

Construction Law Update

A Building Liability Order Granted in Landmark Building Safety Judgment

In *Crest Nicholson v Ardmere* [2026] EWHC 789 (TCC), the Technology and Construction Court handed down a significant judgment concerning the Building Liability Order regime pursuant to the Building Safety Act 2022 (“BSA”).

What is a Building Liability Order (a “BLO”):

A BLO is a statutory remedy introduced by the BSA. It allows the Courts to extend liability incurred under the Defective Premises Act 1972, section 38 of the Building Act 1984 (not yet in force) or as a result of building safety defects from one company to another ‘associated’ company (as defined by the BSA), on a joint and several liability basis. Therefore, BLOs allow the Courts to pierce the corporate veil and hold an associated company liable for the relevant liability of another, provided it is “*just and equitable*” to do so.

The Key Takeaways:

- The Court confirmed it had the power to make “anticipatory” BLOs in advance of a relevant liability being established at trial.
- An Adjudicator’s Decision can be used as a mechanism to establish a “*relevant liability*” for the purposes of a BLO.
- The Court has provided some guidance on the applicable “*just and equitable*”, confirming it is highly fact sensitive (and that each case will be turn on its facts).

Factual Background

The case concerned works to a large development of residential apartment buildings at Admiralty Quarter in Portsmouth (“the **Development**”). Ardmere Construction Limited (“**ACL**”) was engaged by Crest Nicholson Regeneration Limited (“**Crest**”) to design and construct the Development under a contract dated 2005. The construction of the Development was completed in 2009.

Crest alleged extensive building safety risks including the widespread usage of non-compliant combustible insulation, missing and defective cavity barriers, defective firestopping as well as a host of other serious fire-safety defects. Crest contended that these defects rendered the Development unfit for habitation under section 1 of the Defective Premises Act 1972 (the “**DPA**”) and had referred the dispute adjudication.

The Adjudication

The day before the Adjudicator issued his Decision, and having participated throughout (albeit under a reservation of its position), ACL went into administration.

The Adjudicator provided his Decision on 29 August 2025. He decided that he had jurisdiction to hear the dispute and that ACL should pay to Crest the sum of circa £14.9m.

As ACL was insolvent and was unable to meet either the adjudication award or any future judgment, Crest applied to the TCC for two forms of relief.

The Building Liability Orders Sought:

Crest and its associated companies sought two BLOs:

1. An “anticipatory” BLO. In essence, this would make ACL and its associated companies jointly and severally liable for any liability ACL might be found to owe to Crest in respect of the Development under section 1 DPA or as a result of a building safety risk, despite a final

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ruling on liability not having been made yet (the “**Anticipatory BLO**”).

2. A BLO for the associated companies of ACL to be jointly and severally liable for the c£14.9million awarded in the Adjudicator’s Decision (the “**Adjudication BLO**”).

Issues for the Court

The case raised important questions about the scope, timing and operation of BLOs, and their relationship with construction adjudication.

The Judge, Constable J, broke down the key issues for determination as follows:

- Could an Adjudicator’s Decision be a “*relevant liability*” for the purposes of s.130 of the BSA?
- Would it be just and equitable on the facts to grant the BLOs?

Held

Constable J ruled in favour of Crest and granted both the Adjudication BLO and the Anticipatory BLO.

Therefore, ACL and its associated companies were found to be jointly and severally liable for the sums owed to Crest pursuant to the Adjudicator’s Decision and also jointly and severally liable in anticipation of any further relevant liability ACL may ultimately be found to have to Crest in respect of the Development following a trial of the main action.

Key Principles Relating to BLOs

The Judge provided some helpful and important guidance and principles relating to BLOs:

- The “*just and equitable*” test is a highly fact specific test, and the Court will have a wide discretion to consider each case on its own merits. In this instance, and on the facts before him, Constable J was satisfied that it would be “*just and equitable*” to grant the BLOs.

- The Court has the ability to make an anticipatory BLO. Indeed it was confirmed that anticipatory BLOs can serve an important purpose by clarifying at an early stage whether solvent associates will have to stand behind an original (impecunious) defendant.

The Decision of the Adjudicator, gave rise to a “*relevant liability*” for the purposes of making a BLO under s.130(3) BSA. It was held that the temporarily binding nature of adjudication does not deprive such a liability of legal effect, and that “*a conclusion that adjudication is fundamentally incompatible with the application of BLOs would deprive the construction industry of the use of one of the most important dispute resolution tools from which it has benefited significantly over the last 30 years.*”

Comment

This is a significant decision that could have profound implications.

Indeed, wherever you are in the construction chain, whether an insurer, developer, consultant, contractor, or subcontractor, this decision has the potential to materially shift the litigation (and adjudication) landscape under the BSA.

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