



**SLC CONFERENCE
6.11.24**

**RESIDENTIAL
CONVEYANCING UPDATE**

RESOURCES

- The BSA 2022
- The Regulations
- Government Guidance
- Law Society Guidance
- Case Law
- Flowcharts
- The BSA Practitioners Guide



THE BUILDING SAFETY ACT 2022



What has been happening?



Are more firms willing to act?



Has there been any clarification on problem areas?



Have there been hundreds of cases?

THE BUILDING SAFETY ACT 2022

Part 1 – INTRODUCTION- overview of the Act

- Part 2 – **BUILDING SAFETY REGULATOR** – functions, committees, staffing, enforcement , reviews appeals, supplementary and general

Part 3 – **AMENDMENTS TO THE BUILDING ACT 1984** - Building Control Authorities, Building Regulations, Building Control Approvers and Inspectors

Part 4 – **HIGHER RISK BUILDINGS** – Building Safety Risks, Accountable Persons, Registration, Duties,

Part 5 – **SAFETY STANDARDS ETC** – remediation of defects, prohibition on the development, building liability orders, remediation and redress, new homes ombudsman, new home warranties etc. and fire safety

Part 6 – **GENERAL**– Liability of officers of body corporate, review of regulatory regime, financial provision



CAN WE ACT?

- Yes
- We will be undertaking specialist work.
- That generates additional risks.
- With a seller and buyer client who are unlikely to have encountered a sale of this type before.
- There will be additional documentation.
- We may encounter resistance from conveyancers acting for the buyer and lender.



CAN WE ACT ?

- What about PI Insurance?
- Have we got data?
- Do we triage our leasehold work?
- Do we assess risk?
- Do we train our team?
- Do we monitor developments?
- Are we charging more?



**LEHNER V LANT STREET MANAGEMENT
COMPANY LIMITED LON/00BE/LSC/2021/0375**

LESSONS FROM CASE LAW

LEHNER V LANT STREET MANAGEMENT COMPANY LIMITED LON/00BE/LSC/2021/0375

- Preliminary Conditions

- Section 117 BSA are we dealing with a relevant building?
- Section 120 BSA is the service charge in dispute relating to a relevant defect?
- Para. 1(1) BSA is the service charge a charge relating to a relevant measure relating to a relevant defect ?

- Does Para.2 Schedule 8 provide protection

- Is the service charge in dispute payable after 20.7.22?
- Was the landlord required to produce a landlord certificate?
- Did the landlord produce a landlord certificate within time?

LESSONS FROM CASE LAW

Is the lease a qualifying lease?

- Does the contribution condition (para.3) Schedule 8 BSA apply?
- Does Para.4 Schedule 8 BSA protection apply?
- Para. 8 Schedule 8 BSA protection apply?
- Para. 5,6, and 7 Schedule 8 BSA protection apply?

LESSONS FROM CASE LAW

- Blomfield v Monier Road Limited
- Application for a remediation order.
- Was the building a higher risk building?
- The tribunal mandated extensive remediation work.
- Imposition of a deadline on September 2025 for completion of the remediation work.



BLOMFIELD V MONIER ROAD LIMITED

The Ministry of Housing, Communities and Local Government has published a notice at the top of its guidance confirming that it and the Building Safety Regulator are currently considering the views expressed by the FTT in this decision, and they have advised that until stated otherwise, the sector and regulatory bodies should continue to refer to existing government guidance.

ALMACANTAR CENTRE POINT V VARIOUS LEASEHOLDERS OF CENTRE POINT HOUSE [2024] UKUT 193 (LC)

No service charge is payable under a qualifying lease in respect of ‘cladding remediation’ which means the removal or replacement of “any part of a cladding system”, which forms “the outer wall of an external wall system” and which is unsafe. The Upper Tribunal has decided that the ‘cladding system’ should be interpreted widely and includes the underlying insulation and cavity barriers.

The decision in Almacantar expands the scope of the above point in finding that the leaseholders’ protection from cladding remediation costs does not depend on there being a ‘relevant defect’ which causes a building safety risk (as required elsewhere within the BSA). The result is that leaseholders can benefit from protection from remedial costs regardless of when the cladding was put on the building.

CURRENT ISSUES

- Are lenders being sensible with their instructions
- What is the position if a landlord requests a leaseholder deed of certificate and the leaseholder does not provide it?
- What if a leaseholder deed of certificate is incomplete?
- What if a landlord does not produce a landlord certificate?



THE TA FORMS

Another headache

SURELY NOT SOMETHING ELSE TO WORRY ABOUT!



I AM AFRAID SO!!!



- What do we have to explain to the seller?
- What do we have to explain to the buyer?
- What advice do we give the seller?
- What advice do we give the buyer?
- What about the revised TA7?
- What about the revised TA6?

THE EASY BIT – A REMINDER (ACTING FOR THE SELLER)

- The Conveyancing Protocol
- Contract pack should include replies to enquiries - (appropriate TA forms) and supporting documentation.
- If documentation cannot be produced the buyer should be notified.
- The conveyancer for the seller should seek instructions to respond to any additional enquiries raised by the buyer
- No requirement for the seller's conveyancer to certify the information provided by the seller in the TA forms
- BUT there is a legal responsibility to check the answers provided by the sellers

BASICS ACTING FOR THE SELLER

- Repeat the warnings on the TA forms themselves and recommend that the client provides frank and honest answers.
- Give advice concerning the potential for claims for misrepresentation and where appropriate Section 2 Fraud Act 2006.
- Check the replies given by the seller against information on file (or explain this will not be done).
- Recommend amendment of replies where necessary.
- Advise about ongoing duty to update information.

BASICS ACTING FOR THE SELLER

- Scope the retainer to exclude liability for anything provided by the seller to the estate agent before you were instructed.
- Explain you can only explain what the questions in the TA forms require and they you cannot give advice on the answers the seller provides (subject to the point in the previous slide).
- With the TA 7 explain some of the terminology (particularly the BSA questions).

BASICS ACTING FOR THE BUYER

- Explain the potential for misrepresentation.
- Explain the reality of litigation that is misrepresentation based.
- Suggest the TA questions are used as a checklist.
- Highlight the importance of survey and client inspection.
- Check the replies to the questions.
- Consider the need for further enquiries.

ROSSER V PACIFICO

- In replies to TA 6 questions the seller stated
- It was not aware of any breaches of planning permission conditions, or work that did not have all necessary consents, and there were no planning issues to resolve.
- AND
- The received an email from the Estate Agents referring to the front room on the second floor as a bedroom.



ROSSER V PACIFICO

- The fact that the front room on the second floor was referred to as a bedroom in the plans supplied to the buyer by the estate agent would reasonably lead a person in the position of the buyer to believe that the room was at least capable of lawfully being used as a bedroom. That is reinforced by reference by context including the fact that the Property, as viewed by the buyer included two rooms on the second floor, each carpeted, with their own separate natural light and ventilation source, and with electrical fittings at least consistent with their being used as bedrooms
- The answer "no" given by the seller to question 4.4 in the TA 6 carried with it the implied representation that Pacifico had reasonable grounds for believing that (among other things) there was no work that did not have all the necessary consents.

ROSSER V PACIFICO

- The seller contended it seemed that the burden of discovering the true position in relation to planning consents was being put unfairly on it, in circumstances where the buyer had experienced conveyancing solicitors acting for her, who could and should have investigated the position more fully.
- The trial judge said this misses the point that the conveyancing process operates on the basis that the buyer is entitled to ask questions of the seller – rather than having to make its own enquiries from scratch – and is entitled to rely on a seller having the greater knowledge about what has been done, with what permissions, to the property having made its own reasonable enquiries before answering those questions.
- The TA form contains a clear warning to the vendor of the importance of providing accurate answers.

LESSONS FROM CASE LAW

- Downing v Henderson – Central London Court (unreported)
- Jeremy Henderson had answered ‘no’ to the question on the property information form (TA6 form) asking if the property had ever been affected by knotweed. Yet when Downing moved in, he found knotweed at the rear of the property. In court, Henderson claimed that he couldn’t see the knotweed due to a large bush, but actually, it had previously stood up to 2m tall and there was evidence it had been treated with herbicide. His defence was dismissed, with the Judge finding that he didn’t genuinely believe that the property was unaffected by knotweed at the time it was sold. Henderson now faces a legal bill of £200,000.

LESSONS FROM CASE LAW

- SPS Groundworks & Building Ltd v Mahil [2022] EWHC 371 (QB)
- In this case a plot of land is sold for £130,000 at auction. The successful bidder fails to complete and the seller.
- Ms Mahil's was the successful bidder who defended a breach of contract claim for her failure to complete due to a failure to disclose a defect in the title to the land; and induced her purchase by misrepresentation.
- Ms Mahil ultimately won the first point which was enough to defeat the claim and so the second point was not considered by the Court.

THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 AND AMENDMENT REGULATIONS 2014

- Law Society Guidance 8.7.2020
- States 2008 Regulations will apply to solicitors acting for sellers or landlords in residential conveyancing. If this is so, then much of the principle of caveat emptor will not be applicable and solicitors will have to disclose factors that are reasonably in their knowledge.
- Seller consent required.

THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 AND AMENDMENT REGULATIONS 2014

- **Material information** - information that the average consumer needs, according to the context, to make an informed transactional decision.
- **Misleading action** - providing false information or presenting information about the nature or main characteristics of the goods or property in a way which deceives or is likely to deceive the average consumer and, as a result, causes or is likely to cause the average consumer to take a transactional decision they would not otherwise have taken.
- **Misleading omission** - the omission or hiding of material information or providing material information in a manner which is unintelligible, ambiguous or untimely, or fails to identify its commercial intent and, as a result, causes or is likely to cause the average consumer to take a transactional decision they would not otherwise have taken.

THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 AND AMENDMENT REGULATIONS 2014

- Remind your client that neither the client nor you must mislead the buyer or tenant either by providing incorrect or ambiguous information or by omitting to provide material information and that certain information will be revealed through searches and the completion of the TA6 form (other information may become apparent through searches and other enquiries of public databases, surveys and valuation reports).
- Advise your client that the consumer would have rights of redress, including in certain circumstances, the right to unwind the transaction and damages.
- Encourage your client to make all known disclosures as early in the transaction as possible to prevent delays.

THE TA 7 – QUESTION 5 PROBLEMS

- 5.8. Does the seller know of the existence or suspected existence in the building of cladding or any defects that may create a building safety risk? If yes, please give details.
- 5.9 Is the seller aware of any difficulties encountered in collecting the service charges from other flat owners? If yes, please give details.
- 6.2 Has the seller received any note or any other notice about the building, its use, its condition or its repair and maintenance? If yes, please supply a copy.

THE TA 7 – QUESTION 11 PROBLEMS

- 11.1 Have any remediation works on the building been proposed or carried out?
- 11.2 Is the lease of the property a qualifying lease?
- 11.3 Is there a leaseholder deed or certificate for the property? If Yes c;
- (a) Did the seller (the current leaseholder) complete the deed of certificate or was it completed by a previous leaseholder?
- (b) Please supply a copy of the leaseholder deed of certificate and the accompanying evidence

THE TA 7 – QUESTION 11 PROBLEMS

- 11.4. Has the Freeholder /Landlord be notified of the intention to sell?
- 11.5 Has the seller received a landlord's certificate and the accompanying evidence?
- If yes, please supply a copy of the Landlord certificate and the accompanying evidence.

THE SOLUTION

- Scope the retainer so as to explain the fact that the client will be expected to complete the TA 7 unaided and explain the potential for liability.
- Provide the client with an information sheet concerning terminology.
- Explain that it will not be possible for you to check information concerning ownership and occupation in the leaseholder deed of certificate or the information within a landlord certificate.
- Where requests have been made for information or documentation before you are instructed explain you cannot be liable for errors made as to service and calculating effective dates from service.

PRE-EMPT ADDITIONAL ENQUIRIES

- Does the seller know the status of the building where the flat or apartment is situated?
- Has the landlord entered into a developer remediation contract?
- Is the seller aware of any remediation work undertaken or to be undertaken in connection with relevant defects
- When was the landlord notified of the seller's intention to sell?
- Has the landlord requested a leaseholder deed of certificate or has one been volunteered?

THE REVISED TA 6

ENVELOPED IN MIST

TA 6 THE PROBLEMS

- The Protocol Problem - Do we explain, assist or advise?
- Explanation
- Assistance
- Advise

DO YOU HAVE ANY QUESTIONS?

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- Website: iqlegaltraining.com
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iqlegaltraining.com



info@iqlegaltraining.com

