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GS Woodland Court GP 1 Ltd & Anor v RGCM Ltd & Ors [2026] EWHC 351 (TCC): When the Regulator Pulls the Handbrake, the Court Doesn't Park the Case

GS Woodland Court GP 1 Ltd & Anor v RGCM Ltd & Ors [2026] EWHC 351 (TCC)

Date: 19 February 2026

Judge: Mr Justice Constable

Key Words:

Building Safety Regulator, Higher Risk Buildings, fire safety defects, remedial scheme, modular construction, trial adjournment, split trial, liability, quantum, construction management

Summary

In *GS Woodland Court GP 1 Ltd & Anor v RGCM Ltd & Ors EWHC 351 (TCC)*, the Claimants ("Woodland") applied to adjourn a trial scheduled for June 2026. The application was prompted by the Building Safety Regulator (BSR) rejecting Woodland's proposed remedial scheme for fire safety defects [1, 7, 8]. Mr Justice Constable refused to adjourn the entire proceedings, finding that while it would be unfair to force Woodland to prove the financial quantum of a scheme it could not legally implement, the litigation needed to move forward [38, 57-59]. As the "least imperfect option," the judge ordered a split trial: the June 2026 trial date will be retained to determine liability issues, while the quantum of damages and the appropriate remedial scheme will be deferred to a second phase [57-59].

Key Themes:

1. ***Building Safety and Regulatory Compliance****: The impact of the Building Safety Act 2022 and the strict requirement for Building Safety Regulator (BSR) approval before remediating "Higher Risk Buildings" [6-7].*
2. ***Fire Safety Defects****: Claims regarding missing cavity barriers, lack of compartmentation, and combustible materials in modular construction [8].*
3. ***Case Management and Adjournments****: The application of the Civil Procedure Rules (CPR) overriding objective to deal with cases justly, efficiently, and fairly when unexpected regulatory hurdles arise [24-25].*
4. ***Split Trials (Bifurcation)****: Separating liability (duty, breach, and the existence of defects)*

from quantum (the cost and nature of the remedial scheme) to avoid losing a long-planned trial date [46-47, 57-59].

Background

Woodland owns a nine-storey modular student accommodation building in Islington (the "Development") [3-4]. The Development was built using a construction management method involving several defendants, including RGCM (construction manager), HCD (architect), and Unite (modular design/manufacture) [3-5].

Woodland is claiming £35m from the defendants for numerous fire safety defects, including £19.7m for a "Mitigation Remedial Scheme" intended to make the building compliant with Building Regulations [6-7]. Crucially, the Development is classified as a "Higher Risk Building" under the Building Act 1984, meaning Woodland must obtain approval from the BSR before starting any remedial works [6-7].

On 30 October 2025, the BSR unexpectedly rejected Woodland's proposed remedial scheme, citing a lack of information and concerns from the London Fire Brigade about unresolved deficiencies, such as a lack of internal and external compartmentation and combustible materials in the external walls [7-8]. Because Woodland is legally prohibited from implementing its pleaded remedial scheme without BSR approval, it applied to adjourn the June 2026 trial to a date after 1 June 2027 to allow time to resolve the regulatory issues and replead its case [1, 26, 33-34].

Legal Issues and Analysis

1. **The Test for Adjournment:** The judge applied the guiding principle from CPR 1.1(2) to deal with cases justly, alongside the factors from *Fitzroy Robinson Ltd v Mentmore Towers Ltd*, which include evaluating the parties' conduct, the consequences of delays, and fairness [24-26]. Under *Bilta UK Limited v Tradition Financial Services Limited*, this is a fact-sensitive assessment of what is fair in all the circumstances [26-27].
2. **The Impact of the BSR Rejection:** The BSR's rejection fundamentally undermined Woodland's pleaded quantum case. The judge noted it would be obviously unfair to force Woodland to proceed to a quantum trial based on a mitigation scheme that it cannot legally implement [33-34, 36-37]. Furthermore, doing so would leave the Court without realistic evidence of Woodland's true likely loss [38]. The judge accepted that Woodland was not at fault for the delay in the context of the adjournment application [15, 43-44].
3. **The Split Trial Solution:** Despite the unfairness of proceeding with the quantum assessment, completely adjourning the trial would likely push the proceedings to mid-2027, causing significant delay and prejudice [54-55]. RGCM proposed a split trial as an alternative. While the judge recognised the downsides of a split trial—such as some duplication of witness evidence and the delay in resolving contribution claims between the defendants—he found that a clean split was possible [52-53, 55-56].

Conclusion

Mr Justice Constable concluded that a split trial was the fairest way to proceed and refused the application to adjourn the entirety of the proceedings [57-59]. He ordered that the trial in June 2026 will go ahead, but it will be limited to liability issues, such as the scope of the defendants' duties, breaches of duty, and whether those breaches caused the defects [46, 57-59]. The second phase of the trial, determining the necessary remedial scheme and the financial loss (quantum), will be listed at a later date to allow Woodland time to address the BSR's requirements [46-47, 57-59].

Key Takeaway:

The introduction of the Building Safety Regulator (BSR) has created a new, determinative hurdle in construction litigation involving Higher Risk Buildings. If a claimant's proposed remedial scheme is rejected by the BSR prior to trial, the court is unlikely to assess damages based on an unlawful scheme [30-31, 33-34, 38]. However, rather than stalling the entire litigation process indefinitely, courts may utilise split trials to resolve liability first, thereby maintaining case momentum while giving the claimant time to secure regulatory approval for a revised quantum claim [57-59].

Parting Thoughts

What ultimately confronted Mr Justice Constable was not a tidy procedural dilemma but a regulatory ambush. Woodland arrived at the litigation starting line armed with a carefully costed remedial scheme, only to discover—courtesy of the Building Safety Regulator—that the scheme was legally unusable. That is not merely inconvenient; it is the forensic equivalent of turning up to a race with a car that the rulebook suddenly declares illegal.

The judge's response was neither melodramatic nor indulgent. Instead, he did what the Technology and Construction Court tends to do when reality intrudes upon litigation timetables: he reached for pragmatism. Proceeding to determine quantum based on a scheme that the claimant could not lawfully implement would have been an exercise in imaginative fiction rather than judicial determination. As the Court recognised, insisting on such a course would leave the claimant advancing losses it cannot incur and the Court assessing damages detached from the actual regulatory framework governing the building. That, unsurprisingly, was deemed unacceptable.

Yet the opposite extreme—placing the entire litigation into suspended animation while Woodland negotiates with the BSR—was hardly appealing either. Trials in the TCC are not booked lightly, and abandoning a long-prepared trial date merely because a regulator has complicated matters would have inflicted delay, cost, and the sort of procedural inertia that courts spend years trying to avoid.

Hence the solution: a split trial. Liability marches on in June 2026; quantum waits its turn. It is, in the judge's own understated assessment, "the least imperfect option."

And that phrase captures the real lesson of the case. The Building Safety Act has introduced a new character into construction litigation: the regulator who can, quite literally, veto the remedial scheme that underpins the damages claim. Once that happens before trial, the court cannot pretend the veto never occurred. But neither will it allow regulatory uncertainty to derail the entire proceedings. The machinery of litigation will continue to turn—just not necessarily all at once.

The result is a judgment that reads less like a doctrinal statement and more like a piece of practical engineering: keep the case moving, decide what can be decided now, and postpone only what must wait. In the post-Building Safety Act world, that may become the judiciary's preferred way of dealing with the regulator-shaped elephant now standing squarely in the middle of construction disputes.

#BuildingSafetyRegulator #BSR #HigherRiskBuildings #FireSafetyDefects #ConstructionLaw #SplitTrial #ModularConstruction #TCC #BuildingSafetyAct #ConstructionLitigation #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Principles Governing Applications to Adjourn a Trial

1. *Bilta UK Limited v Tradition Financial Services Limited* [2021] EWCA Civ 221. *This case provides the overarching "guiding principle" relied upon by the judge for the primary application to adjourn. It establishes that the core test is whether progressing with the trial will be "fair in all the circumstances". The court relied on the principle that assessing fairness is a highly fact-sensitive exercise, rather than the mechanistic application of a specific checklist.*
2. *Fitzroy Robinson Ltd v Mentmore Towers Ltd* [2009] EWHC 3070 (TCC). *Relied upon for the specific, practical factors a court should consider when faced with a contested late application to adjourn a trial. The judge used this case to weigh the parties' conduct, the reasons for delays, the extent to which the consequences of delay could be overcome before trial, potential jeopardy to a fair trial, and the broader consequences of an adjournment for the claimant, defendant, and the court.*
3. *Boyd & Hutchinson v Foenander* [2003] EWCA Civ 1516. *This case was referenced as the foundation for the observations incorporated into the Fitzroy judgment. It establishes the underlying objectives of ensuring parties are on an equal footing, that the case is dealt with proportionately, expeditiously, and fairly, and that an appropriate share of the court's resources is allotted.*

Principles Governing the Ordering of a Split Trial

1. *Electrical Waste Recycling Group Ltd v Philips Electronics UK Ltd* [2012] EWHC 38 (Ch). *Relied upon for the pragmatic considerations a court must undertake when deciding whether to order a split trial (bifurcation). The legal principles relied upon include weighing the potential cost savings if liability is not established against the likelihood of increased aggregate costs if a second trial is needed, as well as assessing the inconvenience to witnesses, the risks of duplication and delay, and the practical difficulty of defining a clean split between the issues.*
2. *Jinxin Inc v Aser Media Pte Limited & Ors* [2022] EWHC 2431 (Comm). *Cited alongside Electrical Waste for the exact same legal propositions. It reinforces the principle that the court must take a pragmatic approach to ensure the whole matter is adjudicated as fairly, quickly, and efficiently as possible when assessing the viability of splitting the trial.*

Legislation:

Civil Procedure and Case Management

1. ***Civil Procedure Rules (CPR), Rule 1.1(2)*** *(Cited at paragraph 25): Establishes the overriding objective for the courts to deal with cases justly and at proportionate cost. The judge relied upon this rule as the core legal framework for determining the adjournment application, weighing factors such as ensuring the parties are on an equal footing, saving expense, dealing with the case proportionately and expeditiously, and allotting an appropriate share of the court's resources.*
2. ***Civil Procedure Rules (CPR), Rule 1.1(2)(a)*** *(Cited at paragraph 36): Dictates that the court must ensure parties are on an equal footing and can participate fully in proceedings. The judge explicitly relied on this specific sub-rule to reject the defendants' argument that the rejection of the remedial scheme had placed the parties on an "even footing", noting instead that forcing the claimant to trial without a lawful scheme to present would be positively unfair and contrary to this provision.*

Building Safety and the Higher Risk Building Regime

1. ***Building (Higher Risk Procedures) Regulations 2023, Regulation 11*** *(Cited at paragraphs 7 and 30): Mandates that approval must be obtained from the Building Safety*

Regulator (BSR) before any remedial works can commence on a Higher Risk Building. The judge relied heavily on this regulation (also referred to generally as the "2023 Regulations") to establish the central problem of the case: because it is now unlawful for the claimant to implement its unapproved, pleaded remedial scheme, it fundamentally alters the court's case management approach as the court cannot reliably assess quantum damages based on an illegal scheme.

2. ***Building Act 1984, Section 120D*** *(Cited at paragraph 7): Defines what constitutes a "Higher Risk Building" in law. This statute was relied upon to establish that the nine-storey student accommodation Development at the centre of the dispute falls under the strict regulatory oversight of the BSR, thereby triggering the legal requirement for BSR approval before remediation.*
3. ***Building Safety Act 2022, Section 31*** *(Cited at paragraph 7): Relied upon as the enacting legislation that inserted section 120D into the Building Act 1984, formally establishing the statutory framework that governs Higher Risk Buildings.*
4. ***Building Regulations*** *(Cited at paragraph 6): Cited generally as the statutory standard of compliance that the claimant's £19.7m "Mitigation Remedial Scheme" was designed to achieve to rectify the alleged fire safety defects.*

Legal Texts & Commentary:

Based strictly on the contents of the provided judgment, there are no legal texts, academic articles, or practitioner commentaries (such as legal textbooks or treatises) cited or relied upon by the judge for legal reasoning. The judge's reasoning is based entirely on case law, statutory legislation, and the Civil Procedure Rules.

(Note: While not a legal text or legal commentary, the judgment does briefly reference a factual parliamentary report: a ***House of Lords committee report*** *is mentioned as factual evidence regarding the severe administrative delays at the Building Safety Regulator (BSR), specifically noting that the median time for the BSR to reach a decision is between 21.5 and 25.1 weeks. This was used to establish the practical reality that the claimant would not have an approved scheme in time for the trial, rather than for a legal principle.)*

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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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