

ON APPEAL FROM

Upper Tribunal (Lands Chamber)

Appeal Ref: LC-2024-00352

Judge Siobhan McGrath

Mrs D Martin TD MRICS FAAV

BETWEEN:-

(1) ALMACANTAR CENTRE POINT NOMINEE NO.1 LTD

(2) ALMACANTAR CENTRE POINT NOMINEE NO.2 LTD

Appellants/Applicants

-and-

**VARIOUS LEASEHOLDERS OF LEASES OF FLATS IN
CENTRE POINT HOUSE, 15A ST GILES HIGH STREET,
LONDON, WC2H 8LW**

(11) GINGER GLOBAL (UK) 2021 LTD (FLAT 19)

(12) XAVIER PROPERTY MANAGEMENT 2021 LTD (FLAT 22)

Respondents

SKELETON FOR R11 & 12

[dated 28 December 2025]

1. This skeleton is filed and served on behalf of R11 & 12 (as defined in the case heading above).
2. [Deleted, following provision of the Core and Supplemental Appeal Bundles]

Definitions

- “BSA 2022” – Building Safety Act 2022
- “LTA 1985” – Landlord and Tenant Act 1985
- “FTT J” – Judgment of the FTT dated 25 March 2024 [CB/158]

- “UT J” – Judgment of the UT dated 16 September 2025 [CB/106]

A Foreword

3. There are 13 Respondents to this appeal. 10 are represented by Justin Bates KC and Mattie Green (instructed by Howard Kennedy LLP), one is represented by Simon Allison KC (instructed by Forsters LLP) and two by the author (instructed direct access).
4. The author is conscious that the court no doubt has a desire to have this appeal conducted as efficiently and proportionately as possible. Given the representation of the other 11 Respondents to this appeal, this skeleton aims to be as concise as possible and to avoid repeating arguments already made in the other Respondents’ two skeleton arguments. R11 & 12 agree with and adopt the arguments set out in those two skeleton arguments.

The Decisions Below

Paragraph 8 of Schedule 8 BSA 2022

5. Para 8 of Schedule 8 provides:

(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.

6. The words “cladding system”, “external wall system” and “unsafe” are left undefined. The provision is not limited by reference to there being a requirement of a “relevant defect”, and both the FTT and the UT considered that such a requirement should not be read into the legislation (FTT J/§§205-226; UT J/§§50-61). The FTT and UT were correct in this interpretation.
7. It is to be noted that in both the FTT and the UT, the Appellants sought to run a floodgates argument (FTT J/§§196-204; UT J/§45). It appears that no such argument is now pursued. The Appellants are correct to belatedly drop this line of

[CB/214;
CB/122]

[CB/212;
CB/121]

argument. There is simply no evidence that the floodgates would be opened if the Respondents' interpretation of Para 8 of Schedule 8 is correct. Indeed, the Judgment of the FTT was handed down in March 2024 and the Judgment of the UT in July 2025, the latter especially to great publicity and academic commentary. There is no sign of landlords rushing to unreasonably incur costs in remedying disrepair to cladding before it tips over into an unsafe condition, and there are statutory safeguards (in particular sections 19 and 20 LTA 1985) which would prevent them from doing so. Furthermore, it is quite right as a matter of policy that landlords are encouraged to not allow cladding to fall into an unsafe condition.

Factual Findings

8. Centre Point House (“CPH”) consists of eight floors, the upper six of which contain 36 residential flats (FTT J/§§4 and 5). It is of 1960’s construction and includes a façade which the FTT found amounted to a “cladding system” (FTT J/§259): [CB/162] [CB/229]

“...There is an underlying structural framework – the concrete building. Onto that framework have been fixed the timber ladders, in preassembled blocks one storey x 3 metres into which the glazing has been inserted. The facade has then been built up, by inserting a wall or blockwork that has taken some of the weight of the fenestration (whether by accident or design). After that blockwork is a gap, an insulation panel, and spandrel inserts. Onto the glazing have been screwed aluminium clamp strips, which have been over-sealed. The ladder frame system is tied back to the concrete frame with metal ties. That makes up the building ‘envelope’ at the east and west elevations. The function served by the whole is to keep the elements out. The design is to transfer wind load to the concrete structure, not to support that concrete structure. The dwarf walls do not provide structural support to the building as a whole, though may provide some support to the envelope. The metal ties tying back the timber ladders to the concrete are also not providing structural support, but do help to transfer wind-load. That design, it seems to us, is apt to meet the description of cladding.”

9. The FTT went on to find that the Proposed Scheme will amount to “cladding remediation” for the purposes of Para 8 of Schedule 8 (FTT J/§§301-302, 315). That is, implementing the Proposed Scheme will mean the removal or replacement of parts of the cladding system on CPH which: a). “forms the outer wall of an [CB/239, 242]

external wall system” (FTT J/§§264-283); and b). “is unsafe”. As to “unsafe”, the FTT found: [CB/230]
[CB/236]

287. Dr Harris made it clear that in windy weather, he was particularly concerned that the glazing would in effect be ‘sucked out’ from the façade due to the forces operating around the building.... The spandrels were ordinary annealed glass and, whether a pane fell to the ground or even just broke in situ, would break into large and sharp pieces with potential dreadful consequences, whether for the leaseholders or members of the public using the public square below... There was potential for one of those units to fail, whether wholly or partially. If it did, the failure of the part would increase the load across other parts of the façade, which would lead to a progressive failure. If one went, others could follow soon after... [Dr Harris said he would] be very worried if anyone was expecting the façade to stand up to its as-designed wind load capacity. He could not know the residual strength of every part of the façade. In the recent storms, he spent his nights sleeplessly half-expecting a ‘phone call to alert him’ of something along the above lines...

288. ...[Dr Harris] agreed he was concerned that the façade would not make it into next winter – indeed he was, as he had said, worried even about the recent types of storm that London experienced in January. He is on the cusp, he told us, of saying to the Applicants that enough is enough, the entire building has to be scaffolded. This could not go on for another 2 years. He did not have confidence the façade would last a further year...

300. On the basis of the very clear evidence from Dr Harris as to the serious degradation of the condition of the façade including the serious risk to the health and safety of the residents and the public if more of the windows detached because of the detachment of the clamp strip and failure of screws (or indeed one of the annealed (i.e. not safety) glass spandrel panels was to be sucked out by wind force) due to degradation in the timbers or failure of external seals due to the water being let and kept in, we are satisfied that the cladding system at CPH is unsafe.

10. The UT correctly identified that the above findings were findings of fact: “cladding system” at UT J/§§69-70; “outer wall of an external wall system” at UT J/§75; and “is unsafe” at UT J/§81. [CB/125; CB/126; CB/127]
11. In making the above findings, the FTT had the benefit of a site visit, hearing live evidence from two façade experts and a 5 day trial where the factual arguments were fleshed out. The constituted panel consisted of Deputy Regional Judge Nikki

Carr, Ms Helen Bowers MRICS (Regional Surveyor) and another experienced surveyor, Mr Ian Holdsworth MSc FRICS. The FTT plainly approached what must have been a difficult trial in a conscientious manner and gave a detailed yet commendably precise and clear Judgment. In the UT, the panel consisted of the President of the FTT Property Chamber and an experienced surveyor, Mrs D Martin TD MRICS FAAV. That panel also had the benefit of a site visit (Judge McGrath visited twice).

Ground 1 – Relevant Defect

12. R11 & 12 contend that the UT was correct to interpret Para 8 of Schedule 8 in the way that it did, for the reasons it gave. That is—

- a. The wording of Para 8 of Schedule 8 is clear and unambiguous. It accords with the context in which the BSA 2022 was enacted, including the clear ministerial statement of Michael Gove that “*no leaseholder living in their own flat ‘would pay a penny to fix dangerous cladding.’*”
- b. Para 8 of Schedule 8 is separate to the package of remediation provided for in most of the remainder of Schedule 8. It is concerned with ensuring that tenants do not have to pay the costs of making cladding safe. It is true that a 30 year limitation period therefore does not apply to it, but that 30 year limit was the product of other considerations, including agreement reached with major residential property developers which might result in them becoming retrospectively liable for paying the costs of remediation due to an increased limitation period. Paragraph 8 mitigates against the potential impact of that arbitrary cut-off on tenants living in buildings which have unsafe cladding.
- c. There are trade-offs in Para 8 of Schedule 8. Where a building has unsafe cladding which is not also a relevant defect both leaseholders and landlords are impacted. Leaseholders cannot seek a Remediation Order and landlords cannot seek a Remediation Contribution Order.

- d. The Appellants’ argument requires words to be read into Para 8 of Schedule 8. Namely, it requires the words “relevant defect” to be read into it. The well known factors set out in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586 at 592, as to what a court must be abundantly sure of before reading words into a statute, are simply not met in this case. Parliament made a deliberate decision, in stark contrast with other provisions of Schedule 8, to use the word “unsafe” in Para 8(2)(b) rather than “relevant defect”. Parliament must have meant something in choosing to use the word “unsafe”, and that is especially so when the definition of “relevant defect” imports its own concept of “building safety risk” which contrasts with and is more narrow than the natural meaning of “unsafe” (see section 120(5)).
 - e. The wording of sections 116 and 122, which introduce Schedule 8, are general and not definitive. It is therefore sections 116 and 120 which should be read as subject to the specific and detailed provisions of Schedule 8.
 - f. On this issue, the decision in *Lehner v Lant Street Management Co Ltd* [2024] UKUT 135 does not assist, because the general guidance which was given in that case was not the subject of argument on this point.
13. The other Respondents’ two skeleton arguments comprehensively set out the law on statutory interpretation and analyse the context and meaning of Part 5 of the BSA 2022 and Schedule 8. Those arguments will not be repeated here; R11 & 12 concur with them.
 14. In relation to the external aids to construction which the Appellants rely on at Paragraphs 41(5) to 49 of their skeleton—
 - a. The BSA 2022 was enacted on 28 April 2022. Sections 116 to 125 and Schedule 8 came into force on 28 June 2022 (section 170(3)). The Building Safety (Leaseholder Protections) (England) Regulations 2022 were not laid before Parliament until 29 June 2022 and did not come into force until 20 July 2022. The Building Safety (Leaseholder Protections) (Information etc)

England Regulations 2022 were not made until 20 July 2022 and did not come into force until 21 July 2022.

- b. The pre-enactment Explanatory Notes published in April 2022 relating to the 5 April 2022 Lords Amendments do not say that Para 8 of Schedule 8 is limited to “relevant defects”. The last sentence of note 143 is disjunctive and does not say, in contrast to the previous sentences, words to the effect of “No service charge is payable for cladding remediation in respect of relevant defects”.
- c. The post-enactment Explanatory Notes have, at best, the same weight which a court would attach to academic writings: *Adriatic Land 5 Limited v Long Leaseholders of Hippersley Point* [2025] H.L.R. 43 at [65-72].
- d. If that is the weight to be attached to post-enactment Explanatory Notes then, *a fortiori*, Government guidance published after enactment and having no Parliamentary oversight can be given no weight.

Grounds 2 to 5 – Cladding Remediation

- 15. The Appellants frame their appeal as being one of law, not fact. They challenge the FTT and UT’s interpretation of the words ‘cladding’, ‘cladding system’, ‘external wall system’ and ‘unsafe’. The meaning of these words is indeed a matter of law, but caution must be had when seeking to put a gloss on, or apply an unusual meaning, to words which have a natural and ordinary meaning; or when borrowing definitions from other legislation or extra-legislative guidance.
- 16. Further, the application of facts to the meaning of a word is an exercise in fact and degree; an evaluative exercise. That exercise can only be interfered with on appeal if the first instance conclusion is one which could not reasonably have been reached on the basis of the primary facts as found. It must be remembered here that the FTT is a specialist tribunal, and its factual findings and evaluation must be accorded great respect. Furthermore, such interference can only occur if an appeal is brought on the basis of an error of fact (which this appeal is not).

17. For the above propositions, see *Clark v Perks* [2001] EWCA Civ 1228; [2002] I.C.R. 302 at [29-37].
18. In this case, neither the FTT nor UT made an error of law; and the FTT's factual findings clearly justify the conclusions it reached. Again, R11 & 12 concur with the arguments set out in the other Respondents' two skeleton arguments.
19. One strand of the Appellants arguments under Grounds 2-5 is that Para 8 of Schedule 8 must be "read in context to understand the specific mischief which it targets". It is then suggested that that mischief relates to "landlord caution regarding fire safety" (Appellants' skeleton, paras 53 and 54). "Unsafe", the Appellants say, must be read with that in mind.
20. This argument is somewhat difficult to grasp—
- a. In Ground 1, the Appellants argue that Para 8 of Schedule 8 ought to be interpreted as being limited by the concept of "relevant defect".
 - b. One of the requirements of a "relevant defect" is that the defect constitutes a "building safety risk" (section 120(2)). "Building safety risk" means a "risk to the safety of people in or about the building arising from— (a) the spread of fire, or (b) the collapse of the building or any part of it" (section 120(5)).
 - c. Yet, when it comes to "unsafe", as it is used within Para 8(2)(b) of Schedule 8, the Appellants discard the concept of "building safety risk", instead limiting matters to fire. They set out no logical basis as to why this should be the case (and, to the extent it is prayed in aid, any reliance on PAS is misplaced). In fact, it is clear why the Appellants feel compelled to argue as they do; it is because the state of the cladding at CPH falls squarely into the definition of "building safety risk" because the collapse of the cladding (being a part of the building) constitutes a grave risk to the safety of people in and about the building.

- d. There is nothing at all within the BSA 2022 to indicate that the use of “unsafe” within Para 8 of Schedule 8 was intended by Parliament to be limited to fire safety risks. If that had been intended, Para 8(2)(b) would read “is unsafe due to a risk of fire”. In enacting the BSA 2022, Parliament was clearly concerned with more than just fire safety risks, hence the definition of “building safety risk” and section 1(1) stating, with no mention of fire, “This Act... contains provisions intended to secure the safety of people in or about buildings and to improve the standard of buildings”.
- e. It is wrong to put such a significant gloss onto the word “unsafe”. “Unsafe” has a clear natural and ordinary meaning. If anything, it extends beyond a risk of fire or collapse, as it could relate to, for example, a choice of material which is hazardous to human health.

Conclusion

21. For the reasons set out in this skeleton and those of the other Respondents, the appeal ought to be dismissed. R11 & 12 will seek an order under section 20C of the LTA 1985 (and, if necessary, Para 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002), in respect of the costs of this appeal.

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