with fire safety requirements [16–17].*
        2. *Such non-compliance was treated as underpinning the conclusion that the defects gave rise to building safety risks within the meaning of the Building Safety Act 2022 [68, 139].*

Legal Texts & Commentary:

1. ***Parliamentary Materials, Explanatory Notes, and Legislative Commentary (Statutory Purpose and Interpretation)***
    1. ***Explanatory Notes to the Building Safety Act 2022 (July 2022)***
        1. *The Explanatory Notes were relied upon as persuasive (though not authoritative) commentary on the purpose and intended operation of section 130, particularly in addressing practices involving thinly capitalised subsidiaries and the winding-up of*

development companies following completion of works [57–59].

2. *The court treated the Notes as admissible background material capable of assisting statutory interpretation in the same way as an academic commentary, while recognising that they post-dated enactment and therefore carried no special status [57, 59].*

2. ***Hansard (Parliamentary Debates on the Building Safety Bill)***
    1. *Hansard materials were cited to illustrate parliamentary concern about the use of special purpose vehicles and corporate structures to evade liability for defective building work, forming part of the contextual background to section 130 [56, 58].*
    2. *The court considered, but ultimately limited, the interpretative weight of Hansard, applying the principles in Pepper v Hart and concluding that the cited debates did not clearly resolve the specific interpretative issues before the court [56, 164–171].*

2. ***Academic and Practitioner Commentary on the Building Safety Act and Adjudication***
    1. ***Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point*** [2025] EWCA Civ 856; [2026] 1 All E.R. 514 *(reference to academic commentary)*
        1. *This authority was cited to support the proposition that Explanatory Notes may be treated analogously to academic articles when assisting with statutory interpretation, reinforcing the court's cautious but permissive approach to their use [57].*

3. ***Leading Practitioner Texts on Construction Law and Adjudication Jurisdiction***
    1. ***Hudson's Building and Engineering Contracts (14th edn, 2019)***
        1. *Hudson was cited as reflecting the view that the reasoning in Fiona Trust may not readily apply to adjudication clauses, illustrating the existence of competing interpretations within practitioner literature [154].*
        2. *The text was relied upon not as determinative authority, but to demonstrate that the scope of adjudication jurisdiction over statutory claims has been the subject of debate [154].*

    2. ***Keating on Construction Contracts (10th edn, Supplement 2019)***
        1. *Keating was cited as expressing a more receptive view to applying Fiona Trust principles by analogy to adjudication, supporting a broader construction of adjudication clauses [154].*
        2. *The court relied on this commentary to show that respected practitioner texts recognise the force of a purposive and modern approach to adjudication jurisdiction [154].*

    3. ***Coulson on Construction Adjudication (4th edn)***
        1. *This text was cited as observing that, notwithstanding earlier first-instance uncertainty, the scope of adjudication jurisdiction in respect of statutory claims remained open for clarification [161].*
        2. *The commentary was relied upon to contextualise the court's acceptance of a broad, Fiona-Trust-influenced construction of adjudication clauses [161–162].*

4. ***Parliamentary and Legislative Commentary on Adjudication under the HGCRA***
    1. ***Hansard (House of Commons Debates on the Housing Grants, Construction and Regeneration Bill 1996)***
        1. *Hansard materials were cited in detail in relation to the rejection of proposed amendments to section 108 HGCRA, which would have expanded adjudication to disputes "in connection with" the contract [165].*
        2. *The court considered these debates carefully but concluded that they did not*

provide a clear or unequivocal statement resolving whether statutory claims such as those under the Defective Premises Act 1972 fall within disputes "under the contract" for adjudication purposes [166–171].

Summary Observation

The judgment makes restrained but deliberate use of legal texts, explanatory materials, and practitioner commentary, treating them as contextual aids rather than substitutes for statutory language and binding authority, and consistently prioritising statutory purpose and modern principles of construction over historical or technical distinctions [57–59, 154–162, 166–171].

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