

ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)

B E T W E E N:

(1) ALMACANTAR CENTRE POINT NOMINEE

NO.1 LIMITED

(2) ALMACANTAR CENTRE POINT NOMINEE

NO.2 LIMITED

Appellants

-and-

VARIOUS LEASEHOLDERS OF CENTRE POINT

HOUSE

Respondents

SKELETON ARGUMENT ON BEHALF OF
THE RESPONDENTS REPRESENTED BY HOWARD
KENNEDY LLP

Introduction

1. This skeleton argument is filed on behalf of respondents 1-10 (“R”) listed in the Annex to the Upper Tribunal decision. [CB/132]
2. Both the FTT and UT held that certain costs to be incurred by the Appellants arising out of a proposed major works scheme to the cladding and external façade of Centre Point House (“CPH”) (“the Proposed Scheme”) were not recoverable from R as a service charge. The Tribunals below were correct, largely for the reasons which the UT gave. [CB/158]
[CB/106]

3. In summary, R's position is that:

- a. Ground 1 should be dismissed. The UT was correct to find that the protection in paragraph 8 of Schedule 8, Building Safety Act 2022 is not contingent on there being a "relevant defect", in particular, because that is not what Sch.8, para.8 says.
- b. Grounds 2 to 5 should be dismissed. The UT was correct to uphold the FTT's decision that no service charge or reserve fund was recoverable from the lessees of flats 5, 11, 15, 17, 18, 19, 22, 28, 29, 31, 33, 34 and 35 in respect of the Proposed Scheme or the QLTA. In particular, neither the FTT nor the UT erred in its construction of paragraph 8 of Schedule 8 of the Act. Those decisions are consistent with the wording of the relevant provisions, the policy of the Act, and existing case-law.

Background

4. The FTT described the construction of Centre Point House in §§4 – 12 of its decision. In summary:

- a. CPH comprises six storeys of residential flats. [CB/162]
- b. There are 36 duplex flats which interlock with each other in a stepped L-pattern. [CB/162]
- c. There is no number 13, and so the numbers run from 1 at the lowest storey to 37 at the upper. Entrance corridors are on the 3rd, 5th and 7th floors only, on to north and south stair cores (which form no part of this application). [CB/162]
- d. 11 flats are retained in the ownership of Almacantar Group Limited. The remainder are in residential occupation by their owners or sub-tenants. [CB/162]
- e. *"Each of the flats has a projecting balcony. The east and west elevations comprise timber framed glazing and a spandrel glazing 'wrap' around the projecting balconies (accessed by a timber sliding door set into the glazed screen), formed by an internal timber ladder frame, with external aluminium pressure plates, glazing panels, and window lights."* (§6) [CB/162]
- f. *"The framing system is unusual, in that the dominant structural element is at the horizontal instead of the vertical... The upper horizontal frame sits on a metal bracket... Mortise and tenon joints join the vertical members into the structure. The horizontal members are only fixed back to the building at the ends, by metal restraint fixings designed to take wind load."* (§7) [CB/162]
- g. *"Where the glazed façade passes between party walls or floor slabs, glazed back-painted annealed glass spandrel panels have been inserted. Behind each of the* [CB/163]

spandrel panels is a thin layer of polystyrene insulation, and then a gap before the dwarf blockwork or concrete wall, behind and onto which the window lights are fixed.” (§8)

- h. *“The glazing was constructed by pressing glazing tape against the timber frames, pressing the glass panels onto the tape, and then applying two layers of glazing tape to aluminium clamp strips which are aligned with the frame and pressed to the outside of the glass. Fixing screws are then driven in and tightened to ensure that the clamp strip is fixed tight against the nosing of timber at the front edge of the frame. Joints are then sealed with mastic.” (§10)* [CB/163]

5. The issues caused by the construction explained in the preceding paragraphs are set out in §11 of the Decision, namely: [CB/163]

“small gaps between the pressure plates to allow for movement between adjunct frames will result in water ingress, as do any screw holes in respect of which the sealant has failed. Once water is in the system, there is limited ability for it to evaporate off (as it would in a normal timber system), as it is sealed in by the impervious aluminium clamp strip, glass and glazing tape. It therefore remains in the timber, forming interstitial condensation which in turn leads to degradation and (eventually) rot of the timber members. Further over-sealing the system will only keep such water as has made its way past the gaps in the system, exacerbating the problem and promoting further decay.”

6. The façade experts agreed that this process will have been occurring since the minute CPH was built. (§12) [CB/163]

7. The Proposed Scheme which is the subject matter of this dispute is described in §13, namely: [CB/163]

“It is proposed by the Applicants that in order to resolve this problem a steel stick curtain wall system including bespoke steel hollow section frames with integrated double glazed vision panels and opaque insulated spandrel panels be superimposed on the existing timbers and fixed to the concrete structural frame, rendering those timbers non-structural (‘the Proposed Scheme’).”

8. The safety risk that the condition of the building poses is obvious. There is an (inevitable) risk that “*a pane of glazing could be sucked out of the façade in high winds*”. In such a scenario the consequences are “*potentially fatal*”, including to anyone standing in the street below the glazing (§77); (§81); (§88). [CB/181]
[CB/184]
[CB/185]
9. In fact, there has already been one occasion when the glazing fell onto the street (although, luckily, no-one was injured) (§81). As the FTT – correctly – noted, this is self-evidently an unsafe arrangement. [CB/184]

Legal Framework

The Building Safety Act 2022

10. As will be well-known to the Court, the Act represents a radical intervention by Parliament in response to a number of overlapping crises. Those included:
- a. the Grenfell Tower tragedy;
 - b. the subsequent discovery of a wider building safety crisis;
 - c. the appalling culture which permeated the building construction and management industries; and,
 - d. the reality that, under a leasehold system, it was leaseholders of flats who were likely to face the ruinous costs associated with these matters.

See, *inter alia*, *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21 (“*URS*”) at [2], [78] to [82], [84]; *Adriatic Land 5 Ltd v Leaseholders of Hippersley Point* [2025] EWCA Civ 856 (“*Adriatic*”) at [27], [145], [153]; and *Triathlon Homes Ltd v SVDP* [2025] EWCA Civ 846 (“*Triathlon*”) at [8]).

11. It would therefore be quite wrong to approach the Act, or any part of the Act, as if it were simply a “fire safety” piece of legislation. Rather, it should be seen for what it is, namely an unprecedented and targeted intervention by Parliament in existing contractual relationships (in particular, via Sch.8), designed to:
- a. provide immediate financial relief to leaseholders (see *Adriatic* at [159]) by protecting them against some – perhaps even all – of the costs arising from these interlinked and overlapping crises; and
 - b. provide certainty to leaseholders and the wider residential housing market in the wider public interest (see *Adriatic* at [27]).

12. The long and the short of it is this: Leaseholders of flats are the only individuals *and the only class* who bear no responsibility for *any* of the problems in paragraph 10 above. For that reason, Parliament has decided that, so far as possible, they (and they alone) should be protected against the costs of remediating historical building safety defects that they had no part in creating (see *URS* at [86(2)] and [274]; *Triathlon* at [87] and [151]; and *Adriatic* at [75]).
13. Once that policy is understood, it is clear that the Act succeeds in giving effect to the evident will of Parliament and does so primarily through Part 5 and Schedule 8 of the Act.
14. Schedule 8 is introduced by s.122 and affords protections to certain leaseholders against specified remediation charges. The majority of the protections in Schedule 8 are only available to the owners of qualifying leases and relate to the taking of relevant measures relating to a relevant defect. However, there are important exceptions:
- a. Paragraph 2 applies “*in relation to a lease of any premises in a relevant building*” and provides that no service charge is payable in respect of a “*relevant measure*” relating to a “*relevant defect*” if the landlord under the lease on 22 February 2022 or the superior landlord was the original developer or an associate. Paragraph 2 is not limited to qualifying leases so that, for example, a housing association which has taken a headlease of several floors in a building (*e.g.* under a s.106 Town and Country Planning Act 1990 arrangement to secure affordable housing as a part of a new development) would benefit from this protection.
 - b. Paragraph 8 provides that “*no service charge is payable under a qualifying lease in respect of cladding remediation*”. “*Cladding remediation*” is defined in paragraph (8)(2) as “*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.*” Paragraph 8 is not limited to taking a “*relevant measure*” in respect of a “*relevant defect*”.
15. The terms “*cladding system*”, “*outer wall of an external wall system*” and “*unsafe*” are not given a statutory definition.
16. Paragraph 10 of Schedule 8 supplements paragraphs 2 to 4, 8 and 9 and provides:
- “(2)Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing –

(a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else) –

(i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge payable under the lease, or

(ii) are to be met from a relevant reserve fund;

(b) any amount payable under the lease, or met from a relevant reserve fund, is limited accordingly (and any necessary adjustment must be made by repayment, reduction of subsequent charges or otherwise).”

17. Paragraph 13 of Schedule 8 provides that a lease which satisfies the conditions in paragraphs (a), (b) and (c) of section 119(2)(d) will be treated for the purposes of Schedule 8 as a qualifying lease unless the landlord has taken “*all reasonable*” and “*any prescribed*” steps to obtain a qualifying lease certificate from a tenant under the lease and no such certificate has been provided to the landlord. Thus, the default position is that the qualifying lease condition is met unless and until the landlord takes both all reasonable and any prescribed steps to obtain a certificate from the tenant.

18. A “*qualifying lease certificate*” is a certificate complying with regulations and confirming that the condition in s.119(2)(d) was met in relation to the lease at the qualifying time.

Principles of Statutory Interpretation

19. The relevant principles of statutory interpretation are as follows:

- a. The basic principle of statutory interpretation is that the words of the statute should be interpreted in the sense which best reflects their ordinary and natural meaning and according with the purposes of the legislation: *R (The Good Law Project) v Electoral Commission* [2018] EWHC 2414 (Admin).
- b. “*A careful study of the statutory language, read in its statutory and historical context and with the benefit of permissible aids to interpretation, is the essential first step in any exercise of statutory interpretation*”: *R (Jackson) v Attorney General* [2005] UKHL 56 at [29] per Lord Bingham.
- c. In construing an enactment, the court should aim to give effect to the legislative purpose: *Bennion, Bailey & Norbury on Statutory Interpretation* (Eighth edition) at [12.2].

- d. The court's duty is to arrive at the legal meaning of the enactment. The legal meaning of an enactment is the meaning that conveys the legislative intention. However, "*the search for legislative intention is not a search for the actual subjective intention of a particular group of politicians, but an objective search for the intention that must be imputed to the legislature by reference to the meaning of the words used and the context in which they are used*": *McNutt v Transport for London* [2019] EWHC 365 per Knowles J at [27].
- e. The words used by Parliament are "*the primary source by which meaning is ascertained*" and external aids to interpretation "*therefore must play a secondary role*". External aids cannot "*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*": *R (O, a minor, by her litigation friend AO) v Secretary of State for the Home Department* [2022] UKSC 3 at [29] – [30].
- f. The explanatory notes which post-date an Act's enactment cannot be viewed as part of the context against which it is enacted. The weight to be given to them should depend on the cogency of any reasoning contained in them: *Bennion* at [24.14] (endorsed by Newey LJ in *Adriatic* at [71] – [72]).
- g. "*When courts identify the intention of Parliament, they do so assuming Parliament to be a rational and informed body pursuing the identifiable purposes of the legislation it enacts in a coherent and principled manner. ... In essence, the courts interpret the language of a statute or statutory instrument as having the meaning which best explains why a rational and informed legislature would have acted as Parliament has. Attributing to Parliament an error or oversight is therefore an interpretation to be adopted only as a last resort.*": *R (N) v Walsall Metropolitan Borough Council* [2014] EWHC 1918.
- h. Where it is argued that Parliament has made an error, the court must be mindful of its proper constitutional role. As Lord Nicholls explained in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586 (pg.592) (emphasis added):

*"A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court **must** be **abundantly sure** of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the*

substance of the provision Parliament would have made, although not necessarily the precise words that Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation ...”

- i. In construing legislation, the significance to be attached to each component should be determined according to its function: *Bennion* at [16.9].
- j. “*The sections, together with any Schedules, are the primary indication of the legislature’s intended meaning. Schedules are used for a wide range of purposes and the division of material between the sections and the Schedules is usually determined by the drafter on the basis of professional judgment about how best to present the legislative material. There are no hard and fast rules governing the nature of the material that should be included in a Schedule. No significance should be attached (in and of itself) to whether material appears in a section or Schedule: provision contained in a Schedule is of no less importance than that contained in the body of an Act.*”: *Bennion* at [16.9].
- k. “*If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for that purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act.*”: *IRC v Gittus* [1920] 1 KB 563.

Lant Street

- 20. As set out above, the Act does not define what amounts to a “*cladding system*” or what is meant by the “*outer wall of an external wall system*”. However, paragraph 8 of Schedule 8 was considered by the UT in *Lant Street*:

- a. In §101 it was held that *“the reference to a “cladding system” is clearly not intended to be limited simply to a single building component such as the final layer of cladding panels visible on the facade of a building. Any “system” has a number of components, and each component is within the scope of paragraph 8(2): cladding remediation comprises the removal or replacement of “any part of a cladding system”.*
- b. At §108 it held that where the expression *“cladding system”* is used elsewhere in the 2022 Act supported the conclusion it had reached about its meaning. In particular, it stated: *“Section 149 is concerned with liability for past defaults relating to “cladding products”. A “cladding product” is defined as “a cladding system or any component of a cladding system” (section 149(12)). One condition of liability for cladding products includes that the “the cladding product is attached to, or included in, the external wall of a relevant building” (section 149(3)). No attempt has been made by Parliament to distinguish between different building components which might be attached to or included in the external wall of a building; that seems to us to invite a wider, rather than a narrower, interpretation of “cladding product” and “cladding system”.*”
- c. As to the meaning of *“external wall system”*, at §113, the UT said *“as currently advised we interpret it as signifying that paragraph 8 is only concerned with the external walls of a building, and not with internal walls, separating different areas within a building. Plasterboard or other coverings applied to internal dividing walls are not within the scope of paragraph 8.”*
- d. Also, in relation to the meaning of *“external wall system”* at §104 the UT referred to the fact that on 1 May 2024 the RICS updated its guidance to surveyors engaged to certify that the safety of a building’s external wall system has been assessed. It noted that *“the publication addresses the question ‘What is an external wall system?’ and advises that ‘The external wall system (EWS) is made up of the outside wall of a residential building, including cladding, insulation, fire break systems, etc.”*
- e. As to the further requirement that that cladding system must form the *“outer wall”* of the external wall system”, at §114 the UT said: *“Paragraph 8 is not concerned with a cladding system which forms the inner wall of an external wall system. If an external wall comprised an outer wall and an inner wall, with a cavity between*

them, only a cladding system which formed the outer wall would be covered by paragraph 8.”

- f. The UT concluded that *“the outer wall of the external wall system includes the aluminium rain-screen panel, the framework on which it is supported, the insulation behind it and the newly installed cavity barriers”*, but it did not consider that *“the two internal plasterboard sheets, separated by a small cavity, are part of the outer wall of the external wall system.”* (§115)
- g. At §116, it further held that: *“The conditions in paragraph 8(2)(a) and (b) must be satisfied by the cladding system as a whole, and not simply by the parts of the system which are to be removed or replaced”* that being *“the natural consequence of the reference to the removal or replacement of “any part” of a cladding system that forms the outer wall of an external wall system. If the intention had been to confine the scope of paragraph 8 to the removal or replacement of the outer wall of an external wall system, the reference to “any part” of the system would be both redundant and misleading. The appropriate way to express the narrower intention would be to refer to “so much of” or “such part of” a cladding system as forms the outer wall of an external wall system.”*
- h. As to paragraph 8(2)(b), the UT considered *“that it is the cladding system as a whole which must be unsafe, and not simply the part which is to be removed or replaced.”* (§117).

21. Although the UT’s decision in *Lant Street* is not binding on this court, the FTT and the UT’s decisions in this case are consistent with *Lant Street*, both broadly (*i.e.* policy considerations) and narrowly (*i.e.* what amounts to a “cladding system”).

Ground 1

22. By Ground 1, A argues that the UT was wrong to hold that CPH as a building is within the provisions of paragraph 8 of Schedule 8 because Schedule 8, including paragraph 8, only applies to “relevant defects” as defined in section 120 of the Act and the Proposed Scheme does not involve remediating a “relevant defect”.

23. The UT was correct to find that paragraph 8 is not confined to “relevant defects” for the reasons set out below.

The wording of paragraph 8

24. First, and foremost, is the wording of paragraph 8 itself. Those words are clear and unambiguous (*cf* *IRC v Gittus* [1920] 1 KB 563); unlike paragraphs 2 to 4 and paragraph 9, the protection afforded by paragraph 8 is not limited to remediating “relevant defects”. That difference is presumed to be intentional. Parliament could easily have chosen to use the words “relevant defect” and/or “relevant measure” in paragraph 8 but it did not do so. In the same way, Parliament chose not to limit the protection in paragraph 2 to those holding a “qualifying lease”. The Upper Tribunal was correct to find that this was a deliberate decision and this court should be very slow to conclude that the omission of the words “relevant defect” or “relevant measure” was a mistake.
25. As well as the omission of the words of “relevant defect” and “relevant measure” in paragraph 8, the requirement that “cladding remediation” must relate to any part of a cladding system that is “unsafe” also supports an interpretation that “cladding remediation” has a distinct meaning from “relevant measures” in relation to a “relevant defect”. A defect is only a “relevant defect” if it causes a building safety risk. Building safety risks are risks to safety (*i.e.* things that are unsafe). If “cladding remediation” was intended to be limited to “relevant defects” it would have been unnecessary to include paragraph 8(2)(b) in paragraph 8 because the “unsafe” requirement would already be met by the existence of a “relevant defect”. The additional criterion that any part of a cladding system is “unsafe” in paragraph 8(2)(b) supports an interpretation that paragraph 8 is different and is not tied to “relevant defects”.
26. Other parts of Sch.8 similarly do not depend on there being a relevant defect. The most striking is Sch.8, para.10, (“a thing”, *i.e.* expressly not limited to a relevant defect). Paragraphs 15 and 16 plainly extend beyond relevant defects.
27. Moreover, the distinction between “cladding” and “relevant defects” was drawn by the Court of Appeal in *Adriatic* at [33(iii)] and [172] and *Triathlon* at [23(3)].
28. In short, nothing in Sch.8, para.8, nor Sch.8 as a whole supports the narrow and constrained interpretation for which A argues. Rather, the approach taken by the FTT and UT is correct. It accords with the legislative purpose of the Act, which is to secure the safety of those in

and around buildings and to give radical protection to the leaseholders specifically in respect of cladding remediation.

Wording of paragraph 8 in its context

29. The argument for A amounts to an assertion that, because there are alleged anomalies arising out of the construction adopted by the UT, that must mean the UT's construction is wrong.
30. There are at least two answers to that. First, cladding has always been intended to be treated differently to other building safety defects (*cf* UT decision at [51] and the legislative history [CB/122] to paragraph 8, discussed under the heading “The purpose of the legislation”). It is a feature, not a bug or anomaly.
31. Secondly, A fails to appreciate the existing body of law which provides solutions to the “anomalies” which A identifies (*cf* A’s skeleton, para.41). For example: [CB/29]
- a. In the case of unsafe cladding which is not itself a relevant defect, the occupiers of the building are not required to be left living in an unsafe building. Rather, the existing public health legislation provides the route by which recalcitrant landlords can be compelled to make buildings safe. The most obvious example is Part 1, Housing Act 2004. Indeed, that legislation was the vehicle for the initial post-Grenfell safety drive, see the statutory *Addendum Guidance on the assessment of high-rise residential buildings with cladding systems* (November 2018) and remains an actively used response to buildings with unsafe cladding.
 - b. There is already a wealth of case-law and legislative provisions which exist to protect leaseholders from legal costs where justice requires that the costs fall on the landlords (*e.g.* ss.19, 20C, LTA 1985; note that it was s.20C that the FTT originally used in the *Adriatic* case to protect the leaseholders against the legal costs associated with the fire safety works).
32. Moreover, whether or not a landlord may be able to secure grant funding from the government cannot tell us what an Act of Parliament means. The meaning does not change with the availability of non-statutory grants.

33. A's real complaint is that it is unfair for them to now be left with these costs. But the costs have to fall somewhere and Parliament has chosen that they should not fall on leaseholders.

Weight to be attached to components of the Act

34. The substance of the leaseholder protections is set out entirely in the Schedule and hence, the Section must be read as subject to the Schedule, *i.e.* the most important part of the Act is the Schedule: Bennion at [16.9].

35. A relies on *R (Maughan) v Her Majesty's Senior Coroner for Oxfordshire* [2020] 3 WLR [CB/25] 1298 as authority for the proposition that Schedule 8 should be read as subsidiary to the provisions in Part 5 on that basis that it was held that "*nothing should be placed in a schedule to which the attention of Parliament should particularly be directed...*".

36. But drafting practice is broader than that. As Bennion notes at [16.9], "*[s]chedules are used for a wide range of purposes and the division of material between the sections and the Schedules is usually determined by the drafter on the basis of professional judgment about how best to present the legislative material.*"

37. The substance of Part 5 of the Act is entirely contained in the Schedule. Accordingly, the wording of paragraph 8 of Schedule 8 should be afforded more weight than the wording in s.116 and s.122.

The purpose of the legislation

38. The UT's interpretation accords with the general policy considerations of the Act. The Act was passed to protect leaseholders against remedial costs (see *URS* at [86(2)] and [274]; *Triathlon* at [87] and [151]; and *Adriatic* at [75]). Yet if A is correct, Sch.8, para.8 would have to be held to apply in fewer scenarios than its plain words suggest.

39. Moreover, we know *why* this provision was introduced. The Secretary of State had "guaranteed that no leaseholder living in their own flat will have to pay a penny for unsafe cladding". That guarantee was why Sch.8, para.8 was introduced. (see Nugee LJ in *Adriatic* at [170], holding that paragraph 8 of Schedule 8 "...implemented the Secretary of State's announcement that no leaseholder living in their own flat "would pay a penny to fix dangerous cladding"").

Caution against correcting errors – *Inco*

40. A makes no attempt to grapple with *Inco* and the extremely heavy burden it carries in showing that an error has been made and what the result should be. A’s explanation for that at §51 of A’s skeleton argument is that A is not advancing a case that the statutory wording is erroneous and that A’s construction does not require words to be read into Schedule 8, but that is wrong. A’s construction requires the court to add words to paragraph 8 to limit “cladding remediation” to “in respect of a relevant defect”. When those words are read into paragraph 8(2), paragraph 25 above (discussing the word “unsafe” in paragraph 8) has even greater force. The UT was correct at [57] to find that the test in *Inco* has not been met. [CB/34] [CB/122]

Other materials

41. A relies heavily on the Explanatory Notes to the Act. R’s primary position is that it is not necessary for the court to have recourse to the Explanatory Notes, because the meaning of paragraph 8 is clear and unambiguous. However, to the extent that the Court finds that there is ambiguity, neither the pre-Act Explanatory Notes nor the post-Act Explanatory notes assist in determining whether paragraph 8 was intended to be limited to relevant defects.
42. The pre-Act Explanatory Notes published in April 2022 relating to the Lords Amendments to the Act set out in §43 of A’s skeleton argument say nothing about whether or not paragraph 8 is limited to relevant defects. [CB/120]
43. Of much greater relevance is note 143 in respect of Lords Amendment 184. That supports R’s interpretation. The note draws a distinction between paragraph 3 of Schedule 8 (“*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*” (emphasis added)), which expressly refer to relevant defects, and paragraph 8 (“*No service charge is payable for cladding remediation*”), which does not.
44. The post-Act Explanatory Notes do not assist in determining whether paragraph 8 was intended to be limited to relevant defects: *Bennion* at [24.14]. See, to the same effect, the Court of Appeal’s decision in *Adriatic* at [65] to [72] and [76] – [77].

45. A relies on *Adriatic* at [70] as authority for the proposition that the post-Act Explanatory Notes “*are persuasive authority and of comparable status to academic writings*”. What Newey LJ actually said was explanatory notes that have been published only after a statute has already been enacted “*may be of persuasive authority, but they do not enjoy any particular legal status and can be compared with academic writings*.” This example encapsulates A’s misconceived approach to this case. Repeatedly during these proceedings, it has started from a position of what it wants the law to be, rather than grappling with the words that were actually used, whether by Parliament or by this Court.

46. As stated by Newey LJ in *Adriatic*, the post-Act Explanatory “*may, of course, show what the Department which promoted the Act understands it to mean, and possibly what it wished it to mean, but the materials plainly cannot have informed Parliamentary decision-making*.”

47. A also relies on government guidance which post-dates the Act. These materials cannot be viewed as part of the context against which the Act was enacted and cannot assist the court in determining Parliament’s intention.

Lant Street

48. A also relies on the decision in *Lehner v Lant Street Management Co Ltd* [2024] UKUT 135 (LC) as support for the proposition that paragraph 8 is only engaged if there is a relevant defect. However, there was simply no argument on that point in *Lant Street*, and this is not a binding – or even reasoned – decision on this point (unlike the analysis of what amounts to cladding, which is reasoned even if not binding).

Absurdity and floodgates

49. In the FTT and UT, A advanced an argument that the effect of the FTT’s interpretation of [CB/214] paragraph 8 might lead to landlords carrying out repairs before they were due or warranted, so as to avoid the conditions of the building falling off the cliff edge to being “unsafe” and that leaseholders would end up paying for repairs before they were needed or justified and that that would result in “absurdity”.

50. It appears that A may no longer be advancing this argument, as it is only thinly alluded to in A's skeleton argument. If that is correct, then A is right to abandon that argument. It was nonsense.

- a. There is no evidence to support this and, if anything, the experience of the courts and Tribunals is the opposite. One sees plenty of disrepair cases, but not cases of oversolicitous landlords.
- b. There would still need to be some disrepair which required remedying before any such works could be done.
- c. Works which were not needed nor justified could not give rise to a reasonable service charge, so that s.19, LTA 1985 would be engaged.
- d. One might think that a scenario such as that which so concerns A would be one which could – and should – be capable of resolution as part of a s.20 LTA 1985 consultation process.
- e. More importantly, however, what is wrong with a policy outcome which sees landlords proactively keeping buildings in repair to ensure they do not become unsafe? That is not absurd. Rather, it would represent a highly desirable policy outcome which Parliament is likely to consider a success.

51. The argument also assumes that there would inevitably be a right to recover such costs as a service charge under the lease, which is plainly not correct (see *Tower Hamlets LBC v Lessees of Brewster House and Malting House* [2025] EWCA 1591).

A's interpretation is contrary to Parliamentary intent and public policy

52. It is important to understand what the effect of A's argument would be if it were accepted. It would mean that, in order to trigger this paragraph, the cladding in question would – in addition to being unsafe – also have to be a relevant defect. That would obviously reduce the pool of buildings to which this provision would apply, as well as narrowing the range of unsafe cladding to which it would apply. Given that it is the national cladding scandal which drove the need for this legislative reform in the first place, an interpretation which serves to reduce the number of people who Parliament has chosen to protect is wrong in principle. What was intended to be a broad, overarching protection would be reduced to a mere subset of “relevant defect”. That is wrong. It is wrong as a matter of construction and wrong as a matter of Parliamentary intent and public policy.

53. For these reasons, the FTT was correct to hold that CPH as a building is within the provisions of paragraph 8 of Schedule 8, which is not confined to “relevant defects”.

Grounds 2 to 5

54. Turning to Grounds 2 – 5, the question for this Court is to determine whether the Proposed Scheme consists of “cladding remediation”.

55. The basis upon which A states the UT misconstrued paragraph 8 of Schedule 8 is set out in §§52 – 100 of A’s skeleton argument. The way A presents its case on grounds 2 to 5 is different to how it presented its case in the FTT and UT. [CB/34]

56. Below, A contended that the FTT gave insufficient weight to the natural or literal construction of the words used by Parliament in paragraph 8 of Schedule 8 to the Act. In this court, A seeks to argue that the meaning of paragraph 8 should be determined by reference to a “*specific mischief which it targets*” and invites the court to construe paragraph 8 by reference to words not used in the statute; see §54 where A requires the court to read in words to the statute (“*outermost*” and “*in the fire-safety sense*”) to achieve the interpretation that A seeks to give to paragraph 8. [CB/35]

57. R’s position is that the FTT and the UT construed the natural and literal words used in paragraph 8 of Schedule 8 in their context in the detailed sequential manner in which one reads the statute, as suggested by the UT in *Lant Street*. R contends that the UT did not err in finding that the FTT was correct to decide that the service charges in respect of the Proposed Scheme were in respect of “cladding remediation” within paragraph 8 for the reasons set out in [69], [70], [75], [80] and [81] of its decision. [CB/125]
[CB/126]
[CB/127]

“Cladding system”

58. As to whether there is a “cladding system”, the UT was correct not to interfere with a finding of fact made by the FTT that the façade system at CPH constituted cladding. That finding of fact was made after the FTT had heard evidence over 5 days, including from expert witnesses and after it had attended a site visit. As a factual finding, it is unimpeachable.

59. A relies heavily on a non-statutory, indeed, non-governmental, document known as PAS9980:2002. The reliance is misplaced. First, Parliament has not endorsed PAS and plainly does not endorse it as a tool for interpreting a new statutory regime. Secondly, even if PAS is in some way relevant, there is no conflict between the findings of the FTT and PAS (see UT at [70]). [CB/125]

“Outer wall of an external wall system”

60. The UT was also correct not to disrupt the FTT’s finding that the façade at CPH comprises the “outer wall of an external wall system”. Again, this was a finding of fact by specialist technical tribunal.

61. A argues that paragraph 8(2) requires two ‘systems’ – (1) a ‘cladding system’ and (2) ‘an external wall system’ of which the cladding system forms the ‘outer wall’. What paragraph 8 requires is set out in plain words and does not include any “two systems” test. Rather, if an external wall system contains an inner wall and an outer wall within an external wall system, only the outer wall could be within the definition of a cladding system in paragraph 8. This accords with the explanation of “outer wall of an external wall system” at §114 of *Lant Street* as follows:

*“Paragraph 8 is not concerned with a cladding system which forms the inner wall of an external wall system. **If** an external wall comprised an outer wall and an inner wall, with a cavity between them, only a cladding system which formed the outer wall would be covered by paragraph 8.” (emphasis added)*

62. The FTT was correct to find that the façade at CPH forms the outer wall of an external wall system.

63. If A were right, the UT’s decision in *Lant Street* at §155 that, in that case, “the outer wall of the external wall system includes the aluminium rainscreen panel, the framework on which it is supported, the insulation behind it and the newly installed cavity barriers” but not “the two internal plasterboard sheets, separated by a small cavity, are part of the outer wall of the external wall system” must be wrong. On A’s case only the aluminium rainscreen panel and its fixing would be the “cladding system”. The effect of such an interpretation would be to narrow the scope of paragraph 8 in a way that offends the policy of the Act, which is to make buildings safe.

“Unsafe”

64. A does not dispute that part of the façade of CPH will be replaced but argues that the parts to be removed or replaced are not “unsafe”. However, A’s suggestion that the UT misconstrued the word “unsafe” and misapplied its meaning and the effect of paragraph 8(2)(b) to the facts of the case is obviously wrong. As stated in s.1(1) of the Act, the provisions of the act are “*intended to secure the safety of people in or about buildings and to improve the standard of buildings*”. Paragraph 8 – indeed, the whole of Schedule 8 - is not concerned with *why* the cladding system is unsafe, just that it is unsafe.
65. A argues that “unsafe” for the purposes of paragraph 8 refers to whether part or parts of the “cladding system” in question poses a “fire” safety issue. However, nowhere in Schedule 8 are the words “fire safety issue” used. Moreover, this would suggest that “unsafe” in the context of paragraph 8 is narrower than the concept of “building safety risk” which is not limited to fire risks but also includes the risk of collapse. There is no rational basis for reading such a limitation into paragraph 8 and the absence of a more specific definition of “unsafe” invites a broader, not narrower, construction than “building safety risk”. The façade at CPH poses a risk of fatality to passers-by. The FTT was evidently correct to find that CPH is unsafe¹.
66. Below, A argued that the fact that paragraph 8 of Schedule 8 (unlike the other provisions of Schedule 8) provides a blanket ban on the recovery of service charges for remediation work falling within its scope, and therefore, represents a significant interference with contractual relationships between landlord and tenant, behoves a narrower interpretation of the provisions. However, this consequence is in accordance with the policy of the Act. As stated in *Triathlon Home LLP v Stratford Village Development Partnership* [2024] UKFTT 26 (PC), Part 5 of the Act extends “radical protections” to leaseholders. Indeed, as stated in *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2023] UKUT 271 (LC), “what might be seen as unfair results [to landlords] are... simply a reflection of life in the new world of the 2022 Act”. See also *Adriatic* at [199] and *Triathlon* at [24] and [87].

¹ R notes that in October 2024, A put up a temporary scaffold fan to catch falling debris from the cladding, which will stay in place until the Proposed Works are complete.

Nothing in the two Court of Appeal decisions suggests that those statements have been disapproved. To the contrary, the obvious implication is that they are correct.

Conclusion

67. For these reasons, the appeal should be dismissed. R also seeks orders under s.20C, Landlord and Tenant Act 1985 / Sch.11, para.5A, Commonhold and Leasehold Reform Act 2002, preventing A from charging its legal costs of this litigation through the service charge.

JUSTIN BATES KC

MATTIE GREEN

29 DECEMBER 2025

LANDMARK CHAMBERS