Supreme Court clarifies defect liability under Building Safety Act

Rachel Lee, of law firm Birketts, explains what a recent Supreme Court judgment on retrospective liability for defects under the Building Safety Act means for consultants working in the construction industry.

On 22 May, the UK Supreme Court handed down its long-awaited decision in the case of *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21, dismissing URS's appeal on all grounds and delivering a judgment that will have far-reaching implications for developers, consultants, insurers, and the wider construction industry.

The decision provides critical clarity on the scope of duties owed under the Defective Premises Act 1972 (DPA 1972), the retrospective application of limitation periods under the Building Safety Act 2022 (BSA 2022), and the viability of contribution claims in the absence of third-party proceedings.

Background: the road to the Supreme Court

The dispute between BDW and URS arose from structural design defects discovered in two residential developments – Capital East in London and Freemans Meadow in Leicester – designed by URS and developed by BDW. Although BDW no longer owned the properties and had not been sued by any third parties, it undertook remedial works to correct the defects and sought to recover its costs in doing so from URS in tort.

At the time of the claim:

- the contractual limitation period had expired
- the six-year limitation period under the DPA 1972 had expired
- no third-party claims had been brought against BDW.

The Technology and Construction Court (TCC) found in BDW's favour on preliminary issues, holding that the losses were actionable in tort and that the cause of action accrued at practical completion.

Following the enactment of the BSA 2022, BDW amended its pleadings to include claims under the DPA 1972 (benefiting from the new 30-year limitation period) and the Civil Liability (Contribution) Act 1978.

The Court of Appeal unanimously upheld the TCC's decision. URS was granted permission to appeal, and appealed to the Supreme Court on the following four grounds:

1) The first ground concerned whether BDW's losses – incurred through remedial works on properties it no longer owned and without any enforceable legal obligation – were irrecoverable in negligence. URS argued that such losses were voluntarily incurred and therefore fell outside the scope of its duty of care or were too remote to be recoverable.
2) The second ground addressed whether the extended 30-year limitation period introduced by Section 135 of the BSA 2022 applied not only to claims under Section 1 of the DPA 1972, but also to related claims in negligence and contribution that are dependent on the same underlying statutory liability.
3) The third ground focused on whether Section 1(1)(a) of the DPA 1972 applies only to purchasers of dwellings or also extends to developers like BDW, which commissioned the construction of the buildings.
4) The final ground considered whether BDW could bring a claim for contribution under Section 1 of the Civil Liability (Contribution) Act 1978, despite there being no judgment, settlement, or third-party claim brought against it.

> **FOR THOSE IN THE CONSTRUCTION INDUSTRY, THE MESSAGE IS CLEAR: THE RISK OF HISTORIC LIABILITY IS REAL AND ENDURING**

The Supreme Court's decision: key takeaways

Dismissing the appeal on all four grounds, the Supreme Court has now confirmed the following:

Voluntarily incurred losses are recoverable

The Court rejected URS's argument that BDW's remedial costs were 'voluntarily incurred' and therefore irrecoverable. It held that there is no rule of law barring recovery of such costs where the claimant acted reasonably in the face of potential safety risks and reputational harm.

Section 135 of the BSA 2022 applies retrospectively

The Court confirmed that the retrospective 30-year limitation period under Section 135 of the BSA 2022 applies not only to claims under the DPA 1972, but also to related negligence and contribution claims that are dependent on the same underlying statutory liability. This ensures that developers can bring contribution claims even where the original limitation period had expired before the BSA 2022 came into force.

Developers are owed duties under the DPA 1972

The Court maintained the previous significant clarification that developers

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do fall within the class of persons to whom duties are owed under Section 1(1)(a) of the DPA 1972. This confirms that developers can bring claims against consultants and contractors for defective work, even if they themselves owe duties to subsequent purchasers.

Contribution claims do not require prior third-party claims

The Court held that a claim for contribution under the 1978 Act can be brought even where no third-party claim has been made or settled. It is sufficient that the claimant has paid compensation (including in kind, such as remedial works) for the same damage.

Implications for the industry

This judgment is a pivotal moment for construction liability and building safety litigation. It reinforces the policy objectives of the Building Safety Act by ensuring that those responsible for historic defects can be held to account, even many years after completion. The decision also provides much-needed certainty for developers who have proactively undertaken remedial works, and for consultants and insurers who must now consider the long-term implications of their professional obligations.

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What about contractors?

While the case centred on the liability of a design consultant, the principles affirmed by the Supreme Court apply equally to contractors who have undertaken works in connection with the provision of dwellings.

Contractors may now face claims from developers under the DPA 1972 even where the original limitation period had expired, thanks to the retrospective effect of Section 135 of the BSA 2022. Moreover, developers who have undertaken remedial works – whether they still own the property or not – may seek a contribution from contractors without needing to wait for a third-party claim to crystallise.

This reinforces the importance for contractors of maintaining robust records, reviewing historic liabilities, and ensuring that their insurance arrangements are adequate to respond to potential claims which may arise from legacy projects.

The Birketts view

The Supreme Court's decision in *URS v BDW* is a welcome and pragmatic clarification of the law. Its aim is to strike a fair balance between holding professionals accountable for historic design failings, while recognising the proactive role developers have played in addressing building safety concerns post-Grenfell.

By confirming that developers are owed duties under the DPA 1972 and that contribution claims can proceed without a crystallised third-party claim, the Court has removed significant procedural and legal hurdles that previously complicated recovery routes. The retrospective application of Section 135 of the BSA 2022 further ensures that the spirit of the legislation, to protect residents and promote accountability, is upheld in practice.

For those in the construction industry, the message is clear: the risk of historic liability is real and enduring. Contractors and designers of residential buildings must remain prepared for renewed scrutiny and potential claims many years after completion.

This article first appeared on the Birketts website.

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