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Grenfell: 5 legal learnings the final inquiry report will build on

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On 17 May 2018, Dame Judith Hackitt declared that the Building Regulations regime in the UK was “not fit for purpose”. Following this, there have been a number of cases and legislative changes relating to fire-safety matters for the industry to digest. The Grenfell Tower Inquiry is due to release its final report on 4 September and, in advance of that, here’s a summary of five key messages from the courts and parliament from the past few years.

1. The end of the ‘lemmings’ defence

The “Bolam” test for assessing negligence refers to the standard of the ordinarily competent member of the profession as the relevant benchmark. In the first cladding ruling since the Grenfell Tower tragedy in 2017, *Martlet Homes Ltd v Mulalley & Co Ltd* [2022] EWHC 1813 (Technology and Construction Court), the TCC warned that this test did not provide a “get out of jail free card” simply because it could be shown that “everyone else was doing it” at the relevant time.

2. Worth the paper they are written on?

In *Martlet*, the court also found that British Board of Agrément construction product certificates were simply “an aid to establish the suitability of a material for use for a specific purpose”, as opposed to a “guarantee” or “passport” to compliance. In *St James’s Oncology SPC Ltd (Project Co) v Lendlease Construction (Europe) Ltd and another* [2022] EWHC 2504 (TCC), building-control certificates were described as not “conclusive evidence” of compliance.

3. Looking back

The changes made to the Defective Premises Act 1972 (DPA) through the Building Safety Act 2022 had

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The changes made to the Defective Premises Act 1972 (DPA) through the Building Safety Act 2022 had adverse implications for those who specified or approved the use of dangerous cladding products, and will continue to do so for many years to come thanks to the introduction of a 30-year retrospective limitation period for claims made under that legislation.

In the Court of Appeal case of *URS Corporation Ltd v BDW Trading Ltd* [2023] EWCA Civ 772 (which is currently being appealed), Lord Justice Coulson hinted that “contractual limitations and qualifications” might fall foul of 6(3) of the DPA, which voids any terms that purport to exclude or restrict the operation of the provisions of that Act (or any liability arising from it). In *Vainker & Vainker v Marbank & Ors* [2024] EWHC 667 (TCC), Mrs Justice Jefford ruled that a net contribution clause did indeed contravene this provision.

4. A wider duty to warn

The (prospective only) “additional duties” imposed on designers and contractors “carrying out only part of the design” or the “building work” to “consider other work which directly relates to that building [work]/[design] and report any concerns as to compliance with all relevant requirements to the principal contractor” by 11K and 11L of the Building Regulations etc (Amendment) (England) Regulations 2023 are notably broad. These provisions may implicate parties who, by virtue of the terms of their contracts, may otherwise have perceived themselves as having a limited role on the project.

5. Reasonable remediation

The *LDC (Portfolio One) Ltd v George Downing Construction Ltd and European Sheeting Ltd* [2022] EWHC 3356 (TCC) decision suggested that where: i) expert evidence had been relied upon in devising the scheme of works; ii) the works, once implemented, effectively cured the defects; and iii) the works complied with current Building Regulations, a defendant is unlikely to be able to demonstrate that a permanent remedial scheme was unreasonable.

New milestone

The report will be an important and interesting read for everyone in the construction industry but it is likely to represent another milestone rather than an end point on the fire-safety journey, as practitioners and the government consider the implications of Sir Martin Moore-Bick’s recommendations.

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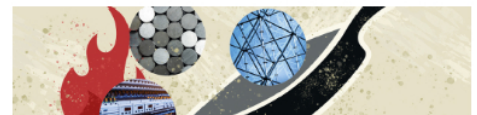
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