DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

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# Triathlon Homes LLP v SVDP & Anor [2025] EWCA Civ 846 – Court to Developers: No Hiding Behind the Sofa

## *Triathlon Homes LLP v Stratford Village Development Partnership & Anor* [2025] EWCA Civ 846

**Date**: 8 July 2025

**Judges**: Lord Justices Newey, Nugee and Holgate

***Key Words:***

*Building Safety, Remediation Orders, Leaseholder Protection, Developer Liability, Retrospective Legislation, Building Safety Act, Fire Safety, Public Funding, Court of Appeal, Legal Accountability, Associated Companies, Service Charges, Statutory Interpretation, Housing Regulation, Social Housing*

**Summary**

The Court of Appeal dismissed the appeal by Stratford Village Development Partnership (SVDP) and Get Living plc against Remediation Contribution Orders (RCOs) made by the First-tier Tribunal (FTT) [66, 74, 82, 93, 95, 98, 106, 114, 121, 136, 155-158, 167]. Two key issues were:

1. Was it "just and equitable" to make RCOs?
2. Could RCOs apply retrospectively to pre-28 June 2022 costs? [1-2, 5-6]

The Court answered both affirmatively. The BSA puts primary responsibility for historic safety defects on developers and associates, with public funding a last resort [51-52, 60, 63, 88]. RCOs can apply retrospectively [47-48, 81-83, 88, 148-149, 151, 167].

***Authorities:***

1. **Core Building Safety Legislation and its Purpose**

**Building Safety Act 2022 (BSA or the Act):**

- Response to Grenfell; aims to improve safety in high-rise buildings [8]
- Part 5 introduces RCOs to shift costs from leaseholders to developers [1, 9]
- Section 124 allows RCOs where "just and equitable" [4-5, 16, 51, 77, 80, 88, 97, 153, 164-167]

- Primary cost responsibility lies with developers and associates [51, 57, 60-61, 87-89]
- Section 121 prevents developers avoiding liability through corporate structuring [17-18, 51, 72, 119]
- Schedule 8 protects leaseholders from service charges for defects if their landlord is the developer or an associate [9-10, 13, 23, 61, 69, 87]
- Section 135 extends limitation for historic claims to 30 years [18-19, 23-24]

**Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 (the 2022 Regulations):**

- Schedule 8, para 12, enables cost recovery from associated landlords [19-21]
- Regulation 3 reinforces that costs should fall on responsible parties [20-21, 23, 57, 61, 68-75]

2. **Interpretation of Statutory Retrospectivity**

***URS Corporation Ltd v BDW Trading Ltd* UKSC 21 ("URS"):**

- Confirmed Part 5 of the BSA has retrospective effect [51, 145-151, 165-167]
- Accountability outweighed unfairness to defendants [88, 146-148]
- Parliament intended not to penalise responsible landlords who acted before the Act [151-152]

***L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* [1994] 1 AC 486:**

- Presumption against retrospectivity overridden where intention is clear [143, 165]

***Secretary of State for Social Security v Tunnicliffe* [1991] 2 All ER 712:**

- Approved in L'Office, stating greater unfairness demands clearer Parliamentary intent [143].

***Granada UK Rental & Retail Ltd v Pensions Regulator* [2019] EWCA Civ 1032, ICR 747:**

- Section 124 imposes new liability on past conduct, not altering accrued rights [163-165]
- "Just and equitable" test mitigates unfairness [164-167]

3. **Case Precedents for BSA Interpretation**

***Adriatic Land 5 Ltd v The Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856 ("the Adriatic appeal"):**

- Schedule 8 bars service charge liability but not recovery of past payments [142, 151, 163]
- Section 124 offers remedy for historic costs [142]

4. **Principles of Contractual Interpretation**

***Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, 1 AC 1101:**

- Emphasised business context over literalism [128-129, 132]
- Courts may correct drafting errors, but only with a strong justification [129, 133]

### *Key Themes:*

- *Developer's Primary Responsibility: BSA and 2022 Regs target developers and associates as payers of last resort [38, 51, 57, 60-61, 69, 87-89, 97, 146-148]*
- *Protection of Leaseholders: BSA shifts costs away from leaseholders [9, 87, 145, 148, 151]*
- *Public Funding as Last Resort: Building Safety Fund is fallback only when developers can't pay [51, 59-60, 63, 88-89, 108-109, 112]*
- *Retrospectivity of the BSA: RCOs apply to past defects and costs [51-52, 72, 81-83, 86-88, 145, 148-149, 167]*
- *"Just and Equitable" Discretion: Acts as a safeguard in retrospective cases [27, 51, 91, 153, 164-167]*

**Background**

**East Village, Stratford**

- Five residential blocks, originally Olympic Village [1, 14, 26]
- Triathlon: social housing leaseholder [1-2, 16, 38]
- SVDP: original developer [1-2, 16, 32-33]
- Get Living: acquired SVDP and its liabilities [1-2, 18-19, 27, 35, 49]
- EVML: estate manager, incurred remediation costs [2, 19-20, 36]
- Fire defects led to major works, partly funded by the Building Safety Fund (£27.5m) [23, 40-44]
- Triathlon was exempt from service charges and sought RCOs for its share (£16m) and £1.1m in other costs [2-3, 23-24, 44-45, 84]
- Appeal went directly from FTT to Court of Appeal [3, 30-31]Top of FormBottom of Form

**Legal Issues and Analysis**

**BSA Remediation Provisions**

- Section 124 allows FTT to make RCOs if “just and equitable” [5, 16]
- Developers and associated landlords are within scope [16, 27, 32, 49]
- Schedule 8 protects lessees like Triathlon [13-14, 44, 64]
- 2022 Regs allow upstream cost recovery [10, 19-23, 61, 68]

**The FTT's Decision (Upheld by the Court of Appeal)**

The FTT held it was “just and equitable” to make RCOs against SVDP and Get Living, including for pre-BSA costs [25, 29, 50-51]; the Court of Appeal upheld this [95-98].

**Ground 1: "Just and Equitable" Test**

The Court rejected all ten sub-grounds of appeal [54-55]:

- Developers bear primary cost responsibility [51, 57, 60-61]
- Association rules validly applied to Get Living [49, 72-75, 119]
- Public funds are secondary [51, 59-60, 88]
- Triathlon’s motivations irrelevant [76-83]

- No need to await third-party litigation [85, 95-97]
- Fund cooperation did not block RCOs [99-106]
- Ownership changes did not limit liability [115-120]
- The Grant Funding Agreement (GFA) did not block claims against Get Living [122-135]

**Ground 2: Retrospectivity of RCOs**

- RCOs can apply to pre-2022 costs [47-48, 81-83, 85, 138-141]
- URS confirmed retrospective reach [87-89, 145-149, 167]
- Section 124 offers recovery where Schedule 8 doesn't [49, 142, 151-154]
- "Just and equitable" provides fairness safeguard [91, 153, 164-167]

**Conclusion**

The appeal failed on all grounds [95]. The Court reaffirmed that RCOs apply retrospectively and developers—including associates—must bear the financial burden of historic safety defects [89].

***Key Takeaway:***

*The BSA is unambiguous: developers and their associates must pay for historical defects, even retrospectively. Public funds are a last resort, not a shield [51-52, 60, 63, 88-90, 97, 141, 146, 148-149, 151, 162-163, 167].*

***Parting Thoughts***

*This judgment slams the door on developer evasion. The Court didn't blink at retrospectivity or the "just and equitable" test. The BSA is not a gentle suggestion—it's a scalpel. If you're liable, you're paying—no technicalities, no delay, no excuses.*

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**Nigel Davies** BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE and the CIArb
Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 20067

TECSA Adjudication Panel Member since 2012
FIDIC Adjudication Panel Member since 2021
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