



## Waite is Over: First Remediation Order granted under the BSA 2022

In what is thought to have been the first decision of its kind, the First-Tier Tribunal (“FTT”) in *Waite and others v Kedai Ltd* [2023], has granted the applicant leaseholders a Remediation Order under the Building Safety Act 2022 (“BSA”).

### The test set out in the BSA

Under section 123 of the BSA, the FTT may, on the application of an interested person, make a Remediation Order compelling a relevant landlord to remedy a specified defect in a relevant building within a set period of time (“**Remediation Order**”).

An application can only be brought by an “*interested person*”, which includes the local authority, fire and rescue authority, any person with a legal or equitable interest in the relevant building and any other person prescribed by the regulations.

A Remediation Order can only be made against a “*relevant landlord*”, defined in the BSA as “*a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect*”.

A “*relevant defect*” for the purposes of the BSA is a defect that arises as a result of anything done or not done, or anything used or not used, in connection with relevant works, which causes a building safety risk.

A “*building safety risk*” means a risk to the safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part of it.

A “*relevant building*” for the purposes of the BSA is defined as a self-contained building or part of a building containing at least two dwellings which is at least 11m (or five storeys) high.

### Background

On 20 September 2022, Ms. Waite applied for a Remediation Order against her landlord, Kedai Limited (“**Kedai**”), for the remediation of defects at Blocks A and B, 2-4 Leigham Court Road, London (the “**Property**”). On 7 December 2022, a second application was made by around 30 other leaseholders of the Property (“the **Applicants**”). The defects included unsafe ACM cladding, combustible Kingspan K15 insulation behind the cladding panels, and a pervasive lack of fire-stopping (“the **Defects**”).

In 2019, following the Grenfell tragedy, fire safety concerns arose in relation to the ACM cladding on the upper two storeys of the Property. Between 2019 and 2023 various fire safety reports were obtained and in June 2023 two improvement notices were served by Lambeth Council under Section 12 of the Housing Act 2004 in respect of the Defects.

The hearing date was set for 10-13 July 2023, however Kedai applied to postpone the hearing date on the grounds that it required more time to procure a specialist façade engineer report. However, the FTT decided that the reports and respective position statements already provided by the parties included sufficient information to determine the criteria for a Remediation Order. Kedai’s application was therefore denied and the hearing was to proceed as planned.

### The Dispute

On 10 July 2023, the morning of the hearing, the FTT inspected the Property in the presence of the parties and their respective solicitors. The

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inspection corroborated some of the observations in the previous fire safety reports obtained between 2019 and 2023.

Both parties agreed that Kedai was a ‘*relevant landlord*’ within the meaning of section 123 of the BSA and that the Property constituted a ‘*relevant building*’. However, Kedai reserved its position as to whether some of the Defects were ‘*relevant defects*’ and stated that technical evidence would be required to determine whether the alleged Defects amounted to a ‘*building safety risk*’.

## Held

The FTT granted the Remediation Order against Kedai requiring it to remedy all Defects by 19 September 2025.

The FTT was satisfied that the majority of the Defects at the Property were “*relevant defects*” for the purposes of the BSA and that the Defects caused a “*building safety risk*”, namely a risk to the safety of people in the Property arising from the spread of fire and/or collapse of the building or any part of it.

## Timing

The Applicants pressed the FTT to determine that all remedial works must be completed within 18 months, on the basis that Kedai had knowledge of the Defects some 3 years prior. However, the FTT were reluctant to agree to this timescale on the basis that it would take Kedai considerable time to design a remediation scheme, have it approved and complete it. Thus, the FTT granted Kedai 26.5 months to complete the necessary remedial works.

## Other relief sought by the Applicants

The Applicants sought an order for Kedai’s detailed scope of works to be submitted to them for agreement prior to commencement of the remedial

works. The FTT found that although the power to make a Remediation Order is very wide, it could or should not make the Applicants’ prior agreement a precondition to the commencement of the remedial works.

The Applicants also sought an order requiring Kedai to obtain an independent report upon completion of the remedial works to evidence that the fire risk to the external wall cladding was reduced, no further remedial works were required and that the Property now complied with the Building Regulations. The FTT determined that it was not proportionate to require Kedai to obtain an independent report, but that any remaining ‘*relevant defects*’ in accordance with the BSA may be subject to a fresh application to the Tribunal.

The FTT also declined to grant an order that Kedai should keep the Applicants updated on a monthly basis as to the progress of the remedial works, albeit it did “*recommend*” and “*encourage*” such a process.

## Defences

The Tribunal also determined that it would not be a defence to the grant of a Remediation Order that the Property complied with Building Regulations at the time of practical completion. Instead, the risk posed by the state of the Property should be assessed in the light of today’s knowledge.

## Analysis

As the first of its kind, this case provides a useful insight into the sort of considerations the FTT will have in mind in assessing claims for Remediation Orders, and the nature, scope and extent of any Orders it might be prepared to make.

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