

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)

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

THIRTEENTH RESPONDENT’S REPLACEMENT

APPEAL SKELETON ARGUMENT

References herein to pages in the Core Bundle are shown [CB.XX], and to the Supplemental Bundle as [S.XX].

Introduction and Summary

- 1 This skeleton argument is filed on behalf of the thirteenth respondent, Mr Sean Doran, who is one of the leaseholders and lives at Centre Point House.
- 2 Mr Doran will face a service charge bill of in excess of £325,000 in respect of the cost of re-cladding the façade of Centre Point House, if the Appellants do eventually undertake their long-delayed planned scheme. That is for one relatively modest flat. However, as the lower courts found in these proceedings, because Mr Doran holds a ‘qualifying lease’, no service charge will in fact be payable because Mr Doran is protected from having to pay for the costs of re-cladding by virtue of paragraph 8 of Schedule 8 of the Act.

- 3 Two things are worth noting at the outset, by way of context:
- (1) Firstly, the only reason the paragraph 8 protections are engaged is because the cladding on Centre Point House is indisputably unsafe¹. Had repair or replacement been undertaken more promptly (in accordance with A's covenants under the flat leases), such that the façade was not permitted to deteriorate to the point where there is a serious risk of parts of it falling from the building², paragraph 8 would not apply. This was all avoidable by A.
 - (2) Secondly, the design of the façade was *inherently* defective – i.e. from the point of construction. By virtue of its design, the façade was always bound to deteriorate and fail due to water being unable to escape once it found its way behind the pressure plates. This is as the FtT found at §138 **[CB.200]** /§153 **[CB.204]**.
- 4 In a lengthy reasoned decision, the FtT explained its conclusions on the issues in these proceedings, including as to the proper operation of Paragraph 8. The FtT panel consisted of the London Deputy Regional Judge (Judge Carr), and two very experienced surveyors, one of which is the Regional Surveyor for London.
- 5 The FtT's conclusions include a number of significant findings of fact, that cannot be challenged in this appeal (s.11 Tribunal Courts and Services Act 2007), including as to the nature of the construction of the façade, whether the cladding is unsafe, and whether the cladding forms the 'outer wall' of an external wall system. It made those findings following a 5 day trial, including site view, at which it heard evidence from many witnesses, including leading façade experts.
- 6 The Upper Tribunal dismissed an appeal against those findings, in no small part due to the fact that a finding of fact by the FtT cannot be disturbed on appeal – see decision at §69 **[CB.125]** & §75 **[CB.126]**. The Upper Tribunal panel consisted of the President of the FtT (Property Chamber) and another experienced surveyor, Mrs Martin.

¹ As found by the FtT and endorsed by the UT(§80) **[CB.127]** – being a finding of fact not capable of challenge on appeal. A's contention that the word 'unsafe' should be read such that it only relates to *fire* risks is addressed below, but in short R13 submits this argument is unsustainable.

² In fact, one window sash has *already* fallen, fortunately without causing any injuries to persons below.

- 7 This Court will properly be reluctant to disturb findings of specialist tribunals.
- 8 Whilst that may be an answer to some parts of the appeal, it is of course accepted that A's first (and indeed, now central) ground in particular is an appeal on a point of law; the focus of this skeleton argument is upon that ground, which R13 says should be dismissed. That focus should not, however, be seen as an indication of any acceptance that the other grounds have merit. They do not, for the reasons both the FtT and the UT gave. A few points in that regard are touched on below.

Background

- 9 The background as set out in section C of A's appeal skeleton argument is broadly agreed save that R13 does not know whether A will in fact carry out the scheme of works in 2026 and has only now (on receipt of the skeleton) discovered that the total cost of the Proposed Scheme is now in excess of £12m; sums significantly less than this were mooted in the context of these proceedings before the FtT.
- 10 Additionally, it is noted that whilst at §8 of A's skeleton argument it is said that there was some 'structural function' to the old timber subframe, that function was only structural (in the taking of loads sense) in terms of supporting the loads associated with the façade itself (including windows); it is not structural in the sense of supporting the underlying building which is of concrete frame construction.
- 11 There are a number of helpful photographs and drawings to illustrate the nature of the 'experimental' / 'unique' façade design to CPH. See, in particular, the photograph of one side of CPH at [S.196], the photographs attached to Dr Harris's report at [S.288] onwards, a drawing illustrating the timber 'modules' forming the rails to which the glazed panels are fixed at [S.294], the photographs from the Sandberg report at [S.100] onwards, the photograph of an exposed spandrel zone area at [S.3], and (importantly) drawings SK024, 025 and 026 at [S.314] on.

The legal framework

- 12 The Building Safety Act 2022 ('the Act') represents Parliament's most substantive legislative response to the concerns around building safety in taller residential buildings that arose out of the Grenfell Tower fire. It introduced, amongst other things, a scheme

(underpinned by complex sets of regulations that have been amended multiple times) designed to protect certain leaseholders from having to pay by way of service charge some or all of the cost of remediating unsafe buildings.

- 13 This court and the Supreme Court have now considered the Act several times, albeit without focus to date upon paragraph 8. The Court of Appeal has heard the appeals in Adriatic Land 5 Limited v Leaseholders of Hippersley Point [2025] H.L.R. 43 (“Hippersley Point”) and Triathlon Homes LLP v Stratford Village Development Partnership (1) Get Living Plc (2) East Village Management Ltd (3) [2025] EWCA Civ 846 (“Triathlon”); in both of those cases, the Supreme Court has granted permission to appeal with respect to a related issue as to the retrospective application of the Act (not in issue in this appeal).
- 14 In addition, albeit fairly peripherally for the purpose of this appeal³, the Supreme Court has handed down judgment in URS Corp Ltd v BDW Trading Limited [2025] 2 WLR 1095 (“URS”). In URS, in the joint judgment of Lords Burrows and Hamblen at §84, the background to the Act is said to be that it was:

“part of the Government’s response to the need to identify and remediate historic building safety defects as quickly as possible, to protect leaseholders from physical and financial risk and to ensure that those responsible are held to account.” [emphasis added]

- 15 The overall scheme in Part 5 of the Act, and more specifically the protections introduced by Schedule 8 are well covered in Hippersley at §13-30. Schedule 8, which is titled “Remediation costs under qualifying leases etc”, includes a series of provisions that protect (for the most part⁴) only those leaseholders who have a “qualifying lease”. Schedule 8 as a whole represents a particularly radical statutory intervention into the

³ In particular, given the specific focus on s.135 of the Act, and given the Supreme Court’s apparently mistaken assumption that the Explanatory Notes to the Act published post-assent were substantially the same as those before Parliament when the bill made its way through Parliament (they were not – see Hippersley at §34).

⁴ Paragraph 2, Sch. 8 is not restricted to the protection of leaseholders with qualifying leases but instead applies to “a lease of any premises in a relevant building”; that includes commercial premises in mixed-use relevant buildings. The substance of this provision is that no leaseholders will be required to pay a service charge for the costs of remediating relevant defects where the relevant landlord was responsible for the defect or is associated with the person responsible.

arrangements between landlord and tenant. As this Court and the tribunals have already found in other cases, it is drafted in seemingly intentionally wide terms. It can, it seems, have very surprising and even unfair (at least subjectively) or arbitrary effects. However, that is just the necessary corollary of Parliament’s decision to relieve leaseholders from having to pay the costs of cladding remediation: Hippersley Point at §163 *per* Nugee LJ and see §79 *per* Newey LJ. As noted by the President of the Upper Tribunal in Adriatic Land 5 Limited v Leaseholders of Hippersley Point [2024] L.&T.R. 1 at §158, ‘*What might be seen as unfair results are, it seems to me, simply a reflection of life in the new world of the 2022 Act*’.

16 Pausing here, it should be noted that when the Building Safety Bill was introduced to Parliament it was directed at changing the regulatory regime applicable going forward to high-rise buildings. It was not directed at affecting liability for past defects. It was only late in the passage in the bill (at the Committee stage in the House of Lords) that it was amended to introduce what became Schedule 8, which was introduced by way of amendments announced on 14 February 2022.

17 Paragraph 8 provides as follows:

(1) No service charge is payable under a qualifying lease in respect of cladding remediation.

(2) In this paragraph “cladding remediation” means 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.

18 Other than the words ‘qualifying lease’, and the phrase ‘No service charge is payable’, none of the other words or terms used in that formulation are defined in the Act save to the extent sub-section (2) attempts to assist. It has been left to the courts to determine their meaning, and to establish whether or not on the facts of each case a scheme of works falls within or outside of them.

Relevant principles of construction

19 The Court’s objective, when interpreting a statute, is to give effect to the intention of Parliament, as discerned by considering the ordinary meaning of the words used in their

statutory context, with regard to the purpose of the provision and the consequences of rival interpretations.⁵ This is an exercise which will also be informed by the application of accepted principles of statutory construction.⁶

- 20 The words which Parliament has chosen to enact as an expression of the purpose of the legislation are ‘*the primary source by which meaning is ascertained*’, per Lord Hodge in R(O) v Secretary of State for the Home Department [2023] AC 255 at [29]. A phrase must be read in the context of the section as a whole and in its wider context. Importantly, external aids (such as explanatory notes) do not ‘*displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity*’ (at [30]). The intention in that context is (of course) objective, not subjective (at [31]).
- 21 The importance of the primacy attached to the words used in a statute is obvious: “*Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.*”⁷
- 22 The relevance of the post-assent explanatory notes published by the Government with respect to the Act is very limited; they do not reflect the notes that accompanied the bill, or the amendments to that bill that went on to introduce (fairly late in the day) what is now Schedule 8: Hippersley at §65-72.
- 23 To the extent a later enactment or subordinate legislation proceeds on a particular view as to the operation of an earlier Act, that later legislation will not lightly be taken to override the clear legislative intention expressed in the words of an earlier Act: Bennion at 24.19. The legislature cannot authoritatively interpret the law; that function belongs to the judiciary. Per Lord Radcliffe in IRC v Dowdall O’Mahoney & Co Ltd. [1952] AC 401 at 426, ‘*The beliefs or assumptions of those who frame Acts of Parliament cannot make the law*’. That said, where legislation is ambiguous, subsequent primary legislation

⁵ See *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687 at [8] per Lord Bingham.

⁶ See e.g. *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] 2 AC 349 at pp.397 to 398 per Lord Nicholls.

⁷ *ibid.* at 397.

may sometimes assist, *per* Lord Sterndale MR in Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 2 KB 403 at 414. It is doubtful the same reasoning would apply to later delegated legislation: Bennion at 24.19. And, quite obviously, even less so still with respect to post-Act ‘guidance’ and other materials.

Ground 1

Meaning is clear and drafting intentional

- 24 As the FtT correctly noted at §216 of its decision **[CB.219]**, paragraph 8 is ‘stark in its language’. The words used in paragraph 8(1) are remarkably simple and straightforward: no service charge is payable... for cladding remediation.
- 25 Paragraph 8(1) is not ambiguous in any way. Read literally, it does not lead to absurdity. The words are clear.
- 26 The words are also entirely consistent – as noted in Hippersley at §43 - with the ministerial statement of the Secretary of State (as promoter of the bill) on 10 January 2022 that foreshadowed the ‘building safety reset’: ‘...*no leaseholder living in a building above 11 metres will ever face any costs for fixing dangerous cladding and, working with Members of both Houses, we will pursue statutory protection for leaseholders and nothing will be off the table.*’⁸ That statement was also clear and unambiguous. No leaseholder will ever face such costs.
- 27 As the Appellants stress in their skeleton argument – albeit giving the factor far greater weight than it deserves in the process of construction – it was cladding concerns that had precipitated the wider examination of the safety of high rise buildings in the country. Addressing cladding costs was a political priority, but as part of a far more wide-ranging scheme addressing building safety issues more widely.
- 28 It is certainly true that Paragraph 8 stands in distinction to other provisions. It expressly – and it must be assumed deliberately – makes no reference to ‘relevant defects’ (to which the 30 year term is tied). Of course, it still only provides protection against payments due under qualifying leases, and buildings must still be a ‘relevant building’; but the

⁸ Hansard, Commons, Vol 706, Col 285, 10 January 2022

requirement that there be a ‘relevant defect’, as defined, has been omitted. There can be no doubt about that.

29 However, other provisions in Schedule 8 also stand in distinction to other provisions. Paragraph 8 is not the only ‘outlier’:

(1) Paragraph 2 is the only paragraph to provide protection to leaseholders under all leases – whether or not qualifying, whether residential or commercial. None of the others do this.

(2) Paragraph 9 contains exemptions specific to management companies in certain circumstances, unlike other provisions.

30 There has been a clear policy decision to treat cladding remediation costs separately from other types of remediation and mitigation costs. That may be, in part, due to the existence for some buildings of grant funding (for instance, via the Government’s Building Safety Fund, amongst a number of schemes) for cladding. It may be, in part, to reflect the Minister’s promise to the House (and the wider public).

31 Furthermore, it is clear from looking at the provisions as a whole that they are littered with policy ‘bright lines’ – whether that be that there is complete protection against the cost of remedying relevant defects where a landlord group happens to have more than £2m per building, or the arbitrary way in which it is determined whether a lease is qualifying, or the way in which the maximum cap under paragraph 6 operates. Sometimes parties will fall on the right side of a provision (from their perspective), sometimes they will not. The line with cladding was drawn in a straightforward manner – no service charge is payable *at all* if you have a qualifying lease.

32 That making no reference in paragraph 8 to the concept of a ‘relevant defect’ was intentional can also be seen in the language used in paragraph 10.

(1) The words used in paragraph 10(2) address the position where a paragraph in Schedule 8 provides that ‘*no service charge is payable under a lease in respect of a thing*’.

(2) Were paragraph 8 to be referable to cladding remediation that is limited to remediation of a relevant defect, there would be no reason to refer in paragraph 10,

several times, to a ‘thing’; the obvious wording to use would have been to refer to sums payable in respect of ‘a relevant defect’ – the formulation used in paragraphs 2-5 and 9. It is another outlier by referring to a ‘thing’.

(3) This is unlikely to be an accident. It clearly reflects the fact that there is protection under Schedule 8 in respect of the cost of relevant measures relating to relevant defects, the cost of cladding remediation, and legal and professional services costs relating to the liability of a person incurred as a result of a relevant defect - albeit that last point could probably fall under a formulation that simply referred to sums payable ‘in respect of’ a relevant defect of course – so it is paragraph 8 itself that is forcing the use of the term ‘thing’.

33 There is a further pointer in the words used in Schedule 8 to the fact that it was intentional not to limit paragraph 8 protection to solely relevant defects. The definition of ‘cladding remediation’ at paragraph 8(2) includes the requirement that the system is ‘unsafe’.

34 The meaning of ‘unsafe’ is addressed further below. However, it can be noted that for a defect to be a ‘relevant defect’ the defect would have to be by definition one that causes a ‘building safety risk’ (s.120(2)(b)). There would have been no need to include the requirement that the cladding system be ‘unsafe’ if the protection was limited to relevant defects, as they would necessarily be ‘unsafe’ by virtue of having a defect that causes a ‘building safety risk’. This is a clear pointer to the fact that paragraph 8 was intended to be a standalone provision, meeting the Secretary of State’s promise to leaseholders.

Outcome is not arbitrary

35 The first point to make is that the outcome of paragraph 8 as construed in the UT is not particularly arbitrary in itself. It is a blanket ban on recovery of the cost of cladding remediation under qualifying leases. That doesn’t in itself produce an arbitrary result any more than any other ‘bright line’ policy decision.

36 But even if that is wrong, or only partially right, and even accepting that Parliament is not lightly to be taken to have legislated with the intention of producing capricious and

arbitrary effects (para. 21(2) A's skel), the reality is that this is a feature of the Act to some extent in many ways, such as:

- (1) Even within Schedule 8, there are 'outliers' as above – all just part of one wider comprehensive scheme it might be said, but the protections certainly apply in different ways between paragraphs.
- (2) As this court noted in Hippersley, the retrospective application of the protections in Schedule 8 and more generally the effect of bringing the provisions into force on a particular date is inevitably going to produce arbitrary results however one construes the Act: §79 and §198. The arbitrary results illustrated by Hippersley are far more stark than anything that the Appellants can point to in this case.
- (3) No remediation order can be sought under s.123 of the Act where there is an RTM Company in place: Mirchandani and ors v Java Properties International Ltd (FtT, 18 February 2025, Dep. Regional Judge Carr) – an obvious anomaly.

- 37 The very nature of a 'bright lines' policy is that cases have to fall one side or the other of that line. Here, the result is that as the cladding does not amount to a 'relevant defect' as defined, the Respondents cannot force the Appellants to fix Centre Point House by application for a Remediation Order (under s.123). Nor can the Appellants apply for a Remediation Contribution Order (under s.124) against the original developer or its associates. Furthermore, a policy decision to only extend the limitation period in respect of Defective Premises Act 1972 ('DPA') claims to 30 years (s.135 of the Act) has the result that works undertaken 30 years and one day prior to the Act coming into force will have always fallen outside the scope of the provision. That is no more arbitrary than any other non-discretionary legal provision; either you fall within it, or you don't.
- 38 Other anomalies as pointed to by the Appellants in their skeleton argument (at paragraph 41) can equally be considered in the same way:

- (1) Yes, paragraph 9 only applies to costs incurred 'as a result of a relevant defect'. That's where the line was drawn. However, firstly, some cladding defects will amount to a relevant defect, even if not all will. Secondly, the most obvious focus of paragraph 9 is in respect of claims against third parties arising out of that defect (e.g. s.1 DPA claims), which in themselves are subject to limitation (and thus won't

be incurred much outside that limitation period). And thirdly, the effect is not actually as stark as is suggested anyway, in that leaseholders will be protected from the legal and professional fees associated with the remediation costs themselves because they are part and parcel of the cost of doing the cladding remediation itself; they are project costs. Accordingly, the costs of surveyors, designers, fire engineers, structural engineers, costs consultants, and all the other many professionals involved in large construction projects would be caught by paragraph 8 itself. And to the extent some costs are not caught by paragraph 8 or paragraph 9, so be it. The result is not ‘nonsensical’ as is suggested.

- (2) The fact that the Appellants cannot seek a Remediation Contribution Order or bring a DPA claim is far from a disincentive to make a building safe. Quite the opposite is true, logically. If the costs cannot be recovered from third parties, and a landlord will have to bear them itself, the landlord is incentivised to minimise those costs and or take steps to ensure the cladding never reaches the point where it is unsafe. The landlord is incentivised to keep it in repair thus meeting a policy objective. In any event, it is far from guaranteed that any potential developer defendant to a claim would still exist given the 30 year timespan.
- (3) It is true that the Appellants have not been able to recoup their anticipated outlay via Government funding schemes such as the Building Safety Fund. But that is not so much as a result of the age of the building as a result of the fact that the schemes are focussed upon fire safety issues rather than structural safety issues⁹. Glass cladding panels do not fall within the schemes. But in any event, it is difficult to see how the availability from time to time of discretionary grant funding schemes can be particularly relevant to construing paragraph 8.
- (4) As above, subsequent statutory instruments introduced pursuant to the Act shed no real light on *Parliament’s* intention.

⁹ The current Cladding Safety Scheme for instance only covers the cost of remediating ‘life safety fire risks associated with cladding and external wall systems on eligible buildings’: <https://www.gov.uk/government/publications/cladding-safety-scheme/cladding-safety-scheme-overview#what-we-will-fund>

- (5) Any supposed consistency in other documents where reference is only made to relevant defects including in the context of paragraph 8 does not necessarily support the Appellants' case. It is equally consistent with a policy decision that those various provisions (permitting the passing of costs on to other landlords e.g. where there is a chain of headleases) will only apply to cladding remediation where that is to correct a 'relevant defect' (i.e. tied to the 30 year period), with ability to pursue third parties thereafter falling outside the cut-off date – but leaseholders remaining protected nonetheless and landlords with repairing obligations left having to deal with that (probably rather small) subset of remediation costs. It is readily explicable¹⁰, and clearly not absurd; it is just not a result that suits the Appellants.
- (6) That inconsistency, if it is one, applies with respect to paragraphs other than paragraph 8 as well, suggesting the point isn't indicative of defective or incomplete drafting – but rather an intentional decision. When one considers paragraph 9, legal and professional costs incurred in pursuing claims against third parties are not relevant measures or relevant steps, and so reg.5 of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 ('the LPI Regs') does not assist with respect to those irrecoverable costs either, notwithstanding the express reference to both para.8 and para.9 in reg.5. All that is happening is that the LPI Regs only facilitate shifting of costs onto other landlords where the costs relate to a relevant measure relating to a relevant defect (where there will be potential new remedies available under ss.124 and 135). That is perfectly logical.

¹⁰ Retrospectively amending limitation periods, and providing new remedies in respect of past matters, is inherently prone to raise A1P1 issues. An open-ended time period for bringing claims would have been difficult to justify, whereas the 30 year period struck a balance. By contrast, building *owners* have an ongoing interest in the building and there is a reasonable expectation – and important public policy reasons why – they should keep that building safe. In addition, see the point in the immediately following sub-paragraph.

Wider context

- 39 The nub of the Appellants' argument is to (a) point to the 30 year period that links the concept of a 'relevant defect' with the ability to recover costs from third parties, including by way of s.124, s.135 and s.149, and (b) point to the wording used in s.116 and s.122 of the Act (which references relevant defects) and thus say, against that background, paragraph 8 must be read *as if* it was limited to cladding remediation that also amounts to remediation of a relevant defect.
- 40 There is no dispute that the wider context is a relevant consideration. However:
- (1) Part 5 is headed 'Remediation of certain defects'¹¹. It does not refer specifically to 'relevant defects', implying that there are relevant defects and other types of defect that require remediation.
 - (2) The heading to Schedule 8 (if headings are relevant) refers to 'Remediation costs under qualifying leases'; there is no reference to relevant defects.
 - (3) Section 116 (headed by reference to 'certain' defects) does admittedly say that Schedule 8 makes provision in connection with the remediation of relevant defects. Well, that is correct, it does, albeit it also makes provision in connection with other matters, most notably cladding remediation (a different type of 'certain' defect).
 - (4) Section 122 is perhaps the high point of the Appellant's argument, as it solely refers to 'relevant defects' as being the focus of Schedule 8, together with recovery of amounts from persons who are landlords under leases. However, section 122 is clearly introductory in nature – a way of bringing within the Act the provisions of Schedule 8. It is unlikely to have been intended to in any way limit the provisions of Schedule 8 itself. The better approach is to read section 122 as subject to the content of Schedule 8 rather than the other way round – Bennion at 16.9. In that regard, it will be noted that the heading of section 122 refers solely to qualifying

¹¹ Headings are brief guides and may not be entirely accurate in any event: Bennion at 16.7. Where a heading differs from the material it describes, the court is put on inquiry, but the plain meaning of the words are unlikely to be overridden purely by reason of a heading – *ibid.*

leases, yet we know the protection at paragraph 2 of Schedule 8 refers to all leases, not just qualifying leases (so again, is not a complete description).

- 41 It may be that the explanation for these discrepancies is partly due to the fact that the *definition* of ‘cladding remediation’ was inserted relatively last minute¹², having originally been intended to be left to secondary legislation¹³. The provisions the Appellants point to and said to support them are headings to sections and introductory sections rather than substantive provisions, and perhaps were not updated as diligently and coherently as they might have been when the drafting of paragraph 8 was concluded – understandable given the rush by which the legislation was introduced and given their subordinate role. That said, it is worth noting that paragraph 8(1), once introduced, was always in its current simple form.
- 42 What can be noted, of course, is that one of the most striking, far reaching and radical provisions of the Act – being all of the leaseholder protections – are contained within a Schedule. So the Appellants’ point that matters of principle should not be within a schedule, only matters of detail (see skeleton argument, paragraph 29) only takes them so far. In modern legislation, all manner of important provisions are contained in schedules and Schedule 8 as a whole is perhaps a paradigm example of this. *‘The Schedule is as much a part of the statute, and is as much an enactment, as any other part’* per Brett LJ in A-G v Lamplough, cited in Bennion at 16.9.
- 43 In short, the words in paragraph 8 are clear, and there is simply not enough material from which this Court can conclude that the omission of any reference to ‘relevant defects’ was an obvious mistake, or that words should clearly be read in as a matter of construction, or that it is clear from s.116 and 122 and the headings that paragraph 8 was intended to be limited to relevant defects. Courts will exercise ‘considerable caution’ before adding or omitting or substituting words when interpreting a statute: Inco Europe Ltd v First Choice Distribution [2000] 1 WLR 586 at 592 (*per* Lord Nicholls).

¹² By an amendment at Report stage introduced in the Lords on 29 March 2022, less than a month before the Act received assent. The definition was introduced (amendment number 169) and accepted .

¹³ The draft Bill as at 2 March 2022 (when what is now Schedule 8 – then Schedule 9 was introduced) provided at paragraph 8(2) that “cladding remediation” *‘has the meaning given by regulations made by the Secretary of State’*.

- 44 The construction arrived at by the FtT and the UT is as a result of clear and unambiguous words that do not lead to absurdity. If there has been an error, and Parliament intended paragraph 8 to be limited to relevant defects, that is an error that it is for Parliament to correct, not this Court.

Grounds 2-5

- 45 The definition of ‘cladding remediation’ is both short and straightforward.
- 46 There is no requirement for two systems at all. The cladding system must form an element of the external wall system, but that does not mean they need to be two different systems or even that the cladding system be a subset (as opposed to the whole) of the external wall system.
- 47 There is no requirement for an inner wall; no mention whatsoever. There is just the requirement that the cladding system forms the outer wall. It incontrovertibly *does*.
- 48 What is required is that there is not just ‘cladding’ but a cladding *system*. As noted in Lehner v Lant Street Management Company Limited [2024] UKUT 0135 at §99/101, that will be formed of multiple identifiable components.
- 49 At Centre Point House, it is obvious there is a complete system, as described in intricate detail in the report of Dr Harris (the Appellants’ expert).
- 50 There is a timber frame, held back by metal brackets, supported on a dwarf wall. Glazed panels are secured to it by means of glazing tape, pressure plates and screws. In the spandrel zones, there is additionally insulation directly behind the glazed opaque panels, with then an airgap before the internal concrete or blockwork wall, with plaster affixed to the inside face of that wall. This is particularly clearly shown in drawing SK024 [S.314]. The system is described at §240 of the FtT’s decision [CB.224]. The agreed evidence was that the construction detail in the spandrel zone (i.e. the opaque glazed panels used under some windows and covering floor slab junctions) was (from outside to inside):
- (a) 6mm annealed glass.
 - (b) 12.7mm polystyrene insulation sheet

- (c) An air gap of at least 30mm.
- (d) A blockwork or concrete dwarf wall. The ‘inner wall’, if the same were considered to be required.
- (e) Plaster (internal face)

- 51 Dr Harris considered the ‘system’ used on CPH as a ‘timber-framed glazing system’ when re-examined (no doubt keen not to use the word ‘cladding’). He said it was a ‘*complete system in its own right... an entirely self-contained structure and weathering system...*’ (§241 of FtT decision **[CB.224]**).
- 52 There is no suggestion that the ‘cladding system’ definition was intended to exclude systems that include a combination of ‘classic cladding’ elements (e.g. the spandrel panel sections on Centre Point House – accepted by Dr Harris as being a ‘classic’ cladding build-up (§252 FtT decision **[CB.227]**) and vision panels (fixed windows). Windows are, after all, far from an uncommon feature of residential building, and there cannot be an ‘inner wall’ where there is a vision panel (else it would not achieve the purpose of allowing light into the building). Centre Point House has more glazing compared to some other buildings; it is unlikely that it would have been intended that this can disqualify a building from falling within the ambit of paragraph 8. Centre Point House does have, nonetheless, an inner wall (albeit it is not accepted the same is statutorily required by paragraph 8).
- 53 The FtT reached conclusions on the issues at grounds 2-5 that were clearly open to it – both in terms of the factual findings it made (which cannot be reopened in this appeal) and in terms of its approach as a matter of law to the statutory definition of ‘cladding remediation’. For the same reasons, the UT (§62 decision onwards **[CB.123]**) dismissed the Appellants’ appeal. 5 members of specialist tribunals have reached the same conclusion on these grounds.

The meaning of ‘unsafe’

- 54 The word ‘unsafe’ should be given its ordinary natural meaning. The Appellants appear to accept this means that it means ‘dangerous’ or ‘not safe’ (i.e. not free from risk): paragraph 85(1) of their skeleton argument.
- 55 Whilst some cladding is combustible, the definition of cladding remediation is not constrained by reference to combustibility; all forms of cladding system are encompassed, if they are unsafe. A glazed curtain wall that is prone to movement or to spontaneous shattering / collapse of panes (a known issue on some buildings due to high batch levels of nickel sulphide inclusions) is an example of an unsafe cladding system that must have been intended to be caught by paragraph 8; it doesn’t need to be combustible.
- 56 If the focus of paragraph 8 was solely upon *fire* risks, Parliament would have said so.
- 57 It is noteworthy that the definition of a ‘building safety risk’, for the purpose of establishing whether a defect is a ‘relevant defect’ encompasses both fire safety risks and structural risks associated with collapse of a building or part of a building: s.120(5). The Act is far from being solely focussed upon fire risks; to think otherwise is an obvious misconception. There is no basis for reading ‘unsafe’ as a reference only to fire risks, whether taking into account the wider context or just construing the word by reference to its natural ordinary meaning.
- 58 At paragraph 85(4) of the Appellant’s skeleton argument, they suggest that ‘*it is difficult to see how [the cladding] could be structurally dangerous or defective*’, and thus ‘unsafe’ can only refer to risk of fire spread. Given a part of the cladding at Centre Point House has already fallen to the ground, and given the Appellants’ experts own evidence at trial, this is unsustainable as an argument. The system was inherently defective, and over time structurally failed to the point where the system was weak and at risk of collapse.
- 59 In circumstances where the Appellants’ own expert gave evidence that he found himself kept awake at night worrying about whether part of the cladding system on Centre Point House might fall to the ground (FtT decision §287 **[CB.236]**), it is hardly surprising that the FtT found as it did.

- 60 In short, the FtT was clearly entitled to find as a fact that the cladding system was unsafe, and they did not err in law by failing to restrict the meaning of ‘unsafe’ to fire risks.

Other points in response to the Appellant’s appeal skeleton argument

- 61 At paragraph 53 of the Appellants’ skeleton argument, it is suggested that it is relevant context when construing Schedule 8 that there was concern at that time that landlords were undertaking unnecessary works (i.e. excessive schemes of remediation) at the expense of leaseholders. If that is correct, it is difficult to see why a narrow definition of ‘cladding remediation’ would have been intended; a narrow definition would leave more leaseholders lacking protection against the costs of the perceived ‘excessive’ levels of remediation, meaning Schedule 8 would provide no incentive to keep a ‘cap’ on the levels of remediation in a greater number of cases. The point made is illogical.
- 62 The focus on PAS at paragraph 66-73 of the Appellants’ skeleton argument is misguided:
- (1) There is, of course, no reference to PAS in the Act *whatsoever* – notwithstanding its introduction prior to the amendments that brought what is now Part 5 and Schedule 8.
 - (2) The focus of PAS is solely upon the fire risk assessment of external walls of residential and similar buildings. By contrast, paragraph 8 is not limited to fire risks other than on the most strained and creative reading.
 - (3) To the extent that (which is denied) PAS does assist the Court in construing the words in paragraph 8(2) that require the cladding to form ‘*the outer wall of an external wall system*’ (see paragraph 67 of the Appellants’ skeleton argument), the system on Centre Point House does meet the requirements. The glazed panels do form the outermost component forming part of an external wall construction. The glass is not the ‘entire wall itself’.
- 63 The distinction sought to be drawn at paragraph 79 of the Appellants’ skeleton argument – framing the relevant question in a narrower way – is really another (composite) way of

asking the very same question the FtT asked itself. All the relevant components of the words used in paragraph 8(2) must be met, either way. As the FtT found (paragraph 278 of their decision [CB.233]), paragraph 8(2) is widely drafted. And more to the point, they found that the system on Centre Point House did, in fact, form the outer wall of an external wall system (paragraphs 281-283) which is a conclusion that is logically very difficult to fault.

- 64 The FtT did not ask itself the wrong questions. It applied the test in paragraph 8(2) in a simple and logical way.

Conclusion

- 65 For all the reasons set out above, R13 invites the court to dismiss the appeal.

SIMON ALLISON KC

Landmark Chambers

SAllison@landmarkchambers.co.uk

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