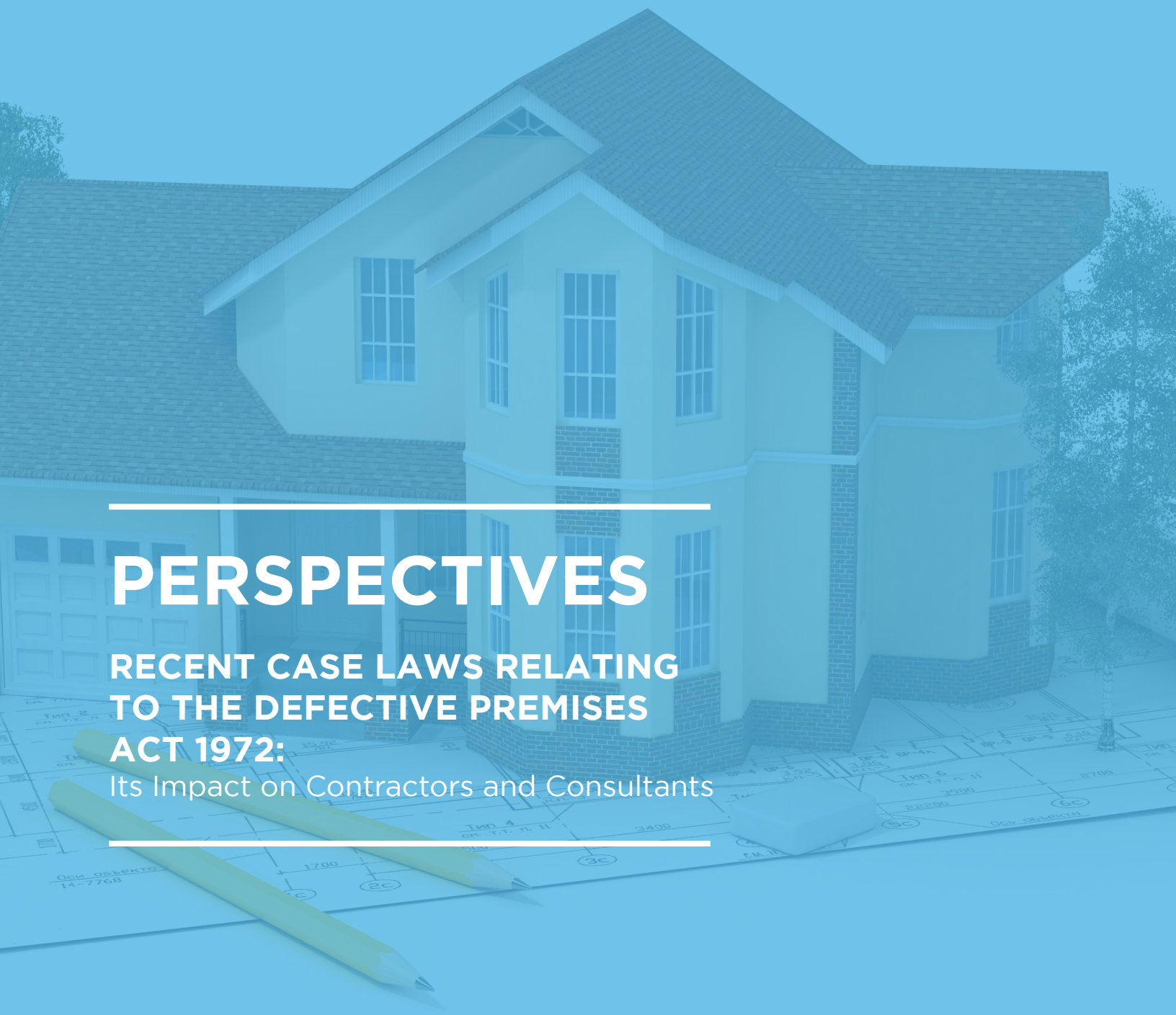

# PERSPECTIVES

## RECENT CASE LAWS RELATING TO THE DEFECTIVE PREMISES ACT 1972:

Its Impact on Contractors and Consultants

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

# Introduction

The Building Safety Act 2022[1] **(BSA 2022)** (which gained Royal Assent on 28 April 2022), has had a significant impact on liability around the design and construction process. One of the changes brought about by the BSA 2022 is the change in the limitation periods to bring a claim under the Defective Premises Act 1972 **(DPA)**. This legislative change has prompted claims under the DPA (which would have been time-barred pre-BSA 2022), where claims in contract and tort[2] are time-barred.

The recent UK Supreme Court and High Court decision on ***URS v BDW*** [2025] UKSC 21,[3] and High Court decisions on ***Vainker v Marbank*** [2024] EWHC 667 (TCC)[4] and ***BDW v Ardmore*** [2024][5] provide new guidance on DPA claim outcomes within the Courts and their potential impact on the UK construction industry.

# Relevant Limitation Periods Overview

The Limitation Act 1980 **(LA 1980)** states the time limits for bringing actions. An action in tort has a limitation period of six years from the occurrence of damage[6] or three years from the date of knowledge if that period expires later than the normal six year limitation period.[7] A simple contract has a limitation period of six years from the date of breach.[8] A contract under seal has a limitation period of 12 years.[9]

The BSA 2022 section 135 (s.135 BSA) inserted section 4B into the LA 1980, and has retrospectively increased the limitation period for a claim under section 1(1) of the DPA **(s1(1) of the DPA)** from six years to 30 years from the date on which the right of action occurred prior to 28 June 2022 or 15 years where the right of action occurred after that date.[10] This legislative change has prompted new claims under the DPA when claims in contract or tort are time-barred. This is evident in the background of the claims brought to the Courts on *URS v BDW* [2025], *Vainker v Marbank* [2024] and *BDW v Ardmore* [2024].

# Limitation Period and Time Bar Issues for Claims

## Vainker v Marbank [2024]

In *Vainker v Marbank*, Mrs Vainker the homeowner, and SCd the architect, entered into contract in 2011 for Royal Institute of British Architects (RIBA) work stages E to L.[11] Even though the contract was not signed, Mrs Vainker paid SCd (around October 2011) for services with respect to Stage E works.[12] The view of Mrs. Justice Jefford DBE (the Judge) was that a signature is not a pre-requisite for a concluded contract and that the conduct of Mrs Vainker in asking and paying for SCd's services was sufficient to confirm acceptance of a contract.[13]

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[1] https://www.gov.uk/guidance/the-building-safety-act
[2] Tort: an act or omission that gives rise to an injury (invasion of a legal right) or harm (a loss or detriment that an individual suffers) from another and amounts to a civil wrong for which the courts impose liability.
[3] *URS Corporation Ltd (Appellant) v BDW Trading Ltd (Respondent)* [2025] UKSC 21 (although this case involves BDW it is separate from *BDW v Ardmore*)
[4] [2024] EWHC 667 (TCC) (1) Brenda Vainker (2) Francois Vainker and (1) Marbank Construction Limited (2) Mercer & Miller (3) SCd Architects Limited.
[5] *BDW Trading Limited v Ardmore Construction Limited* [2024] EWHC 3235 (TCC). At the time of writing, the case is under appeal and is scheduled to be heard in October 2025.
[6] Limitation Act 1980, Section 2; LexisNexis Limitation – professional negligence claims
[7] Limitation Act 1980, Section 14A
[8] Limitation Act 1980, Section 5; LexisNexis Limitation – professional negligence claims
[9] Limitation Act 1980, Section 8
[10] BSA 2022, Section 135 (in force on 28 June 2022) https://www.legislation.gov.uk/ukpga/2022/30/section/135
[11] The Royal Institute of British Architects (RIBA) Plan of Work outlines key work stages for the design and construction of any building project. RIBA stages E to L (which is not the current RIBA terminology) involves E: Technical design, F: Production of Information, G: Tender documentation, H: Tender action, J: Mobilisation, K: Construction to Practical Completion, and L: Post-Completion (including Handover).
[12] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 16.
[13] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 22.

During the course of the works (between 2013 and practical completion on 15 May 2014) Mrs Vainker complained about the brickwork finish and water ingress at the property.[14] The Judge found that Mrs Vainker's claim against SCd, with respect to breach of contract based on SCd's design and / or inspection around these areas, was time-barred as all the relevant breaches occurred well before practical completion and therefore more than six years before the commencement of proceedings[15] in 2020.

The Judge also found that the claim in tort in respect to design and / or inspection was also time-barred as Mrs Vainker had knowledge of the damage that was attributable to SCd, in whole or in part, from late 2013.[16] This is more than three years from the date of knowledge where the period expires later than the normal six year limitation period.[17] The claimant therefore opted to claim against SCd for breach under the DPA,[18] as the claim in contract and tort were both time-barred.

## BDW v Ardmore [2024]

*BDW v Ardmore* [2024] covered a summary judgement application by BDW (the Claimant), to enforce an adjudication decision, requiring Ardmore (the Defendant) to pay over £14M of damages plus adjudicator's costs and expenses after BDW obtained practical completion on an apartment development between December 2003 and June 2004.[19] The key allegations that BDW raised were: *"the unsuitable nature of the Alumasc product and the omission of fire barriers."*[20]

Ardmore, the contractor, had a limitation defence under LA 1980 against any claims that might be brought by BDW under section 1(1) of the DPA. This became potentially ineffective when the provisions of the BSA 2022 came into force.[21] This legislative change prompted BDW to issue a Letter of Claim to Ardmore in July 2022, nearly 20 years after practical completion, regarding fire safety defects at the development.[22]

## URS v BDW [2025]

In *URS v BDW*, BDW discovered structural design defects in two of its multiple high-rise residential building developments (Capital East and Freemens Meadow) during its investigations in late 2019.[23] BDW carried out remedial works between 2020 to 2021. At the time that repair costs were incurred, BDW no longer had proprietary interest in the developments and any action brought by third parties to BDW whether under the DPA or in contract would have been time barred under Limitation Act 1980.[24]

In March 2020, BDW brought a claim against URS (who provided structural design services to BDW) in tort.[25] In October 2021, in *URS v BDW's* preliminary issue trial, *BDW v URS* [2021] EHWC 2796 (TCC),[26] the Judge, Mr Justice Fraser, considered that the defects presented a health and safety risk.[27]

In June 2022, s.135 BSA came into force which retrospectively extended the limitation period under section 1 of the DPA. BDW applied to amend its case relying on s.135 of the BSA (2022). BDW succeeded in amending

[14] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 9.
[15] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 23, 182.
[16] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 190.
[17] Limitation Act 1980, Section 14A
[18] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 191.
[19] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 9
[20] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 32a
[21] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 9
[22] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 11
[23] *URS v BDW* [2025], paragraph 5
[24] *URS v BDW* [2025], paragraphs 8 to 9
[25] *URS v BDW* [2025], paragraph 10
[26] *BDW Trading Limited v (1) URS Corporation Limited (2) Cameron Taylor One Limited* [2021] EWHC 2796 (TCC)
[27] *BDW v URS* [2021], paragraph 21

its claim and bringing new claims against URS under s.1 of the DPA and under the Civil Liability (Contribution) Act 1978.[28] The amendments were granted by the High Court in December 2022.[29]

The High Court decisions were appealed and heard by the Court of Appeals in April 2023.[30] The Court of Appeals dismissed the appeals.[31] The Supreme Court granted permission to appeal on four grounds, which included the effect of applying s135 of the BSA (2022) and additionally whether URS owed a duty to BDW under section 1(1)(a) of the DPA and if BDW's alleged losses were recoverable for breach of that duty.[32]

## Consideration of Relevant Defects in the Decisions

In section 1(1)(b) of the DPA, the duties of the person(s) taking on work in connection with dwellings are described as being:

*"done in a workmanlike or... professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed."*

Based on a previous case,[33] the types of defects that the Court is likely to consider as falling under the remit of the DPA, are the defects that will render the dwelling unfit for habitation. This relates primarily to the safety of the users and / or make the condition of the dwelling deteriorate over time. The Court held that for defects based on aesthetics, it is unlikely that it would make a dwelling unfit for habitation.

### Vainker v Marbank [2024]

In Vainker v Marbank, numerous defects were alleged, the most relevant of which are those that could render the house *'unfit for habitation,'* namely the alleged brickwork finish and the glass balustrade defects. When considering which defects were relevant the Judge cited *Rendlesham Estates plc & Ors v Barr Ltd* [2014] EWHC 3968 (TCC), a case concerning defects in an apartment building that could lead to mould and damp. In *Rendlesham v Barr*, the judgement says that:[34]

*"(iii) There may be a breach of the duty in respect of a defect which means that* ***the condition of the dwelling is likely to deteriorate over time*** *and render the dwelling unfit for habitation when it does so...*

*(iv) ...* ***it must be the case that minor or aesthetic defects which do not contribute, and are not capable of contributing to, unfitness for habitation cannot be relevant*** *in this consideration and damages cannot be recovered in respect of such a defect merely because other defects render the dwelling unfit for habitation."*

Mrs Vainker alleged that the brickwork was *"permanently damp"* and *"the stained brickwork forms part of the structural element of the building and that prolonged saturation of the mortar may well result in sulphate damage to the mortar joints."*[35] The alleged water ingress and structural risk formed part of the basis of Mrs Vainker's argument that the House was unfit for habitation at the time of completion.[36] Additionally it was alleged that these defects were due to SCd's failure to exercise reasonable skill and care and a breach of section 1 of the DPA[37] relating to

[29] [2022] EWHC 2966 (TCC) HT-2020-000084 (14 December 2022); *URS v BDW* [2025], paragraph 14
[30] [2023] EWCA Civ. 772; *URS v BDW* [2025], paragraph 15
[31] [2023] EWCA Civ. 772; *URS v BDW* [2025], paragraph 15
[32] *URS v BDW* [2025], paragraph 16
[33] *Rendlesham Estates Plc v Barr Ltd [2014].*
[34] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 39
[35] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 194
[36] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 195
[37] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 119

inadequate specifications and details, and failure to carry out appropriate site inspections.

The Judge considered the experts' evidence and held that there was no evidence of a causal connection between any design defect and the leaks that occurred or any risk of future leaks.[38] There was no evidence that the brickwork was permanently damp.[39]

The Judge noted that the experts agreed that there was no evidence of structural brickwork failure or falling bricks[40] and that Mrs Vainker's case must show *"the condition of the brickwork at the time of completion meant that it was susceptible to failure at a later date to an extent that would make the property unfit for habitation."*[41]

The Judge noted that there was broad agreement between the Experts on the risk of structural failure arising from sulphate attack due to the brickwork being permanently saturated.[42] However, it was not clear whether there had been any erosion of the mortar that was consistent with sulphate attack.[43] The Court therefore was not satisfied that it was likely for further erosion or for structural risk to occur as a result of design or workmanship issues. The Court also decided that the staining was an aesthetic defect which would not make the house unfit for habitation at the time of completion[44] and that SCd was not in breach of their duties under section 1 of the DPA.

Regarding the glass balustrade which were installed at the first and second floor terrace, and to the main internal staircase of the house, it was alleged that toughened and laminated glass panels should have been installed, as per specification, rather than just toughened glass panels. The installation of just toughened glass panels was not in accordance with the Building Regulations K2 requirements. The installation of the incorrect and unspecified glass panels should have been identified by SCd (the architect) as part of their inspections, when exercising reasonable care and skill.

It was the Judge's view that the Contract (including specification and drawings) did call for bonded toughened and laminated glass panels in all the locations described and therefore Marbank Construction Limited ("**MCL**") were in breach as they had failed to carry out the works in line with the Contract.[45] Therefore, the claim against MCL on breach of contract was not time-barred.

The Judge stated that there had been little consideration at trial on the interpretation of the Building Regulations, and it should be noted that:

*"... it seems more likely that they would require laminated glass or a handrail in such circumstances, since the failure of the glass would create the risk of fall to ground level."* [46]

On SCd using reasonable skill and care during their inspections the Judge stated:

*"... the weight of the agreed expert evidence is firmly in favour of the conclusion that it is visually obvious that the glass is not laminated... and that is something that SCd, exercising reasonable care and skill, ought to have observed at some point..."*[47]

The Judge concluded that SCd's failure to notice that laminated glass had not been installed rendered the House unfit for habitation

[38] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 195
[39] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 195
[40] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 196
[41] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 196
[42] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 197
[43] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 199
[44] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 208
[45] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 280-281
[46] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 279
[47] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 282

because of the inherent risk posed to health and safety, and therefore, was a breach of duty under section 1 of the DPA.[48]

As it was unclear whether SCd had the opportunity to inspect other aspects of the balustrade installation which may have proven to be defective (such as the stainless steel plate covers and packing pieces for the glass balustrades) the Judge found that the Claimants had not made their case and that SCd could not be found to be in breach of contract or duty of care in this respect.[49] This underlines the importance of making accurate records during site inspections.

## BDW v Ardmore [2024]

In *BDW v Ardmore* [2024], the summary judgement focuses on the legal arguments challenging the adjudicator's decision and jurisdiction on deciding a claim under DPA. But at the centre of the case is the underlying allegations relating to fire safety defects. The allegations BDW raised were *"the unsuitable nature of the Alumasc product and the omission of fire barriers."*[50] These key allegations were subsequently advanced in the adjudication. BDW's Letter of Claim identified Ardmore's general obligations under both the Building Contract and the DPA.[51]

The Adjudicator held that Ardmore had breached its duties under contract and was liable under the DPA.[52] The Judge held the adjudicator's decision, and that the adjudicator had jurisdiction on deciding the claims.[53] While the summary judgement does not go into the details of the allegations, it sheds a light on what type of claims were brought under the DPA.

## BDW v URS [2021]

In *URS v BDW's* Preliminary Issue trial, BDW v URS [2021] EHWC 2796 (TCC),[54] the Judge, Mr Justice Fraser, considered the defects that present a health and safety risk.[55] It was alleged that the existing structure of the buildings in Capital East and Freemens Meadows were not safe following BDW's investigations. The lack of safety was said to be a result of the deficiencies in URS's structural design, which were not known prior to the inspections.[56] The defect allegations relate to the structural slabs being overstressed.[57] The parties accepted that for the purposes of the Preliminary Issues hearing, it was assumed that the defendant (URS) breached its duty of care.[58]

# The Court Decides on Reasonableness of Historic Document Disclosure

In the case of the parties having difficulties finding relevant documents, the Court is likely to consider whether parties have taken *"proper"*[59] steps to gather the relevant information and documentation.

In *BDW v Ardmore*, the Judge considered two related questions: (i) what the reason for Ardmore's inability is to access relevant

[48] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 308
[49] *Vainker v Marbank Construction Ltd & Ors* [2024] EWHC 667 (TCC), paragraph 292
[50] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 32a
[51] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 32a
[52] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 32a
[53] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 80
[54] *BDW Trading Limited v (1) URS Corporation Limited (2) Cameron Taylor One Limited* [2021] EWHC 2796 (TCC)
[55] *BDW v URS* [2021], paragraph 21
[56] *BDW v URS* [2021], paragraph 13
[57] *BDW v URS* [2021], paragraphs 21 to 22
[58] *BDW v URS* [2021], paragraph 50
[59] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 123

documents, and (ii) given Ardmore's lack of documents, were the broad requirements of natural justice satisfied during the adjudication process in relation to the provision of disclosure by BDW. On the first question, the Judge's view was that Ardmore's record keeping over the relevant period was deficient, and particular reference was made to the witness statements.

Ardmore's witness stated that Ardmore's record keeping on recent projects is robust, but this was not the case for projects completed around the time of the BDW development. The witness did refer to the fact that *"until recently, there has been no reason for those operating in the construction industry to retain documents for longer than required for usual limitation periods (i.e. 15 years)."*[60] The Judge stated that in essence the witness evidence is that Ardmore has been unable to find pertinent documents. The Judge inferred that Ardmore's lack of documentation was not due to document disposal after any relevant period had expired.

The Judge then considered where BDW's witness stated that there was every reason for Ardmore to retain documents in the circumstances because, by the time that this dispute was raised in July 2022, there had been two previous disputes about Ardmore's works. In 2007 when Ardmore carried out remedial works to address water leaks and in 2015 when BDW arbitrated against Ardmore regarding balcony defects, which settled in February 2017, and Ardmore carried out remedial works to the balconies. In 2019, BDW began asking Ardmore for documents relating to the cladding materials. These previous events should have alerted Ardmore to the importance of retaining its documents for a longer period.

Regarding the insufficient information going into the adjudication due to Ardmore's poor record keeping or Admore's decision not to carry out any detailed investigations, the Judge found that neither of these reasons would be due to the 20 year passage of time.[61]

On the second question, regarding the breach of natural justice in relation to the provision of documents to Ardmore, the Judge referred to the correspondence between the parties and found that it does not support this proposition. The Judge cited that in Ardmore's pre-adjudication correspondence, Ardmore had requested extensive disclosure from BDW. BDW had provided various documents and reports to Ardmore. During the adjudication, Ardmore identified cat egories of disclosure, which the Adjudicator directed BDW to comply with. When BDW provided the documents, Ardmore did not complain about any omissions in any of the disclosures. Ardmore requested additional documents in its Rebutter, and these were also provided by BDW.[62]

The Judge rejected the suggestion that because of the adjudication process, Ardmore had received only selected documents from BDW. Based on the evidence, the Judge found that BDW had carried out reasonable and proportionate searches and disclosed the relevant documents to Ardmore.[63]

[60] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 121
[61] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 125
[62] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraphs 128 to 130
[63] *BDW v Ardmore* [2024] EHWC 3235 (TCC), paragraph 132

# Retrospective Effect of s.135 of the BSA 2022 Clarified in URS v BDW [2025] UKSC Decision

In URS v BDW (2025), the retrospective effect of the provisions in the BSA 2022 was clarified. It is not disputed that s.135 BSA applies to a claim brought under s.1 of the DPA. The issue is whether the retrospective effect of s.135 BSA also applies to other claims which are dependent on the time limit under the DPA but are not actually claims under the DPA.[64] In this case, an action is brought by BDW against URS claiming damages for repair costs in the tort of negligence and for contribution.

The Supreme Court held that s.135(3) of the BSA does apply to claims which are dependent on s.1 DPA. Section 135(3) of the BSA refers to *"an action by virtue of"* s.1 of the DPA and it is not limited to actions *"under"* s.1 of the DPA.

The Supreme Court held that the *"central purpose of the BSA in general, and section 135 in particular, was to hold those responsible for building safety defects accountable."* [65]

If s.135(3) of the BSA were restricted to actions under s.1 DPA then this purpose would be seriously undermined. The consequence would be that the 30-year limitation period would apply to claims brought by homeowners against a developer under the DPA. But it would limit any 'onward' claims brought by the developer against the contractor (whether builder, architect or engineer) who was directly responsible for the building safety defect.[66] This might penalise responsible developers who are proactive in identifying and remedying building safety defects.[67]

The Supreme Court decision quoted the Secretary of State's explanation:

*"Retrospectivity is central to achieving the aims and objectives of the BSA. Many of the building safety issues identified in the wake of the Grenfell Tower fire arise in relation to buildings constructed many years ago.... A retrospective approach provides for effective routes to redress against those responsible for historical building safety defects that have only recently come to light, whatever level of the supply chain they operated at."* [68]

# Conclusion

Based on the High Court's decision on *BDW v Ardmore* [2024], it appears that there is another route to bring claims under the DPA via adjudication for construction contracts (within the definition of the Housing Grants, Construction and Regenerations Act 1996). However, this is still being tested as Ardmore was allowed to appeal the High Court's decision, and the hearing is scheduled for October 2025.

Now that the BSA 2022 has extended the DPA limitation period to 30 years, the DPA would apply to recovery actions against consultants, designers and contractors. For consultants, designers and contractors, retaining the relevant critical documentation to stand behind what they have done on a project going back up to 30 years and going forward up to 15 years (based on the 28 June starting point that the initiated by the BSA 2022) is now crucial as they are less likely

[64] *URS v BDW* [2025], paragraph 96
[65] *URS v BDW* [2025], paragraphs 104-106
[66] *URS v BDW* [2025], paragraphs 107-108
[67] *URS v BDW* [2025], paragraphs 109-116
[68] *URS v BDW* [2025], paragraph 87

to have reliable witness evidence available to cover such long periods. Record keeping demonstrating the design process, decision making, and implementation will be essential.

This additional area of exposure to construction professionals has now been created, as developers can now pursue a direct statutory route to construction professionals rather than relying on a claim in negligence or breach of contract. This direct route is likely to impact the cost and availability of the professional indemnity cover market for construction professionals and introduce more claims into the construction industry. This may result in more costs where contractors, designers, and consultants will need to put more resources into responding to claims in an industry which the government has already identified as having low productivity rates.

These rulings will give building owners and developers the confidence to undertake remedial works and recover costs from their supply chains, even though they are not facing claims. An aim of the BSA 2022 is to hold those responsible for building safety defects liable by giving the broadest interpretation of the legislation possible, as the Courts encourage developers to carry out repairs to remove dangers to occupants.

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## More About J.S. Held's Contributor

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