

The background of the slide features a complex network of thin, dark grey lines connecting various colored dots. The dots are in shades of blue, orange, green, purple, and grey, scattered across the frame. A large, semi-transparent light green rectangle is positioned on the left side, serving as a backdrop for the title and speaker information.

LANDLORD AND TENANT UPDATE



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Reports From The Courts



It has been a busy year.

Impact from BSA starting to be felt

Who bears responsibility for EPC and maintenance?

Clarification on Right To Manage Issues

The background of the slide is a photograph of a construction site at dusk or dawn. A large tower crane is visible on the left, its arm extending diagonally across the upper half of the frame. In the foreground and middle ground, there are several tall, rectangular concrete structures under construction, completely encased in a dense network of metal scaffolding. Several workers can be seen as silhouettes on different levels of the scaffolding, working on the structures. The sky is a mix of soft orange, yellow, and blue tones. The title text is centered over the middle of the image.

BUILDING SAFETY ACT 2022



What is a Storey? First Tier Tribunal Clarification

HRB: at least 18m high OR at least 7 storeys with at least 2 residential units

Tribunal “troubled by apparent discrepancy between Regulations and Guidance.” As are we all.

21 June 2023: Government Guidance: storey must be “fully enclosed”

BUT

Tribunal considered purpose of legislation...

Fire Safety “where there is a roof garden, persons may well be located there”

First Tier Tribunal and the HRB



Subject Building: Ground Floor Commercial Space, five residential storeys plus roof garden

So six storeys? Or seven?

Leaseholders brought remediation action

Tribunal rejected several elements of the claim

BUT

“the level of the roof garden will be significant”

Building to be registered with Building Safety Regulator as HRB

BSR and Government reviewing this

BSA: THE FIRST REMEDICATION ORDER



Kedai Ltd (KL)
Freeholder and
Landlord
2-4 Leigham
Court Road



S123 BSA:

Enforced deadline for remediation of
“relevant defects” on
a” relevant building”
requested by “interested person”
Leaseholder protection against slow
remediation by landlord

Relevant Building

Self contained building or
part of building

At least two dwellings

At least eleven metres high

OR at least five storeys

Excludes leaseholder-owned
buildings

Relevant Landlord



Landlord under lease or
any part thereof



Who is required to repair
or maintain



Anything relating to
relevant defect

Relevant Defect



S120 BSA:

Building Defect which arises in connection with relevant works

As a result of anything done or omitted

Anything used or not used

Which causes a building safety risk

To people in or about the building

Consider spread of fire, building collapse

Qualifying Lease



S119 BSA

- Long lease of single dwelling in relevant building
 - Tenant liable for service charge
- Lease pre 14/02/2022 “the qualifying time”
- Dwelling is primary or only residence
- Relevant tenant owned no more than two dwellings in UK other than interest under the lease

First Tier Tribunal Decision



Applicants must establish s123 prima facie case (relevant defects causing building safety risk)



Remediation Order must be Specific as to deadline plus works required



Works must comply with Building Regs at date remedial works undertaken



Post-works Fire Risk Appraisal of External Walls: EWS External Wall Fire Review Form issued



Order made: specified works to be completed September 2025

Costs



Schedule 8 BSA
protects qualifying
leaseholders
against landlord's
costs of
proceedings



s20C Landlord
and Tenant Act
1985 protects
non-qualifying
leaseholders

RIGHT TO MANAGE



A1 Properties
(Sunderland) Ltd v
Tudor Studios RTM
Company Ltd
[2024]UKSC 27

S79 (6)(a) Commonhold
and Leasehold Reform Act
2002

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graph TD; A[S79 (6)(a) Commonhold and Leasehold Reform Act 2002] --> B[CLRA 2002 allows qualifying tenants to assume landlord's management functions via creation of Right To Manage Company (RTM)]; B --> C[Two stage process:];
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CLRA 2002 allows qualifying
tenants to assume landlord's
management functions via
creation of Right To Manage
Company (RTM)

Two stage process:

- Service of “notice of invitation to participate” on all qualifying tenants
- Service of claim notice on landlord and other building stakeholders

Service of Claim Notice to Stakeholders



S79(6) CLRA 2002

Landlord of whole or part of premises

Party to Lease of whole or part of
premises other than as landlord or tenant

Manager appointed under Part II
Landlord and Tenant Act 1987

Facts of Case put before Supreme Court

Qualifying tenants of block of student housing
served claim notice

Served on freeholder

Served on management company

Did not serve on A1

A1 holds four separate intermediate leases of
communal areas, sublet to management company

A1 served counternotice: no RTM due to breach
of s79(6)(a) CLRA 2002

At the Supreme Court



Upper Tribunal (Lands Chamber) allowed appeal directly to SC

1. Will failure to serve claim notice correctly on intermediate landlord always invalidate RTM if other service correct?
2. If not, was failure of service on A1 fatal to claim?

SC found:

1. No.
2. No.



Supreme Court



Key Question:

Whether party affected by procedural omission had actually been deprived of real opportunity to make substantive objection

If no substantive objection could reasonably have been raised, nothing lost

RTM claim effective

EPC



Clipper Logistics plc v
Scottish Equitable plc
(unreported: Sheffield
County Court 2022)

Renewal of Lease under LTA 1954

Landlord request Alteration Covenants be added at
Renewal

Tenant to return property to original EPC rating
should their alterations reduce EPC to substandard

Tenant refused.

Held: Refusal to deny right to alter: clause in place
already effective. BUT

New Clause compelling tenant to return property
at same EPC as it had at outset.

DECEIT



McDonald's
Restaurants Ltd v
Shirayama Shokusan
Company Ltd [2024]
EWHC 1133 (Ch)



High Court



S 37A LTA 1954 Landlord liable to
pay compensation having obtained
order terminating lease by
misrepresentation?

The Facts



Under s26 LTA 1954, tenant served notice requesting new tenancy

S30(1) ground (g), landlord opposed this: intention to occupy premises for purposes of running their own business

Landlord gave undertaking to court that they would open Zen Bento restaurant as soon as reasonably practicable after vacant possession

Landlord did not do this.

Opened a bakery and different restaurant

The Claim



Tenant sued in
deceit and under
s37 LTA 1954

Claim termination
Order obtained by
Misrepresentation

The Verdict



High Court examined emails showing landlord had been uncertain as to what to open in premises

Landlord had therefore misled the county court as to its intention

Termination Order had been obtained by Misrepresentation

Deceit not established as Court had been deceived, not claimant

Breach s37A LTA 1954: quantum tbd

THANK YOU

ANY QUESTIONS?

