

Overview

Industry

Construction, Legal,
Building Safety Litigation

Location

England and Wales

Legal issue

Statutory liability for
construction professionals
under the Defective Premises
Act 1972 and Building Safety
Act 2022

Key outcome

Supreme Court unanimously
rejects URS's appeal on all
grounds, confirming extended
statutory liability for defective
residential design – including
retrospective claims

A Landmark in Liability: The Supreme Court applies the Building Safety Act and Defective Premises Act in URS Corporation Ltd v BDW Trading Ltd

June 2025

Relevant to construction and insurance claims involving:

- Professional negligence without contractual privity
- Statutory building safety obligations
- Long-tail latent defect liability
- Civil contribution claims between parties
- Claims under the Building Safety Act 2022 and Defective Premises Act 1972

Claim background – when latent defects resurface, who pays?

BDW Trading Ltd (“BDW”), a national housebuilder, bought proceedings against URS Corporation Ltd (“URS”), a firm of structural engineers, over negligent design services relating to two residential tower developments. Years after completion, critical safety defects emerged and BDW voluntarily bore the cost of substantial remediation and sought to recover this from URS – despite no direct contractual link between them.

The case tested whether BDW could rely on statutory duties under the Defective Premises Act (as amended) 1972 (“DPA 1972”) to seek a contribution under the Civil Liability (Contribution) Act 1978 (“CLC 1978”), asserting that URS’s negligent input made it jointly liable.

BDW brought a negligence claim against URS in the Technology and Construction Court (“TCC”) seeking to recover losses related to remedial works. As the proceedings pre-dated the Building Safety Act 2022 (“BSA 2022”), BDW was unable to bring a claim under contract or the Defective Premises Act 1972 (“DPA 1972”) due to limitation issues. URS argued that the losses claimed by BDW fell outside the scope of its duty.

Coverage assessment

Key issues for loss adjusters

1. **Policy scope** – confirm if the claim fits within PI, PL or CAR cover and identify the nature of the defect (design, workmanship or materials).
2. **Defective Premises Act 1972** – check if the property is a “dwelling” and if defects make it “unfit for habitation,” triggering statutory liability.
3. **Building Safety Act 2022** – note that extended limitation periods (15–30 years) may revive historic claims.
4. **Third-party risk** – assess exposure under Civil Liability Contribution Act 1978, even without direct contracts.
5. **Causation** – ensure defects caused the loss and are materially significant.

At first instance, the TCC ruled in BDW’s favour, finding that the losses were within the scope of URS’s duty and were, in principle, recoverable. The court also held that BDW’s cause of action had accrued no later than the date of practical completion, and BDW had a proprietary interest at that time.

Following the extension of limitation periods under the BSA 2022, in June 2022, BDW successfully applied to amend its claim to include causes of action under the DPA 1972 and the Civil Liability (Contribution) Act 1978 (“CLCA 1978”). URS’s application for permission to appeal this amendment was dismissed by the Court of Appeal.

The Court of Appeal later upheld the TCC’s original decision, rejecting all grounds of URS’s appeal. URS was subsequently granted permission to appeal to the Supreme Court on four grounds.

Supreme Court: a total rejection of URS’s appeal

In December 2024, the Supreme Court delivered a unanimous judgment, dismissing URS’s appeal on all four grounds. It is the first time the Court has examined the interplay between the DPA 1972 and the BSA 2022, setting out a clear path for claimants to recover losses through statutory routes, even many years after construction.

Key rulings included:

1. **Engineers can owe a statutory duty:** The Court held that consulting engineers fall within the scope of s.1 of the DPA 1972 where their work contributes to unfit dwellings, broadening the types of professionals liable.
2. **Duty owed to developers:** Statutory duties can be owed not just to future occupiers or purchasers, but also to developers like BDW, who relied on URS’s work.
3. **Economic loss recoverable:** Crucially, the Court found that BDW’s financial loss arising from repair costs after selling properties, was actionable, confirming that liability is not extinguished when a developer parts with its interest.
4. **Time-bar is no longer a defence:** The 30-year limitation period introduced by the BSA 2022 was upheld, allowing BDW on an otherwise time-barred claim.
5. **Statutory rights override limitations of contract:** URS’s lack of direct contract with BDW did not shield it from liability. The CLCA 1978 allowed BDW to pursue contribution from URS based on its statutory breach, even in the absence of contractual privity.

Claims handling strategy

Practical guidance for loss adjusters

- **Review historic projects proactively** – identify exposure in older residential developments. Claims previously considered time-barred may now be revived under the BSA 2022 extended limitation regime.
- **Audit indemnity limits and policy wordings** – long tail liabilities can stretch the capacity of PI cover. Examine retrospective dates, exclusions (e.g., fitness for purpose clauses) and aggregate vs any-one-claim wording to understand total exposure.
- **Refer the matter to Crawford Legal Services at an early stage to:**
 - (i) determine whether the claim arises from statutory, tortious, or contractual obligations; (ii) assess potential apportionment of liability where multiple consultants or contractors are involved; and (iii) secure early evidence to preserve contribution rights and minimise policy erosion.

Broader impact: statutory liability reshaped

The Supreme Court's decision significantly alters how design professionals and insurers must assess risk:

- Statutory liability trumps contract: Parties previously seen as third-tier consultants may now face claims from developers or others relying on their work.
- The Contribution Act provides a back door: Even without a contract, a party who has paid for remediation may recover from others whose statutory breach contributed to the loss.
- The 30-year tail creates major exposure: Professional indemnity policies may now face claims related to work completed decades later.
- Preventative design scrutiny is essential: Firms must not only comply with design briefs but also consider whether their work renders a dwelling unfit for habitation, a now actionable standard for years to come.

The implications of the URS v BDW decision particularly under BSA 1972 and DPA 2022 represent a significant shift in the liability landscape for construction professionals and their insurers.

This remains a relatively new and evolving area of law. As more claims are brought and tested, particularly those reaching back decades, we can expect further legal challenges and clarification from the court. However, at this stage, the courts appear increasingly willing to prioritise the rights of those who have suffered from defective residential works, regardless of how long ago the work was carried out.

You should remain alert to these developments and continue to assess both liability and coverage exposure with this broader statutory context in mind.



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