

IN THE COURT OF APPEAL

ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)

JUDGE SIOBHAN MCGRATH AND MEMBER MRS DIANE MARTIN [2025] UKUT
298 (LC)

BETWEEN—

(1) ALMACANTAR CENTRE POINT NOMINEE NO.1 LIMITED
(2) ALMACANTAR CENTRE POINT NOMINEE NO.2 LIMITED

Appellants

and

PENELOPE DE VALK AND 12 OTHERS

Respondents

APPELLANTS' REPLACEMENT SKELETON
ARGUMENT
(16 February 2026)

References to the pages in the Core Bundle are as follows: [CB / tab no. / page].

References to the pages in the Supplementary Bundle are as follows: [SB / tab no. / page].

An Appendix to this skeleton argument set out the key provisions of the Act (emphasis added).

A. INTRODUCTION

1. This appeal raises two questions regarding the true interpretation of Part 5 and Schedule 8 of the Building Safety Act 2022 (**'the Act'**). The key provision for the purposes of this appeal, Paragraph 8 of Schedule 8 to the Act (**'Paragraph 8'**), relieves tenants of qualifying leases from paying service charges in respect of 'cladding remediation'.
2. The first question is whether Paragraph 8 operates only where a landlord's works relate to remedying a 'relevant defect', or whether it extends to any works to any relevant building of any age, provided they can be described as 'cladding remediation' (**Appeal Ground 1**) [CB/1/16].

3. The second question is whether any part of the proposed scheme of works to Centre Point House (**'CPH'**) which the Appellants (**'A'**) will carry out (**'the Proposed Scheme'**) amounts to 'cladding remediation' within the meaning of Paragraph 8 (**Appeal Grounds 2-5**) [**CB/1/16-17**].
4. There is no binding appellate authority on either of the two central questions raised by the Appeal. Moreover, these questions are of far-reaching importance, giving rise to significant practical and financial consequences for landlords and leaseholders (as the UT expressly recognised when granting permission to appeal). If the FTT's decision was correct, it potentially brings within the purview of the Act a wide range of repairs to older buildings which have never formed part of the mischief that gave rise to the Act.

B. THE APPEAL IN SUMMARY

5. In summary, A's case is that, as regards the costs of the Proposed Scheme, the FTT (and the UT which upheld its decision) were wrong to hold that Paragraph 8 was engaged at all:
 - (1) No part of Schedule 8 is engaged in relation to the Proposed Scheme as there is no 'relevant defect' as defined within the Act, given the age of CPH and the fact that no relevant works have been carried out in the relevant period since its construction.
 - (2) Even if Schedule 8 is engaged in principle, the Proposed Scheme does not involve any 'cladding remediation' as defined in Paragraph 8 of Schedule 8.
 - (3) Accordingly, the costs of all elements of the Proposed Scheme are in principle recoverable from all CPH long leaseholders under the service charge provisions – whether or not they hold what would otherwise be qualifying leases.

C. BACKGROUND

6. A is the freeholder landlord of CPH, part of the iconic Centre Point development, which was completed in the mid-1960s, all of which is now Grade II listed. The exterior façade of CPH is a hardwood timber-framed construction – it comprises a timber-framed glazing system with a screw-fixed aluminium clamp strip which retains the glazing (equivalent to

traditional putty) forming a ‘composite’ system. A reprographic is attached (see also [SB/6/191-194]).

7. By way of overview, the facade has long exceeded its expected 30–40-year lifespan. The exterior has degraded and is now at risk of collapse owing to the action of the elements on it over time, which has caused the timber ‘ladder’ subframe to rot. This disrepair has been caused by: (i) the lack of a designed drainage path when rainwater gets inside the timber framing system; and (ii) long-term interstitial condensation in the vicinity of the timber frames.
8. In 2026, A will carry out a scheme of repair works to CPH. This involves installing a ‘stick’ system over the existing façade, whereby the degraded timber subframe will remain in place, but will act as a decorative (internal) feature only. The Proposed Scheme entails installing a new ‘Raico’ curtain-walling system which will be attached to the exterior of CPH, so allowing parts of the listed façade to remain in place. The new system will thus supersede the structural function of the old timber subframe. As part of the repair, all timber-framed windows will be replaced with thermally efficient frames.
9. The total cost of the Proposed Scheme is expected to exceed £12 million inclusive of VAT and professional fees. As owner of 11 of the 36 flats forming CPH, A will bear a significant proportion of those costs itself. The Respondents (‘Rs’) are long-leasehold owners of 13 of the remaining 25 flats. As determined by the FTT, Rs are in principle liable to bear a proportion of those costs – unless the FTT was right in its further conclusion that the whole of the Proposed Scheme in fact constitutes ‘cladding remediation’ within the meaning of Paragraph 8. If that is the case, then Rs are liable for none of the costs of the Proposed Scheme.

D. THE ACT AND THE INTRODUCTION OF SCHEDULE 8

10. The background to the Act was comprehensively discussed in the Supreme Court and Court of Appeal’s decisions of *BDW Trading Ltd v URS Corporation Ltd* [2025] 2 WLR 1095; *Triathlon Homes LLP v Stratford Village Development Partnership* [2025] EWCA Civ 846, 221 Con. LR 86 and *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 846, 221 Con. LR 17 (“*Adriatic*”). For A’s purposes, three features of the Act are worth noting at the outset.

11. First, the starting position is that the Act’s legislative purpose and scheme provide “*the basic frame of orientation for the use of the language employed in it*”.¹ The Act was Parliament’s legislative response to the Grenfell Tower tragedy, which highlighted a pressing need to identify and remedy buildings with unsafe cladding. The remit of the ensuing inquiry was initially restricted to ACM cladding; then extended to other types of (modern) non-ACM cladding; and then to a broader range of fire-safety and other structural defects arising from poor building practices (the ‘cladding crisis’).²
12. It was thus in the specific context of the ‘cladding crisis’ that Parliament intervened to protect leaseholders from bearing some of the costs of remediation in relation to modern, high-rise buildings clad in modern combustible materials. This intervention was prompted by concerns that over-cautious landlords would carry out unnecessary remediation works, safe in the knowledge that they could always recover such costs through the service charge provisions of tenants’ long leases³. Part 5 of the Act (sections 116 to 160) thus makes provision (inter alia) for the costs of remediation of ‘historic building safety defects’ in relevant buildings. Part 5 and Schedule 8 have together been referred to as “*the remediation provisions*”,⁴ and should be read, as far as possible, as a coherent whole.
13. Secondly, the Part 5 reforms refer consistently to a 30-year window from 28 June 1992 during which the mischief targeted by the Act had occurred. A 30-year period was chosen for these reforms because, as identified from the evidence received by the Government, this was the period during which unsafe building practices had prevailed. This is confirmed by the Explanatory Notes published after the Act was passed, which make clear that

*‘The leaseholder protections deal only with historical building safety defects; they are backward looking only. They are a one-off intervention designed to deal with the current serious problems with historical building safety defects in medium and high-rise buildings. The protections afforded only apply to defects created in the 30-year period prior to commencement of the provisions, so in practice between mid-1992 and mid-2022. A 30-year period has been chosen as evidence shows that this period captures all buildings affected by the relevant safety issues.’*⁵

¹ *Adriatic* per Nugee LJ at §§144, 145, 201.

² *Adriatic* per Nugee LJ at §§145, 152-154.

³ Hansard: Building Safety Debate, 10 January 2022; Vol 706, Col 284

⁴ *Adriatic* per Nugee LJ at §§146-147; 157; 163.

⁵ *Explanatory Notes* para 957.

14. Part 5 of the Act thus made a number of changes to the law, with retrospective effect, to address these historical building safety defects. These included: (i) a new 30-year limitation period (s.135); (ii) a new right to seek remediation contribution orders (s.124); (iii) a new power to make building liability orders (ss.130-132); (iv) new causes of action against manufacturers and sellers with a 30-year time limit (ss.149-50); and (v) provisions in Schedule 8 for ‘*a range of new safeguards that ensure owners of “qualifying leases” in medium and high-rise buildings are protected as far as possible from the costs of remediating historical building safety defects that they played no part in creating*’.⁶
15. Thirdly, Schedule 8 was introduced by the Government as a late Lords Amendment to the Bill, largely in response to the concern that landlords were carrying out ‘*unnecessary and costly remediation work*’, then charging this to tenants via lease service charge provisions. Schedule 8 was thus, in part, intended to disincentivise landlords from carrying out remediation work at tenants’ expense.⁷ The Explanatory Notes accompanying these Lords Amendments, and the support they provide for A’s case, are considered further below.

E. GROUND 1 – THE NEED FOR A RELEVANT DEFECT

16. A’s Ground 1 case is that the Act is simply not engaged at all. This is supported by: (i) a proper reading of the relevant provisions of Part 5 of the Act, Schedule 8 and Paragraph 8 in context; (ii) secondary legislation introduced pursuant to the Act; and (iii) external aids including the pre-Act and post-Act Explanatory Notes, and relevant Government guidance. A’s case also finds support in the case law: in particular, dicta in this Court in *Adriatic*, and the guidance of the Deputy President of the UT in *Lehner v Lant St* [2024] HLR 47, 958 (“*Lant Street*”), the only UT decision addressing the correct interpretation of Schedule 8.
17. For the purposes of this appeal, Ground 1 stands alone [CB/1/16]. If A succeeds on Ground 1, the appeal must be allowed, and there is no need for the Court to consider Grounds 2-5 [CB/1/16-17].

Applicable principles of construction

18. Multiple authorities confirm that the Court’s task is to interpret the meaning of the words used by Parliament in context, in light of the statutory purpose. Thus, the process of

⁶ *BDW Trading*, *ibid*, at §86 per Lords Burrows and Hamblen.

⁷ See Hansard: Building Safety Debate, Monday 10 January 2022; Vol 706, Col [x]

statutory construction is an exercise in “*seeking the meaning of the words which Parliament used*”: ***Black-Clawson International Ltd v Papierwerke Waldhof Ashaffenburg AG*** [1975] AC 591, at 613 (per Lord Reid). Likewise, “*the court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment*” per Lord Bingham in ***R (Quintavalle) v Secretary of State for Health*** [2003] 2 AC 687 (HL) at [8].

19. It is equally clear from the authorities that the statutory text must be the starting point. Thus, in ***R(O) v Secretary of State for the Home Dept*** [2023] AC 255, Lord Hodge stated: “*Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered*” (para 31). In this regard, the words used are the “*primary source by which meaning is ascertained*” (Para 29). By contrast, external aids to interpretation (such as Explanatory Notes) play “*a secondary role*” (para 30).
20. Nevertheless, the Supreme Court has also warned against adopting ‘tunnel vision’ when reading statutory language by focusing solely on the words in question. Instead, “*a phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context.*”⁸ The statutory text is the starting point, but not the end point.
21. Four further principles of statutory construction, derived from legal policy, must be borne in mind: *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed.) (“***Bennion***”):
 - (1) Legislation must be read as a whole. The way material is divided within a statute may well be relevant as an aspect of this general principle (*Bennion*, section 16.9).
 - (2) The law should be coherent and self-consistent: *Bennion*, section 26.8. As summarised by Sales LJ in ***R (Best) v Chief Land Registrar*** [2015] 3 WLR 1505 at [80]: “*Parliament is not lightly to be taken to have legislated with the intention of producing ... capricious and arbitrary effects on a carefully crafted and comprehensive statutory regime...*”.

⁸ ***R(O) v SSHD*** [2023] AC 255 (SC) at §16 *per* Lord Hodge; ***Rossendale BC v Hurstwood Properties (A) Ltd*** [2022] AC 690 SC at §29.

- (3) The law should not be subject to casual change or be altered by a ‘mere sidewind’: *Bennion*, section 26.7. See, for example, *National Assistance Board v Wilkinson* [1952] 2 QB 648 at 661 *per* Lord Devlin: “*It is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion*”.
- (4) There is a presumption against interference with property rights. Schedule 8 as a whole, and Paragraph 8 in particular, cause “*very substantial disruption*” to the contractual allocation of risk as between landlords and tenants, and in so doing necessarily interfere with landlords’ proprietary rights.⁹ Any such interference with property rights requires clear statutory wording: *Forbes v Interbay Funding Ltd* [2025] 1 WLR 4202, 4215 at [65]-[69] *per* Zacaroli LJ.¹⁰

22. With these principles of construction in mind, there are three reasons why the FTT (and UT) erred in concluding that Paragraph 8 was engaged in relation to the Proposed Scheme.

(1) A’s construction is supported by the clear words of the Act interpreted in context

Sections 116-124

23. The Court is directed to the Appendix for the text of these sections. It is logical to begin with these sections of Part 5, since they introduce Schedule 8 and give an overview of its content, effect and relationship with other provisions of the Act. It is drafting convention to ensure that such overview clauses are accurate and not misleading.¹¹
24. In this respect, the wording of ss.116-124 could not be clearer: these sections and Schedule 8 are concerned only with “*relevant defects*” within the 30-year window referred to above (s.120). If a defect is not a ‘relevant defect’ because it falls outside the 30-year window, then it also falls outside the ‘remediation provisions’ under ss.116-124 and Schedule 8.
25. This focus on ‘relevant defects’ is apparent from Part 5 and ss.116-124. To begin, the heading to Part 5 makes clear that this Part concerns the ‘*Remediation of certain defects*’

⁹ *Adriatic* at §§161-163 *per* Nugee LJ.

¹⁰ See also *Adriatic* at paras 60-64 and 140, *per* Newey LJ and Nugee LJ respectively.

¹¹ *Office of the Parliamentary Counsel: Drafting Guidance* (March 2024), Part 3.2.

(the heading is admissible as an aid to construction: *Bennion* at section 16.7). This focus on relevant defects is further confirmed by the following sections (emphasis added):

- (1) Section 116(1), which provides that ss.117 to 125 and Schedule 8 “*make provision in connection with the remediation of relevant defects in relevant buildings*”. Likewise, s.116(2) provides that s.122 and Schedule 8 “*contain protections for tenants in respect of costs connected with relevant defects*”.
- (2) Section 120, which expressly applies to Schedule 8: s.120(1). This defines the terms ‘relevant defect’, ‘relevant steps’ and ‘relevant works’ (inter alia) by reference to the ‘relevant period’, namely the 30-year window prior to the Act’s commencement.
- (3) Section 122, which introduces Schedule 8. This provision describes the protection conferred under Schedule 8, whereby “*certain service charge amounts relating to relevant defects in a relevant building are not payable*”. It is drafting convention to ensure that the description of a Schedule is accurate and covers everything in it.¹²

26. The words of ss.116, 120 and 122 thus all make clear that the existence of a ‘relevant defect’ is an essential gateway to the application of Part 5, including Schedule 8. As such, for A’s purposes, a ‘relevant defect’ can only be one relating to construction work at CPH since 28 June 1992 (i.e. in the 30-year window between 29 June 1992 and 28 June 2022).

27. However, crucially, no conversion or other works which might constitute ‘relevant works’ have been carried out at CPH within the ‘relevant period’. CPH is simply an out of repair building, dating from the 1960s, which falls outside the 30-year window by virtue of its age. It follows that the provisions in Part 5 cannot apply to the Proposed Scheme. Indeed, no analysis of Schedule 8 or Paragraph 8 is even necessary in order to reach this conclusion.

Schedule 8

28. Schedule 8 only confirms the position foregrounded by ss.116-124 of Part 5. Under Schedule 8, certain service charges in respect of a relevant measure relating to a relevant defect – which would otherwise be payable by certain leaseholders in relevant buildings – are not payable.

¹² *Office of the Parliamentary Counsel: Drafting Guidance* (March 2024), Part 3.9.7.

29. The provisions of Schedule 8 are to be read consistently with ss.116, 120 and 122. Furthermore, there is Supreme Court authority to the effect that Schedule 8 should be read as subsidiary to the provisions in Part 5, insofar as the schedule only contains relevant detail implementing the matters of principle set out in those sections:

“It is desirable to include in a schedule matters of detail; it is improper to put in a schedule matters of principle. The drawing [of] the proper line of demarcation between the two classes of matters is often difficult. All that can be said is that nothing should be placed in a schedule to which the attention of Parliament should be particularly directed...”

Lord Thring, *Practical Legislation* (1877), approved in **R (Maughan) Her Majesty’s Senior Coroner for Oxfordshire** [2020] 3 WLR 1298 at [44] per Lady Arden.

30. This is consistent with the Government’s published drafting guidance, which indicates that Schedules should be used for “*lengthy material that is at something of a tangent to the main story*” of the Act: material should not be relegated to Schedules without good reason.¹³

31. If the FTT (and UT) were correct that there is no need for a ‘relevant defect’ for Paragraph 8 to be engaged, then Paragraph 8 would be an important ‘standalone’ matter of principle not mentioned in ss.116-124 and relegated to Schedule 8 (in which it would also be a significant outlier). However, such an interpretation is to misread the scheme of the Act, and especially Schedule 8, as a consistent whole. It offends the general principle that the law should not be changed by a ‘mere sidewind’.

32. Taking the first two provisions of Schedule 8:

(1) Paragraph 1 of Schedule 8 provides definitions which make clear that ‘*remediation costs*’ relate only to relevant defects. Each of the key definitions of ‘*relevant measure*’ and ‘*relevant step*’ in Para 1 is tied back to the definition of ‘*relevant defect*’ in s.120 of the Act.

(2) Paragraph 2 of Schedule 8 is something of an outlier provision. It provides that no service charge is payable for relevant defects for which the landlord or associate is responsible. Paragraph 2 is thus the only true ‘standalone’ provision in Schedule 8 in the sense that it applies whether or not the leaseholder holds a ‘qualifying lease’. It is nonetheless consistent with the purpose of Part 5, and the Act more generally, in

¹³ *Office of the Parliamentary Counsel: Drafting Guidance* (March 2024), Part 3.9.3.

embodying the principle that the ‘polluter pays’. In any event, it is only engaged if there is a relevant defect. As such, it is entirely consistent with A’s argument on Ground 1 that Schedule 8 is a coherent scheme.

33. Putting Paragraph 8 to one side (see further below), each of the remaining relevant paragraphs of Schedule 8 which limit the recoverability of service charge, unarguably apply only in respect of a relevant measure relating to a relevant defect:

- (1) By Paragraph 3, no service charge is payable under a qualifying lease in respect of a relevant defect if the landlord under the lease met the ‘contribution condition’ at the qualifying time (14 February 2022).
- (2) By Paragraph 4, no such service charge is payable under a qualifying lease in respect of a relevant measure relating to a relevant defect if the value of the qualifying lease at the qualifying time was below certain values.
- (3) Paragraphs 5 and 6 impose, for costs of a relevant measure relating to a relevant defect, a service charge cap over 5 years, with the cap dependent on location and lease value at 14 February 2022. Paragraph 7 imposes a separate cap over 12 months.
- (4) Paragraph 9 makes no service charge ‘payable under a qualifying lease in respect of other professional services relating to the liability (or potential liability of any person incurred as a result of a relevant defect’ (this was the subject of the appeal in **Adriatic**).

34. Looking at Schedule 8 as a whole, independent of Paragraph 8, it is thus obvious that in all other respects, it is solely concerned with ‘relevant measures’ relating to ‘relevant defects’. It is in that (otherwise wholly coherent) context that Paragraph 8 must be considered.

Paragraph 8

35. Paragraph 8 must be construed against the backdrop of its introductory sections (ss.116-124) and its encompassing schedule (Schedule 8). Such an approach is entirely consistent with the overarching principles of statutory construction identified above, as well as the modern approach whereby literal and purposive interpretation combine to form a “*single, and largely subliminal, mental process*”: Craies on Legislation, 13th ed. at §18-007.

36. Although sandwiched between provisions which all refer expressly to relevant defects, Paragraph 8 itself does not do so. However, the explanation is simple: it did not need to. The introductory sections of the Act make clear that the whole of Schedule 8 is confined to relevant defects. If Paragraph 8 alone was engaged by something other than a relevant defect, ss.116, 120 and 122 would and should have said so clearly. They do not. As such, ‘cladding remediation’ in Paragraph 8 obviously refers to a sub-set of ‘relevant defect’. Sections 116, 120 and 122, along with every other paragraph of Schedule 8, make this clear.

37. A’s construction is on all fours with:

(1) How this Court has read the provisions of Schedule 8 - in **Adriatic**, Newey LJ said:

‘46. The evident purpose of schedule 8 reinforces that conclusion. It is obvious from the terms of the schedule that it is seeking to relieve tenants (especially “qualifying tenants”) from liabilities to pay service charges arising from “relevant defects” and in particular, “cladding remediation.”’¹⁴

(2) How Schedule 8 was interpreted by the Deputy-President of the UT - when seeking to give general guidance to the FTT in **Lant Street**, he described the existence of a relevant defect as a ‘preliminary condition’ or gateway to all of the Schedule 8 protections, including Paragraph 8.¹⁵

38. The position of Paragraph 8 within Schedule 8, directly after a series of paragraphs dealing with leaseholder contribution caps, is entirely explicable: those caps only apply in respect of relevant measures which are *not* related to cladding remediation (i.e. non-cladding costs). It is also significant that Paragraph 8 immediately precedes Paragraph 9, which provides tenants with a general exemption in relation to professional costs relating to liability incurred as a result of a relevant defect. Paragraph 9 (another express ‘relevant defect’ provision) clearly relates to all of the preceding paragraphs in the Schedule – including Paragraph 8.

39. A’s interpretation of the words of Paragraph 8, contrary to that of the FTT and UT, is thus consistent with the structure and purpose of Part 5 as a whole, and Schedule 8 in particular.

(2) A’s construction is supported by an iterative reading of Paragraph 8

¹⁴ **Triathlon**, *supra*, implicitly also supports A’s interpretation encapsulated in Appeal Ground 1 – see, Newey LJ at [24]

¹⁵ **Lant St** at paras 43-44 and Step 1 in the appendix to the decision.

40. Even if the above literal and contextual reading of Paragraph 8 does not provide a complete answer to the true interpretation of the provision (which A does not accept), the correct construction becomes even clearer when the Tribunals' construction of Paragraph 8 is tested against the wider context of the Act's provisions and its secondary legislation.

41. Followed to its logical conclusion, the Tribunals' (and Rs') construction of Paragraph 8 produces startling anomalies:

(1) Paragraph 9 clearly applies only to relevant defects. If the Tribunals were right, and Paragraph 8 prevents the landlord from recovering the cost of the Proposed Scheme, then charges for the legal and professional services relating to the Proposed Scheme will equally not relate to a relevant defect. As such, those charges would not be caught by Paragraph 9, and *prima facie* would be recoverable. It cannot have been Parliament's intention that leaseholders would be protected from some costs under Paragraph 8, but not other costs under Paragraph 9, in respect of the same works. That result is nonsensical.

(2) Section 123 provides for an 'interested person' to secure a remediation order against relevant landlords. Again, however, this section only applies in respect of relevant defects. As such, it would have no application in the case of CPH or any other pre-1992 building in relation to which service charges are incurred in relation to cladding remediation. If the Tribunals' construction is correct, then if (for example) A refused to carry out the work, the tenants of CPH (including Rs) could not apply for a remediation order. Yet A (as the landlord) would equally not be able to recover the costs of the work. As a result, landlords would be actively disincentivised from carrying out any works to make a building safe. The Tribunals' interpretation destroys the integrity of the coherent regime of leaseholder protections in Part 5.

(3) The same logic applies to s.124, which creates remediation contribution orders. These allow an interested person (including landlords) to apply for contribution orders from third-party corporate bodies/partnerships. In each case, the definitions exclude contributions for anything which is not a relevant defect or connected to such a defect. If the Tribunals' construction is correct, and one of A's companies bears the costs of the Proposed Scheme, then A could not pass

on a share to another company that might have been responsible for the façade's construction.¹⁶ Nor of course would the 30-year limitation period - introduced by the Act to deal with the problem of 'historic building safety defects' - be of any assistance to A. Again, the integrity of the Act's scheme is adversely affected.

- (4) There is no possibility of a landlord recouping costs through Government funding schemes such as the Building Safety Fund or Cladding Safety Scheme. These are confined to dealing with the 'cladding crisis' (i.e. historical building safety defects).
- (5) Statutory Instruments introduced pursuant to the Act are all consistent with A's interpretation. Moreover, they are inconsistent with and do not support the Tribunals' interpretation. See, for example:

- a. The Building Safety (Leaseholder Protections) (England) Regulations 2022:¹⁷ – the definition of 'remediation service charge' (reg 1) and the specific requirements of a 'Landlord's certificate' (reg 6) each make clear that they relate only to relevant defects.
- b. The Building Safety (Leaseholder Protections) (Information etc) England Regulations 2022,¹⁸ detailing the requirements of a remediation order application – reg 2(3) and the need to identify (relevant) 'defects'; and reg 5, which states as follows:

'5 (1) This regulation applies where, in relation to a relevant building, a landlord (L) under any lease has paid or is liable to pay the cost of a relevant measure relating to a relevant defect ("the remediation amount") which, but for paragraphs 4 to 9 and 11 of Schedule 8 to the Act, would have been payable as a service charge by the tenant under the lease.'

¹⁶ A has owned the freehold title to CPH since 2012 and was not involved the construction of the façade at CPH.

¹⁷ as amended by The Building Safety (Leaseholder Protections) etc (England) (Amendment) Regs 2023, SI 895/2023

¹⁸ as amended by The Building Safety (Leaseholder Protections) etc (England) (Amendment) Regs 2023, SI 895/2023. See, also the Court of Appeal's comments in relation to regs 3 to 5 in *Adriatic* at §23 and in *Triathlon* at §22.

- c. The Explanatory Note to these Regulations, which demonstrates that the drafters of the Regulations consistently treated Paragraph 8 as encompassing relevant defects – but nothing else.

(3) A's construction is supported by external aids to construction

Explanatory Notes

42. It is notable, and persuasive, that all Explanatory Notes relating to the Act, both those published prior to and subsequent to its passage, support A's construction of Paragraph 8.

43. The **pre-Act Explanatory Notes** published in April 2022 (relating to the Lords Amendments to the Act brought in on 5th April 2022) relevantly provide (emphasis added):¹⁹

*68. Lords Amendment 93 introduces provisions about the remediation of **relevant defects** in relevant buildings” (in respect of what became s.116).*

*74 Lords Amendment 99 inserts a new clause which inserts the Schedule (Remediation costs under qualifying leases) which provides that certain service charge amounts relating to **relevant defects** in a relevant building are not payable and makes provision for the recovery of those amounts from landlords under leases of a building.” (in respect of what became s.122).*

143 Lords Amendment 184 inserts a new schedule which outlines the conditions under which the service charge is not payable in respect of relevant defects. No service charge is payable under a qualifying lease in relation to relevant defects for which landlord or associate is responsible or if a landlord meets the contribution condition. No service charge is payable for cladding remediation’ (in respect of what became Paragraph 8).

44. The pre-Act Notes, having accompanied the Bill in its passage through Parliament, are capable of shedding light on Parliament's intention.²⁰ Clearly, these Notes support reading ‘cladding remediation’ as a sub-set of ‘relevant defect’ within the wider scheme of Schedule 8 (A's construction), rather than as a standalone provision (the Tribunals' construction).

45. The **post-Act Explanatory Notes** (published in July 2022, after the Act was passed on 28 June 2022) likewise consistently support A's interpretation of Paragraph 8 and contradict the Tribunals' interpretation:

¹⁹ Cited in *Adriatic* at para 33.

²⁰ *Adriatic* at [67] *per* Newey LJ.

(1) These Notes are persuasive authority and of comparable status to academic writings.²¹ They are designed to be “accurate” and “prevent misconceptions”.²²

(2) Moreover, the combination of the fact that they were published broadly contemporaneously with the Act, are coherent, unequivocal on the issue we are concerned with and, were intended by the Department of Levelling Up and Housing “to assist the reader of the Act and to help inform debate on it....”,²³ mean that it would be wrong for the Court to ignore their clear effect.

46. In addition to §957 of the Post-Act Notes (cited above at paragraph 11), A refers to paras 909-911; 917-918; 924-925; 949-960; 984; 1747-1775, 1747-1751; 1758 to support A’s interpretation. In relation to Paragraph 8 in particular, Explanatory Notes 1750 and 1758 make clear that it relates only to ‘*historical building safety defects*’: a phrase used throughout this part of the post-Act Notes synonymously with ‘*relevant defect*’ (see, para 949 of the post-Act Notes):

*‘1750 The provisions in Schedule 8 protect leaseholders from the costs associated with **historical building safety defects**, defined in paragraph 1 as relevant measures... This paragraph [8] provides for qualifying leaseholders to be fully protected from the costs associated with cladding remediation. This means that the qualifying leaseholder contribution caps only apply in respect of **relevant measures** which are not related to cladding remediation costs in other words, applying to non-cladding costs;*

*‘1758... The purpose of Schedule 8 is to protect leaseholders from costs associated with **historical building safety defects**. Where landlords incur costs in connection with their new liabilities under the Act, this paragraph prevents these costs... from being passed to leaseholders.’²⁴*

47. The pre- and post-Act Notes are thus further persuasive evidence, if such is needed, that A’s construction of Paragraph 8 accords with Parliament’s intention, and hence is correct. If the Tribunals and Rs were right, then those notes are misleading, inaccurate and wrong.

Government guidance

²¹ *Adriatic* at [70] per Newey LJ

²² Cabinet Office, Guide to Making Legislation (2025) at §§10.2 and 10.4

²³ *BSA Explanatory Notes*, ‘What do these notes do’

²⁴ That a key concern of Parliament in introducing Schedule 8 was to prevent inflated landlord claims, is evidenced by the 10 January HofC debate (see Hansard).

48. Finally, post-Act Government Guidance supports A's position, showing that the Govt has interpreted Schedule 8 Paragraph 8 as A does. A points to the following four publications:

(1) *What are my building owner's legal obligations?* (published 21 July 2022, updated 10 August 2023) provides:

'17. If your building owner does not meet the developer test, they still have an obligation to pay all the costs associated with the remediation of cladding and are legally prevented from passing any of these costs on to you if all the following criteria are met: (a) you are a qualifying leaseholder; (b) the defect is a relevant defect (c) the building is a relevant building.'

(2) *Definition of non-cladding remediation* (published July 2022):

'4. Non-cladding remediation is where work is undertaken to fix a relevant defect, which is not an unsafe defect.

5. Examples of non-cladding remediation include [...] (e) fixing any other defect in scope of the relevant defect definition that is not a defect of the cladding system.'

(3) *Cladding remediation* (published July 2022):

'2. It has become clear that many residential blocks of flats have serious historical fire safety defects associated with their original construction or a subsequent refurbishment. Most notably, this has included the use of unsafe cladding on the external walls of these buildings.

4. Due to the risks posed by these existing fire safety defects, remediation work can be necessary. In the most concerning cases, the entire cladding system for a building may need to be replaced, or proper fire compartmentation installed between flats.

8. If you are a qualifying leaseholder, you will be protected from all costs related to the remediation of unsafe cladding systems. This means that, if you are a qualifying leaseholder, you will not have to pay for the remediation of unsafe cladding systems and will no longer be the first port of call to fix historical building safety defects.'

(4) *Definition of 'relevant defect'* (published 21 July 2022) – see, paragraph 9, which refers to “relevant defects (including in relation to cladding systems and non-cladding defects)” and, Example 1, which provides an example of cladding systems caught by the protections as “fall[ing] within the definition of a relevant defect”.

(5) *Building safety leaseholder protections: guidance for leaseholders* (published 21 July 2022; updated 24 July 2024) – see paragraphs 5, 6 and 10, all of which refer to the Act providing protection against ‘historical safety defects’.

49. All of the above posit Paragraph 8 as solely concerned with historical or relevant defects (i.e. within the 30-year window), with cladding remediation as a subset of relevant defect. As with the post-Act Explanatory Notes, A does not rely on such guidance as evidence of Parliament's intentions in enacting the Act. Nonetheless, it sheds light on what the Act, and in particular Paragraph 8 and Schedule 8, were officially understood to mean: *Craies on Legislation* at §27-031. As such, while not conclusive, nevertheless particularly when taken together, they are persuasive, and thereby further ballast to A's arguments on Ground 1.

F. GROUND 1 – ERRORS IN THE DECISION BELOW

50. As regards Ground 1, the FTT's Decision dealt with the point briefly (see, §§222-226) [CB/11/220-221]. It was only one of several issues addressed in the Decision, which included determining the contention of some leaseholders that: (i) there was no defect; and (ii) a patch repair scheme would have sufficed in any event (which would have involved no wholesale removal or replacement of any element). It is further to be noted that the FTT did not have the benefit of the guidance in four decisions in *UBS*; *Triathlon* and *Adriatic* – and perhaps most importantly, *Lant Street*.

51. The UT on the other hand was wrong, for the reasons given above, to dismiss the significance of these cases. Whilst the UT noted the arguments put forward by A: (i) their Decision does not explain in any detail why A's arguments were wrong; and (ii) the anomalies produced by the Rs' (and the UT's) construction are not 'explicable' for the reasons given (§§55-56) or at all [CB/7/122]. Any 'bright line' between costs which do and do not fall within Paragraph 8 is not drawn where the UT put it. Much reliance appears to have been placed on the fact the UT understood A to be advancing a case that the statutory wording was erroneous (see §57) [CB/11/122-123]. As explained, this was not the case. A's case is that, if anyone is suggesting there has been an 'error', it is Rs error: their case means implicitly that the wording of ss.116, 120 and 122 in particular is wrong/incomplete. Thus if the Tribunals were right, ss.116, 129 and 122 provide incomplete (misleading) descriptions of Schedule 8, because no mention is made in any of those sections, that the Schedule does not only relate to relevant defects. A's construction does not require words to be read into the sections (or Schedule 8) – it requires no more than a consistent reading of Part 5.

G. FOUNDATIONS 2-5 – THE DEFINITION OF CLADDING REMEDIATION

52. Grounds 2 to 5 relate to the construction of Paragraph 8 and, in particular, the definition of ‘cladding remediation’ in Paragraph 8(2): the *“removal or replacement of any part of a cladding system that (a) forms the outer wall of an external wall system; and (b) is unsafe”*.
53. A’s case is that Paragraph 8(2) must be read in context to understand the specific mischief which it targets. Whereas Schedule 8 and Paragraph 8(1) show a broad intention to protect leaseholders from the costs of the ‘cladding crisis’ (as defined above), Paragraph 8(2) arose in the context of excessive landlord caution regarding fire safety and thus has a narrower aim: to ensure that only ‘cladding remediation’ truly deserving of the Schedule 8 costs protection is caught.
54. Read in that context, the conditions imposed by Paragraph 8(2) make sense. As a matter of policy, the Act is only concerned to absolve leaseholders from the costs of: (i) removing or replacing; (ii) (outermost) cladding; (iii) which is dangerous (in the fire-safety sense). Unless all three conditions in Paragraph 8(2) are met, the costs protection in Paragraph 8(1) will not apply. Leaseholders are thus protected, but within the limits prescribed by Parliament.
55. The FTT (and UT on appeal) were in error, not least because they identified the wrong starting point. By first asking whether there was anything at CPH that could fall within a broad definition of ‘cladding’, then concluding that, since there were elements on CPH that could be so described, there was accordingly removal or replacement of unsafe cladding, and therefore that the whole of the Proposed Scheme was accordingly ‘cladding remediation’, the FTT asked itself the wrong questions, and in the wrong order. In doing so, it misunderstood both the spirit and the words of the statutory threshold for costs protection in Paragraph 8(2).

Applicable principles of construction

56. The literalist and purposive principles of construction referred to above are equally applicable to these grounds. So is the ‘mischief rule’: if a statute is ambiguous, courts may look at the reasoning or policy behind the legislation to resolve that ambiguity. Having identified the mischief targeted, courts may construe the statute to achieve that end.
57. Under Ground 1, A does not contend that the tenor of Paragraph 8 is ambiguous [CB/1/16]. However, the prolix wording of Paragraph 8(2), and unclear source of the specific words

chosen, are sufficiently ambiguous to engage the mischief rule for the purposes of Grounds 2-5 [CB/1/16-17].

58. Accordingly, it is essential to identify the precise mischief being targeted by the Act and the specific provision in question. Only by identifying the relevant mischief can the provision then be read in its true context.

59. Paragraph 8(1) confers the costs protection itself. The mischief targeted by this paragraph – and the broad justification for the leaseholder protections in Schedule 8 – was clearly the ‘cladding crisis’ and issues arising from this in the 30-year window (see above).

60. But Paragraph 8(2) defines and thereby limits the scope of that protection, by defining the type of ‘cladding remediation’ eligible to benefit from the cost protections. The reason for (or ‘mischief’ behind) this limitation is to be understood by considering the policy context.

Relevant policy context

61. In January 2022, before Paragraph 8 was introduced by Lords Amendment in March 2022, there was an important policy shift by the Government. In the aftermath of the Grenfell Tower inquiry, a compliance-based approach had prevailed under the Building Regulations 2010 in respect of new buildings, exemplified in the government-issued ‘Consolidated Advice Note’. However, Government increasingly recognised that this document had been “*wrongly interpreted*”: provoking an over-inclusive and over-cautious approach to building safety which led to “*unnecessary and costly remediation work*”,²⁵ and which was inappropriate for existing buildings.²⁶

62. On 10 January 2022, in the Commons debate on the Building Safety Bill (Bill 177), the Government accordingly set out the elements of its ‘building safety reset’.²⁷ In response to the prevailing excessive caution regarding building safety, Michael Gove announced the development of new and improved guidance, supported by the Government, and developed by the British Standards Institution. This became PAS 9980:2022, published on 29 January 2022 (“**PAS**”).

²⁵ Hansard, 10 January 2022, Col.284.

²⁶ PAS 9980:2022 at §0.3.

²⁷ Hansard, 10 January 2022, Col.285.

63. In the same debate, Mr Gove introduced the leaseholder protections in Paragraph 8 (“*no leaseholder living in a building above 11 metres will ever face any costs for fixing dangerous cladding...*”). But that sentence must not be read in isolation. The statement was made in the context of the (30-year) cladding crisis as the remainder of Mr Gove’s statement makes clear. On the same day, the Government also withdrew its Consolidated Advice Note. As can be seen, Paragraph 8 thus arrived as part of a balanced policy reset, in which the Government took action to protect only certain leaseholders from certain costs.
64. As at 2 March 2022, the term “*cladding remediation*” in Paragraph 8(1) had been left to be defined by secondary legislation. By 29 March 2022, this changed, and the current wording of Paragraph 8(2) was proposed by a further amendment (HL Bill 125, Amendment 169).
65. It is not easy to discern what prompted this change. However, it may be inferred from: (i) the policy shift on 10 January 2022; (ii) the publication of the Government-influenced PAS shortly afterwards; and (iii) above all, the similarity of the language used in PAS, that Paragraph 8(2) was introduced in the context of the ‘building safety reset’ and, specifically, the ‘row back’ from excessive landlord caution in remediating cladding defects post Grenfell.

PAS

66. Under PAS, a new ‘risk-based approach’ to external-wall fire safety was adopted. This was expressly designed to promote a more pragmatic and proportionate approach to fire safety.²⁸
67. PAS is key background to assist the Court in construing the language of Paragraph 8(2)(a) (“*forms the outer wall of an external wall system*”). Where an expression is used in a statute dealing with a technical subject (e.g. fire safety), it is legitimate to consider how that expression is usually understood in that context, which includes any relevant technical or industry usage.²⁹ Broadly, PAS illustrates three points:

- (1) First, there is a range of different forms of construction for external walls.

²⁸ PAS 9980:2022 at §0.3(f); see also Section 1 (scope), Section 6 (legislative context), Section 7 (Principles and scope of fire risk appraisal) and Annex C (informative” legislative context).

²⁹ *Lant Street*, §102, citing *The Dunelm* (1884) 9 PD 164, at 171 per Brett MR.

(2) Secondly, ‘cladding’ is understood to mean the outermost component forming part of an external wall construction, as opposed to being the entire external wall itself.

(3) Thirdly, the PAS guidance is focused solely on the safety of that outermost component of the external wall and, in particular, the fire-safety standards which it should meet.

68. These three features of PAS, and especially the language in which they are expressed, evoke (if not mirror) the wording of Paragraph 8(2), and so indicate how it should be construed.

69. First, PAS defines “external wall construction” as a composite system including a “range of different forms of construction used for the entirety of the external walls of a building, from inside to outside, including both internal and external finishes”. Notably, PAS is concerned only with cladding located on, and so forming part of, this external wall system:

*‘NOTE 1 In the context of this PAS, external wall construction includes any cladding on the external wall (whether installed as a complete system at the time of construction or retrospectively through, for example, renovation) as well as **the underlying wall construction**, whether loadbearing or not.’³⁰*

70. Secondly, PAS defines “cladding” as a “**system of one or more components that are attached to, and might form part of the weatherproof covering of, the exterior of a building**” (at §3.1.4). Again, PAS is concerned only with those cladding systems which are located on or attached to, and thus form part of, the external wall construction / system – not those which are the external wall itself:

‘NOTE: Such systems are normally attached to the primary structure of a building to form non-structural, non-loadbearing external surfaces and can comprise a range of facing materials/cladding panels, including metal composite panels or non-loadbearing masonry, along with insulating materials, rendered insulation systems ... and insulated core sandwich panels, which are attached to the substrate. Combinations of, for example, cladding panels and insulation foam cladding systems, and such systems might include cavities, which can be ventilated or non-ventilated. The cladding system also encompasses the supporting rails and bracketry, as applicable to attach the cladding to the building and cavity barriers where applicable. Systems that constitute the entire thickness of the external wall, by definition, cease to be cladding systems and are the external wall, e.g. curtain walling.’³¹

³⁰ PAS 9980:2022 at §3.1.10, emphasis added.

³¹ PAS 9980:2022 at §3.1.4, emphasis added.

71. Thirdly, PAS distinguishes between the inner and outer parts of external wall systems, targeting the fire-safety guidance only at the ‘outermost’ cladding component (which must comply with fire-safety standards on combustible materials), as opposed to materials inside that outermost component which form part of the internal wall system / construction:

*‘**Outermost cladding component** cannot be readily combustible and needs to provide adequate resistance to fire spread around the fire barriers [...] any combustible materials inside the outmost component of the external wall are contained within the compartment and in effect become part of the internal construction.’*

72. As can be seen from the above, the revised guidance in PAS was concerned only with the fire-safety of cladding forming the outer part of an external wall system, in response to the former excess of caution in respect of building safety.

73. This was the context for, and the mischief targeted by, Paragraph 8(2).

Paragraph 8(2)

74. The wording of this provision becomes clear when read in the context above: this additional legislative purpose was to weed out landlords’ works which did not constitute dangerous ‘cladding remediation’ deserving of protection under Paragraph 8(1). Paragraph 8(2) tells the reader what is ‘cladding’ for the purposes of Paragraph 8(1), and defines what will be regarded as ‘remediation’ so as to receive the costs protection. The three conditions in Paragraph 8(2) can thus be dealt with in turn.

(1) There must be remediation

75. The definition of ‘remediation’ in Paragraph 8(2) qualifies Paragraph 8(1) in three ways. The costs protection extended to leaseholders covers:

(1) Not any works to a building but only those which involve ‘removal’ or ‘replacement’.

(2) Not the removal/replacement of any part of a building: only something which answers to the definition of a ‘cladding system’.

(3) Not the removal/replacement of any cladding system (or part thereof): only one which meets both conditions in Paragraph 8(2)(a)-(b).

(2) There must be remediation of a part of a ‘cladding system’ which is ‘outermost’

76. The relevant words in Paragraph 8(2) are “*any part of a cladding system that forms the outer wall of an external wall system*”.

77. The first point is that, as regards the need for something which answers to the definition of a ‘cladding system’, the following general points may be made:

- (1) The word ‘cladding’ most naturally describes material attached to the structure of a building to provide an ‘outer skin’, or outermost weather-facing layer or surface.³²
- (2) A ‘cladding system’ can (and likely will) comprise multiple different components, of which one such component will be the weather-facing outer layer or skin.
- (3) That is consistent with: (i) the natural and ordinary meaning of the language used; (ii) the comments of the Deputy President of the UT in ***Lant Street***³³; (iii) the definition of ‘cladding’ provided in PAS (above) and RICS³⁴; (iv) other provisions in the Act, such as s.149 and the definition of ‘cladding product’ in s.149(12); and (v) Government guidance which also refers to PAS when defining cladding and cladding systems.³⁵
- (4) An overly broad construction of ‘cladding’ or ‘cladding system’ risks the scope of Paragraph 8(1) being drawn more widely than the language allows: offending not only the ordinary meaning of the words used, but also the underlying policy concerns that landlord’s building safety measures had strayed “*beyond what is necessary*”.³⁶

³² See, for example, OED definition of ‘cladding’: *a coating or covering applied to the surface of an object, a building etc; the application of such a coating*

³³ ***Lant Street***, §§99-107.

³⁴ RICS, Prof Standard ‘Valuation of properties in multi-storey, multi-occupancy residential buildings with cladding’ (reissued in March 2024) – cover page and glossary (definition of cladding).

³⁵ See, for example, the Government’s *Building Safety Fund guidance for existing applications registered 2020, Annex A: Technical Information*, published before the Act and updated afterwards, which regards ‘cladding’ as the singular weather-facing outer layer of a cladding system. Likewise, the Government’s Technical Guidance for Applicants of Building Safety Fund Applying for Funding via PAS 9980:2022, which provides: “*The building must have cladding, using the definition of cladding set out in the PAS 9980:2022 guidance*”.

³⁶ Hansard, 10 January 2022, Col.284.

78. However, the relevant question for the purposes of Paragraph 8(2)(a) is not whether there is any ‘cladding’ or anything at all that could properly be described as a ‘cladding system’. This is where the FTT (and the UT) erred.

79. Rather, Paragraph 8(2)(a) poses a narrower question: whether the cladding system (or part thereof) which is being remediated is ‘outermost’, in the sense that it “*forms the outer wall of an external wall system*”. Anything which does not meet that definition – be it cladding, cladding system, or otherwise – is not caught.

80. A’s construction of Paragraph 8(2)(a) as targeting only ‘outermost’ cladding is consistent with:

- (1) The express wording, which was deliberately introduced by amendment (rather than being left to be defined in secondary legislation). As a matter of legal principle, it is to be assumed that Parliament legislates in a manner which is coherent, consistent and rational, and thus that ‘it means what it says’ when it uses certain words. It is not sufficient to determine whether something might be described as ‘cladding’ and then to assume that Paragraph 8(1) must apply – to do so ignores the words Parliament has chosen.
- (2) The revised fire-safety guidance in PAS, introduced very shortly before the wording in Paragraph 8(2)(a) was introduced, which clearly targeted only the outermost cladding components in external wall systems as the subject of fire-safety measures.
- (3) The ‘building safety reset’ underlying Paragraph 8, which included a move away from an overly cautious, overly inclusive approach towards a more proportionate ‘risk-based’ approach resulting in less unnecessary remediation.

81. A’s construction is also consistent with a number of external aids to construction, including and the post-Act Explanatory Notes - at paragraphs 915, 1748, 1228 and 558, in particular - which refer variously (inter alia) to “*cladding on external walls*” and “*unsafe cladding form[ing] the outer part of an external wall*”.

82. Finally, Government Guidance lends further support – in particular:

- (1) *Cladding Remediation* (published 21 July 2022) which refers to “*the use of unsafe cladding on the external walls*” and gives as an example of what would constitute

‘cladding remediation’ attracting costs protection under Paragraph 8 “*cladding systems that cover part of the external wall*”.

(2) *Cladding Safety Scheme* (updated 18 June 2025), which provides that:

“The building must have cladding, using the definition of cladding set out in the PAS 9980:2022 guidance. If you have buildings with external walls that comprise only masonry or concrete construction, or in which combustible materials are limited to insulation within the cavity of double skin masonry walls, you should consider or take appropriate advice on whether you need a FRAEW. The PAS 9980 guidance suggests these systems are considered to pose a minimal risk to life.”

(3) There must be remediation of a cladding system which is ‘outermost’ and ‘unsafe’

83. That brings us to the final condition for service charges to relate to ‘cladding remediation’ within the meaning of the Act, as specified in Paragraph 8(2)(b).

84. Parliament has chosen to limit the costs protection in Paragraph 8(1) even further; it extends only to cases where the outermost cladding system (or part thereof) being remediated is “*unsafe*”. While this term is not defined in the Act, its meaning can be derived from an orthodox application of principles of statutory construction.

85. A’s construction of this term is simple: “*unsafe*” means ‘combustible’ or dangerous in the sense that it contributes to the spread of fire. This is consistent with, and follows from:

(1) Natural and ordinary meaning. On its ordinary dictionary definition, ‘unsafe’ is an adjective which means dangerous or not safe (i.e. not free from risk). It thus describes the ‘condition’ of the thing being remediated (the relevant part of the cladding system). The question is thus the nature of the risk referred to.

(2) Technical guidance. ‘Cladding’ is defined in PAS as referring to “*non-structural, non-loadbearing external surfaces*”. This definition was applied by the UT in ***Lant Street*** without qualification.³⁷

(3) Other sections of the Act. By s.120 of the Act, “*building safety risk*”³⁸ is defined as risk to the safety of people in or about a building arising from the spread of fire or the collapse of a building or any part of it: reflecting the original and

³⁷ PAS at §3.4.1; ***Lant Street*** at §§103-105.

³⁸ There is a slightly different definition of ‘building safety risk’ in Part 4 of the Act (s.62)

extended remit of the Grenfell inquiry. (It is perhaps notable that para 8(2)(b) does not refer to a ‘building safety risk’, so suggesting that the word ‘unsafe’ is to be read more narrowly than that phrase).

(4) Cladding is by its nature non-structural. As such, it is difficult to see how it could be structurally dangerous or defective. The only remaining risk as defined under the Act is thus, as a matter of logic, the risk of fire spread, and the word ‘unsafe’ is thus to be so confined.

86. A’s construction of ‘unsafe’ as meaning ‘combustible’ or contributing to fire safety risk is also consistent with:

- (1) The purpose and context of the Act. As described above, the Act was originally introduced to target the ‘cladding crisis’ following the Grenfell Tower tragedy, in which “*combustible cladding*” on the external façade was a significant cause of fire spread. While the remit extended beyond the original focus on combustible ACM-cladding to include “*other combustible cladding materials*”, the sorts of structural risks targeted concerned matters other than cladding (risk of building collapse) – i.e. the ‘non-cladding defects’.³⁹ Section 149 of the Act, particularly when read alongside the definition of ‘cladding product’ in s.149(12), is consistent with reading Paragraph 8 as targeted at unsafe (modern) cladding products or practices (i.e. unsafe systems) and that such products are those which are attached to an external wall and form part of it, but are not the external wall itself.
- (2) Judicial guidance. In **BDW**, the Supreme Court stated: “*Aside from **unsafe cladding**, other issues were identified, including **other fire safety concerns**, such as lack of compartmentation and flammable balconies, and serious structural defects that gave rise to risks of buildings (or parts of buildings) collapsing*” (at §2, emphasis added).
- (3) Post-Act Explanatory Notes. These make clear that ‘unsafe’ cladding is chiefly used to refer to fire-safety defects. See the Note at §915: *Since the Grenfell Tower fire in 2017, it has become apparent that a number of residential blocks of flats have **serious historical fire safety defects**, often, but not always, associated with their original construction. Most notably this has included the use of **unsafe cladding** on the*

³⁹ PAS at §0.1.

external walls of these buildings. Due to the risk to life posed by these defects, extensive and often costly remediation work to make buildings safe can be needed.

- (4) Government guidance. The guidance on the Cladding Safety Scheme overview (updated 18 June 2025) provides: “‘**Unsafe**’ means those cladding systems that have been identified as containing **combustible** materials”. Guidance on the ‘Definition of Relevant Defect’ (published 21 July 2022) which refers to “*flammable cladding system*”.

87. In light of the above, it is clear that the additional condition imposed by the use of ‘unsafe’ in Paragraph 8(2)(b) is one of combustibility or contributing to fire safety risk. That is what was within Parliament’s purview and the mischief was to protect leaseholders against the costs of removing or replacing such ‘unsafe’ products or systems.

The meaning of ‘cladding remediation’

88. Accordingly, A’s case on Grounds 2-5 is that Paragraph 8(2) provides a threefold definition of ‘cladding remediation’, all elements of which must be met for the protection in Paragraph 8(1) to apply.

89. Not only did the UT fail to identify or apply the correct questions in determining whether ‘cladding remediation’ within the meaning was present at CPH, its factual findings do not support its conclusion that Paragraph 8(2) was in fact satisfied.

H. GROUNDS 2-5 - ERRORS IN THE DECISIONS BELOW

90. What matters most as regards Grounds 2-5 is the Decision of the FTT rather than that of the UT, which merely endorsed the FTT’s Decision (see *Lea and others v GP Ilfracombe Management Ltd* [2025] 1 WLR 371 at para 31 per Coulson LJ).

91. It is common ground that CPH is a ‘relevant building’ within the term’s definition in Part 5 of the Act, owing to its height, and A has always contended that its façade is in dire need of repair (even in the face of disagreement from leaseholders who, for many years, asserted the Proposed Scheme went beyond repair and the landlord was not permitted to improve CPH) [CB/11/180-193 (§§72-110)].

92. Accordingly, the FTT Decision accurately recorded that [CB/11/204-205]:

‘153. In order to fix that problem (i.e. to put the façade into good and substantial repair and condition) Dr Harris [A’s expert] and Mr Gray [Rs’ fenestration expert] agree that the only practical solution is the Proposed Scheme. That Proposed Scheme will, in effect, create a new curtain wall stuck on the existing façade, so that the existing structural parts of the façade will no longer have a structural function. There will, as a consequence, be no further danger of the collapse of the façade due to decay or rot in the residual timbers.’

93. For the avoidance of doubt, A does not challenge the factual findings of the FTT as to the physical make-up of the façade [CB/11/229 (§259)]. The point is however that the construction design and safety issues which arose at CPH are not the target of the protections afforded by the Act and Paragraph 8(1).

94. Applying the proper construction of Paragraph 8(2) set out above, the three statutory conditions to qualify as ‘cladding remediation’ are not satisfied on the facts as found by the FTT.

95. **Is there remediation?** In one sense, it could be said that parts of the exterior of CPH are being ‘removed or replaced’, but what is being removed or replaced are not relevant ‘unsafe’ parts of a ‘cladding system’. Thus, that work is not remediation for the purposes of Paragraph 8.

96. **Is there remediation of an ‘outermost’ cladding system?** No. In the instant case, the FTT had considerable difficulty identifying the constituent elements of a ‘*cladding system that forms the outer wall of an external wall system*’ at CPH:

(1) At §259 of its Decision, the FTT described the make-up of the façade at CPH [CB/11/229]. However, the FTT fell into error by reading the description of the integrated structural and non-structural components that make up or support the glazed façade of CPH, then concluding that: *‘That design, seems to us, is apt to meet the description of cladding’*.

(2) What the FTT has described, in the preceding paragraphs, is simply a number of components that made up the building facade. One might ask, having read their description: where is the cladding, and what material does this consist of? Further, where is the cladding system, and what are its component parts? It is impossible to answer these questions having read this key paragraph of the Decision. That is because there is no cladding on any definition, still less the ‘outermost’ or ‘unsafe’ cladding at which the provision is targeted.

(3) At §262, the FTT then concluded that: *‘We are therefore satisfied that the external facades on each of the East and West facing elevations are ‘cladding’ in the generic sense’* [CB/11/229]. It is unclear what the FTT meant by ‘in the generic sense’, and what definition it was applying. However, the use of that phrase emphasises the point, apparent from §259, that the FTT could not actually identify the ‘cladding’ or ‘cladding system’, let alone where it was on the exterior façade such as to form *‘the outer wall of an external wall system’* within the meaning of Paragraph 8(2)(a). The UT repeated the error at §75 when - somewhat tellingly – they concluded “the façade at CPH comprises ‘the outer wall of an external wall system.’” [CB/7/126]

97. Instead, the FTT appear in §262 effectively to describe the whole of the external façade at CPH as ‘cladding’ (including, for example) the ‘traditional’ timber framed windows with glazing [CB/11/229]. Indeed, their difficulty in finding any ‘cladding’ to begin with is further evidenced by their alternative conclusion that spandrel panels would constitute the cladding system.

98. The FTT’s description thus points to their own difficulties when it came to satisfying the second condition under Paragraph 8(2) of a *‘cladding system forming the outer wall of an external wall system’*. Instead of looking to see whether the statutory test was met, they looked for something which could be characterised as ‘cladding’, deciding (in effect) that the whole external wall was ‘cladding’ in the ‘generic sense’. The Tribunal then worked backwards from there. Taking this approach was illegitimate. The UT fell into the same error by endorsing the FTT’s analysis and conclusion for the reasons they gave (§75) [CB/7/126].

99. **Is there remediation of an outermost cladding system which is unsafe?** No. This is apparent from the absence of any findings in the FTT’s decision regarding combustibility:

- a. There is no question of any fire safety issues as regards the existing exterior of CPH or any of its component parts, including those being removed and replaced; and
- b. There is no question of inherently defective (i.e. flammable) cladding products at CPH. The only ‘unsafe’ element (the degraded hardwood timber sub-frame) does not represent a fire-safety risk; it is to be left in place as an internal decorative feature. Indeed, it is telling that both experts posited as feasible, albeit more costly, a patch

repair to the timber sub-frame as advanced by a number of leaseholders for many years, effectively replacing like-for-like the degraded elements.

100. It is thus apparent that, if the FTT and UT had applied the proper construction of Paragraph 8(2) to the facts, they must have found that there was no ‘cladding remediation’ at CPH within the meaning of the Act, to which the protection in Paragraph 8(1) might apply. The costs of the Proposed Scheme must therefore be recoverable, subject to the usual protections afforded by the Landlord and Tenant Act 1985.

I. CONCLUSION

101. For the reasons given above, the Court is invited to allow the appeal.

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