

# "Please, sir, I want some more... – A Brief Discussion of the Schedule 8 Protections under the Building Safety Act 2022, following *Lehner v Lant Street Management Co Ltd* [2024] UKUT 135 (LC)"

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## Overview

Schedule 8 to the Building Safety Act 2022 ("**BSA**") sets out provisions that are designed to protect leaseholders, where certain criteria is met, against some or all of the costs associated with remedying building safety defects (known as 'relevant measures').

This appeal related to a First Tier Tribunal ("**FTT**") decision which originally found that Mr Lehner was liable for service charges relating to relevant measures. On appeal the Upper Tribunal ("**UT**") considered that these costs did relate to a cladding system and that the Schedule 8 protections applied. The UT went through the stages of tenant protections in Schedule 8 and the presumptions made about leases within this regime.

## Presumption 1 - Regulation 6(7) (Step 2 of the Appendix to the decision)

Action: Where a current landlord does not provide a landlord certificate ("**LLC**") which complies with Regulation 6, in the form set out in Schedule 1, then the Developer Condition (the condition set out in Schedule 8, paragraph 2(2)) is met. This means that the landlord, whether it was the developer or not, is responsible for the relevant defects identified in the LLC and cannot look to recover the costs of relevant measures undertaken via the service charge.

Case Discussion:

- The UT concluded that since the service charge demand was made before the Regulations came into force, there was no requirement to serve an LLC at the time of making that demand.
- The UT referred to the possibility that there might be an argument to say that the landlord

should have served an LLC four weeks after the Regulations came into force as it was aware of a relevant defect. No decision was made on this point and it was ultimately left open for future consideration.

## **Presumption 2 - BSA, Schedule 8, paragraph 13 of the BSA (Step 3 of the Appendix to the decision)**

Action: Where a lease complies with s119(a-c) of the BSA, the lease is deemed qualifying unless the landlord has taken all reasonable steps (and any prescribed steps) to obtain a leaseholder certificate and no certificate has been provided.

Case Discussion:

- What does "all reasonable steps" mean? In this case the UT notes that "no such steps had been taken", which appears to be an extreme example.
- The UT did not provide any guidance on exactly what "all reasonable steps" means.

## **Presumption 3 – BSA, Schedule 8, paragraph 14(1) (Step 4 of the Appendix to the decision)**

Action: The person who is the landlord under a qualifying lease at the qualifying time is to be treated as having met the contribution condition unless the landlord provides to the tenant a certificate, complying with any prescribed requirements, that the relevant landlord did not meet that condition.

Case Discussion:

- Whilst paragraph 14(1) notes that the LLC should "comply with any prescribed requirements", the focus of the provision appears to be on whether the landlord does/does not meet the contribution condition.
- In this case, the UT notes that "Because the contribution condition is not determinative of the appeal, and because the issue is a tricky one on which we have not heard proper argument, we prefer to say nothing further about it." This statement is an example of how complicated the regime is. It is the application of whether the assumption in 14(1) applies that is of particular practical importance, however the UT was unable to give any direction on this issue, for the reasons explained.

This case represents one of the first UT decisions analysing landlord's certificates and the leaseholder protections arising under Schedule 8 of the BSA 2022. Given the complexity of the

certification regime, we anticipate that the industry will see an increasing number of claims made and subsequent decisions from the Tribunal in this area. Therefore, we find ourselves saying, collectively, "Please, sir, we want some more" ... guidance.

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