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Building Safety Act 2022: Impact on Commercial and Residential Services Charges

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Summary

- The Building Safety Act 2022 (BSA 2022) has fundamentally altered the landscape of service charge recovery in relation to building safety defects, particularly for residential leaseholders.
- Schedule 8 to the BSA 2022, which came into force on 28 June 2022, introduces extensive restrictions and caps on service charges for remediation works in relevant buildings.
- Recent caselaw has clarified critical aspects of these protections, particularly regarding the retrospective application of service charge restrictions and the scope of protection for unsafe cladding.
- Whilst the protections primarily apply to residential qualifying leases, certain provisions extend to commercial premises in limited circumstances.

Summary

- Three significant decisions have shaped the interpretation of Schedule 8:
  - Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point [2025] EWCA Civ 856 established that service charge restrictions apply retrospectively;
  - Almacantar Centre Point Nominee No 1 Ltd v de Valk [2025] UKUT 298 (LC) confirmed that protections for unsafe cladding apply regardless of when the cladding was installed; and
  - Lehner v Lant Street Management Co Ltd [2024] UKUT 135 (LC) clarified the broad meaning of "cladding system

Building Safety Act 2022

- The BSA 2022 was Parliament's main legislative response to the Grenfell Tower tragedy and implements recommendations from Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety.
- The Act establishes a new Building Safety Regulator, creates a more stringent regime for higher-risk buildings, and introduces significant protections for leaseholders in relation to financing remediation works.
- Part 5 of the BSA 2022, comprising sections 116 to 125 and Schedule 8, makes provision in connection with the remediation of relevant defects in relevant buildings and contains the key protections for tenants in respect of costs connected with such defects.
- Schedule 8 to the BSA 2022 restricts when and how much of the costs of remediation works can be charged via the service charge where remediation works are needed to address a relevant defect in a relevant building.

Schedule 8

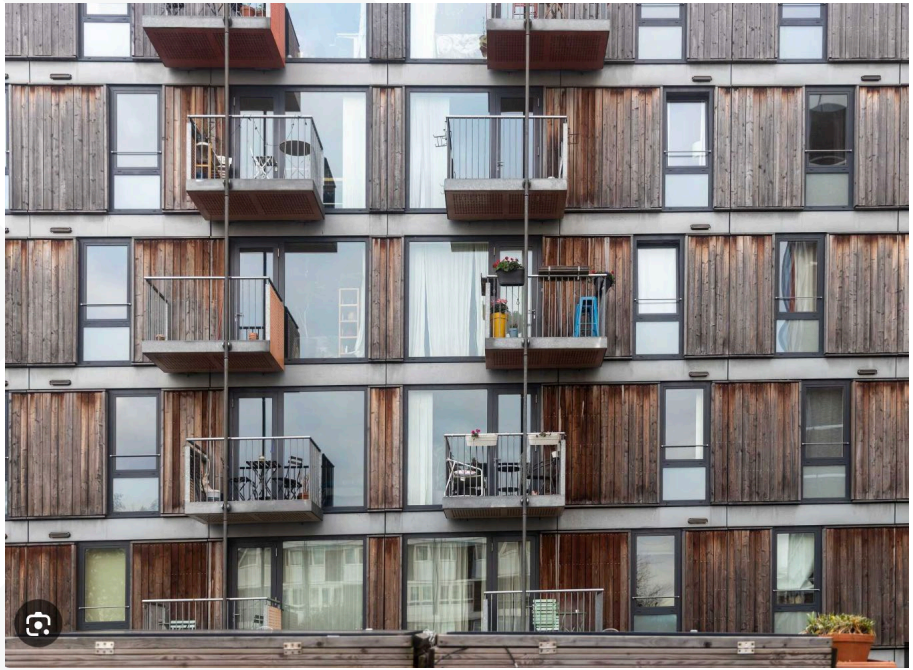
- The protections in Schedule 8 apply to "relevant buildings", which means a self-contained building or self-contained part of a building in England that contains at least two dwellings and is at least 11 metres high or has at least five storeys, subject to certain exceptions.
- Most restrictions on cost recovery only apply where there is a "qualifying lease", which by definition must be a long lease (granted for 21 years or more) of a single dwelling in a relevant building where the tenant is liable to pay a service charge, the lease was granted before 14 February 2022, and at the beginning of 14 February 2022 specific conditions regarding the tenant's ownership of dwellings were met
- The definition of service charge in Schedule 8 is based on section 18 of the Landlord and Tenant Act 1985, which refers to an amount payable by a tenant of a dwelling. However, Schedule 8 extends this definition to apply to a lease of premises that do not include a dwelling
- This means that in some cases, the restrictions on recovery of costs will apply to commercial service charges as well as residential, though in most cases the restrictions only apply where there is a qualifying lease
- No service charge is payable under a qualifying lease for the removal or replacement of any part of a cladding system that forms the outer wall of an external wall system and is unsafe

Schedule 8

- Where the landlord or any superior landlord as at 14 February 2022 was responsible for the defect, or was associated with the person responsible for the defect, no service charge is payable for remedying the relevant defect
- This protection applies to a lease of any premises in a relevant building, not just qualifying leases, and therefore assists both residential and commercial leaseholders in certain circumstances
- Additionally, costs of remediating a relevant defect cannot be recovered via the service charge of a qualifying lease if the value of the lease on 14 February 2022 was less than £325,000 in Greater London or £175,000 elsewhere
- For qualifying leases that do not benefit from complete protection, Schedule 8 imposes caps on the permitted maximum that can be charged. The permitted maximum is £15,000 for properties in Greater London or £10,000 outside Greater London, though these amounts are increased for higher-value properties (£50,000 for leases worth £1-2 million, and £100,000 for leases worth over £2 million on 14 February 2022)
- Furthermore, there is a rolling limit of 10% of the permitted maximum that can be charged for remediation costs in any 12-month period, effectively spreading contributions over a ten-year period

Lehner v Lant Street Management Co Ltd

- [2024] UKUT 135 (LC)



Lehner v Lant Street Management Co Ltd

- The appellant leaseholder appealed against a decision of the First-tier Tribunal regarding his liability to pay a service charge relating to building safety defects.

- The appellant owned the lease of a flat in a building in London. On 8 February 2021, he was issued with a demand for £1,244.85 as a service charge contribution towards the cost of removing and replacing combustible insulation and installing additional fire-stopping in the walls of his building. The demand included a statement for the purposes of the Landlord and Tenant Act 1987 s.47 and s.48 that his landlord was "Damgate Freeholds Limited".

Lehner v Lant Street Management Co Ltd

- The appellant applied to the FTT under the Landlord and Tenant Act 1985 s.27A for a determination of his liability to contribute towards the costs of the proposed works. By its decision in April 2023, the FTT determined that the insulation was not part of a cladding system and therefore the appellant could not rely on the cladding remediations protections provided for in the Building Safety Act 2022 Sch.8 para.8. It concluded that he was liable to pay the sum demanded to the respondent management company.

- The Upper Tribunal had to consider whether the leaseholder protections provided Sch.8 of the 2022 Act applied to the appellant.

Lehner v Lant Street Management Co Ltd

- Appeal allowed.

- Leaseholder protection: suggested approach - The 2022 Act was complex. The following was a suggested sequence of questions which a decision maker should address when determining whether service charges were payable in respect of work to which the leaseholder protections might apply.
- **Step 1 - preliminary conditions:**
- (i) was the building was a relevant building (s.117)?;
- (ii) did the disputed service charge relate to a relevant defect (s.120)?;
- (iii) was the disputed service charge a charge in respect of a relevant measure relating to the relevant defect (Sch.8 para.1(1))?.

Lehner v Lant Street Management Co Ltd

- **Step 2 - Sch.8 para.2 protection:**
- (i) did the disputed service charge became payable after 20 July 2022?;
- (ii) if so, did any of the circumstances listed in the Building Safety (Leaseholder Protections) (England) Regulations 2022 reg.6(1) occur between 20 July 2022 and the date the disputed service charge became payable?;
- (iii) if so, did the current landlord provided a landlord's certificate which complied with reg.6?. If not, reg.6(7) applied, the Sch.8 para.2(2) condition was taken to be satisfied and the service charge was not payable;
- (iv) if the current landlord provided a landlord's certificate, or if the disputed service charge became payable before 20 July 2022, was the landlord or any superior landlord on 14 February 2022 responsible for the relevant defect, or associated with a person responsible for the relevant defect? If so, the Sch.8 para.2(2) condition was satisfied, and the service charge was not payable. If the landlord or any superior landlord or an associate was not responsible for the defect, the Sch.8 para.2 protection did not apply.

Lehner v Lant Street Management Co Ltd

- **Step 3 - qualifying lease:**
- (i) did the lease satisfy the conditions in s.119(2)(a) to (c)?;
- (ii) if so, had the landlord taken all reasonable to obtain a qualifying lease certificate from the tenant for the purpose of Sch.8 para.13? If not, the lease was to be treated as a qualifying lease and the protections in Sch.8 para.3 to para.9 might apply;
- (iii) if the landlord had taken all reasonable steps to obtain a qualifying lease certificate, and either no certificate had been provided, or the leaseholder had certified that the conditions in s.119(2)(d) were met, were those conditions in fact met? If so, the lease was a qualifying lease and the protections in Sch.8 para.3 to para.9 might apply. If not, none of those protections applied.

Lehner v Lant Street Management Co Ltd

- **Step 4 - Sch.8 para.3 protection: the contribution condition:**
- (i) had the landlord provided a certificate to the leaseholder that the person who was the landlord on 14 February 2022 (the relevant landlord) did not meet the contribution condition? If not, the contribution condition was taken to be satisfied and no service charge was payable (Sch.8 para.14(2) and reg.6(7));
- (ii) if the landlord did provide such a certificate, did the relevant landlord in fact meet the contribution condition on 14 February 2022? If so, no service charge was payable (Sch.8 para.3(1)).

Lehner v Lant Street Management Co Ltd

- **Step 5 - Sch.8 para.4 protection: low value leases:**
- On 14 February 2022 was the value of the qualifying lease less than £325,000 (Greater London) or less than £175,000 (elsewhere)? If so, no service charge was payable.

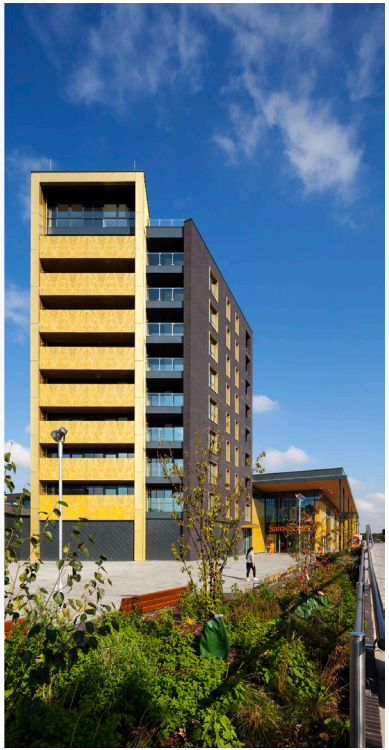
- **Step 6 - Sch.8 para.8 protection**:
- cladding remediation:
- (i) did the relevant measures in respect of which the service charge was claimed comprise the removal or replacement of any part of a cladding system?;
- (ii) if so, did the cladding system form the outer wall of an external wall system, and was the cladding system unsafe? If so the para.8 protection applied, and no service charge was payable in respect of the removal or replacement works.

Lehner v Lant Street Management Co Ltd

- **Step 7 - Sch.8 paras 5, 6 and 7: other protections:**
- If after considering the previous steps the FTT was satisfied that a service charge was payable in respect of relevant measures, was that sum capped because it exceeded the maximum payable under a qualifying lease permitted by Sch.8 para.5 and Sch.8 para.6, or the annual limit permitted by Sch.8 para.7? (see para.45 of judgment).
- **Application to instant case**
- The service charge of £1,244.85 demanded on 8 February 2021 was not payable by the appellant and would not be payable even if a proper demand was made for it in future.
- The service charge demand failed to state the name and address of the landlord which meant that under s.47 of the 1987 Act the amount demanded was not due.
- The work in respect of which the demand was made was "cladding remediation" and, as the owner of a qualifying lease, the appellant had the benefit of the Sch.8 para.8 protection and was not liable to pay a charge in respect of the works (para.121).

Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point

- [2025] EWCA Civ 856



Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point

- The Court of Appeal addressed the critical question of whether restrictions on service charge recovery in the BSA 2022 had retrospective effect
- The case concerned Hippersley Point in Abbey Wood, London, a building constructed in about 2015 with 10 storeys and 32 residential flats. In the latter part of 2020, it emerged that substantial remedial works were required to deal with defects in the external construction which gave rise to fire risk
- The landlord, Adriatic, applied to the First-tier Tribunal for the consultation requirements to be dispensed with in respect of the works. In December 2021, the FTT granted dispensation unconditionally, noting that the building was unsafe in terms of fire risk and that it was not an option to delay works to unsafe premises
- The costs of the dispensation application were incurred before Schedule 8 came into force on 28 June 2022. The key issue was whether paragraph 9 of Schedule 8, which provides that no service charge is payable under a qualifying lease in respect of legal or other professional services relating to liability incurred as a result of a relevant defect, applied to these pre-commencement costs

Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point

- By a majority, the Court of Appeal upheld the Upper Tribunal's finding that the effect of paragraph 9 is retrospective insofar as it prohibits payment by qualifying leaseholders of any service charge caught by paragraph 9 after 28 June 2022, regardless of when the costs were incurred or when the service charge became payable
- The Court noted that paragraph 9 states that "no service charge is payable" under a qualifying lease in respect of the specified services, and since these provisions came into force on 28 June 2022, this means "on and from 28 June 2022 no service charge is payable"
- The Court considered the evident purpose of Schedule 8 to be to relieve tenants, especially qualifying tenants, from liabilities to pay service charges arising from relevant defects and cladding remediation. It concluded that it would be anomalous if a tenant could nevertheless be required to pay service charges stemming from expenditure on an application to dispense with consultation as regards works addressing such defects

Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point

- The decision has significant implications beyond the recovery of legal and professional services costs, as other paragraphs of Schedule 8 use similar wording to that in paragraph 9
- The decision will be a disappointment to landlords who incurred costs before 28 June 2022 that remain unpaid, as the restrictions in Schedule 8 will now prevent recovery of those costs from qualifying leaseholders
- The Upper Tribunal previously acknowledged that the interpretation also disadvantages qualifying leaseholders who diligently paid service charge costs before 28 June 2022, in contrast to tardy payers who now benefit from the protections in Schedule 8
- However, the Court of Appeal stopped short of finding that qualifying leaseholders who had paid such costs before 28 June 2022 should be refunded

Almacantar Centre Point Nominee No 1 Ltd v de Valk

- [2025] UKUT 298 (LC)



Almacantar Centre Point Nominee No 1 Ltd v de Valk

- The appellant lessors appealed against a decision that no service charges were payable by the respondent lessees in respect of proposed works to the façade of a property in which they leased residential flats.

- The physical condition of the property façade had deteriorated and major repair works were needed. The lessors applied to the First-tier Tribunal, under the Landlord and Tenant Act 1985 s.27A(3), for a determination of whether service charges were payable in respect of the cost of the works

Almacantar Centre Point Nominee No 1 Ltd v de Valk

- The Building Safety Act 2022 Sch.8 provided that certain service charge amounts relating to relevant defects in a relevant building were not payable. Lessees were protected from the burden of paying service charge costs to a greater or lesser extent depending on which of the protections in Sch.8 they were entitled to rely on. Paragraphs 2, 3 and 4 of Sch.8 were all stated to be intended to mitigate the costs of remediation by the taking of "relevant measures" to address "relevant defects”.

- Schedule 8 para.8 stated that: "No service charge is payable under a qualifying lease in respect of "cladding remediation". It defined "cladding remediation" as "the removal or replacement of any part of a cladding system that (a) forms the outer wall of an external wall system, and (b) is unsafe".

Almacantar Centre Point Nominee No 1 Ltd v de Valk

- The FTT found that the defects to the façade of the property arose from its original design and construction, between 1963 and 1966. Under s.120, a "relevant defect" was a defect that caused a building safety risk as a result of "relevant works". By s.120(3), relevant works had to have been carried out within the "relevant period". The proposed works could not be carried out within the relevant period and could not therefore be "relevant measures" to address "relevant defects". However, the FTT found that the ordinary and clear meaning to be given to the words of para.8 was that cladding remediation was to be treated as a distinct protection which was not contingent on there being a "relevant defect" and therefore not subject to the relevant period requirement. It found that some of the lessees were entitled to rely on para.8 and were not required to pay any part of the service charge attributable to cladding remediation.

Almacantar Centre Point Nominee No 1 Ltd v de Valk

- **Did Sch.8 para.8 apply to defective cladding which was not also a "relevant defect"?**
- Para.8 makes no mention of "relevant measures" or "relevant defects" and no qualification was to be imported to that effect. The words of para.8 were clear and unambiguous and accorded with the underlying policy of the 2022 Act and the clear ministerial statement that no leaseholder living in their own flat should pay to fix dangerous cladding.
- That interpretation was not anomalous or out of kilter with the structure of other sections in Pt 5 and the remainder of Sch.8. Paragraph 8 provided a different protection for a limited group of qualifying leaseholders where the relevant building had unsafe cladding. It only applied to a part of a cladding system that was "unsafe". The definition of "relevant defect" was very different from the criterion of "unsafe" (see paras 17, 22, 31, 50-61 of judgment).

Almacantar Centre Point Nominee No 1 Ltd v de Valk

- **Were the service charges in respect of "cladding remediation" within para.8?**
- No definition of "cladding" was provided in the 2022 Act, but the FTT had concluded that there was cladding at the property. That was a question of fact.
- The FTT had had regard to technical definitions of cladding, had heard expert evidence, and had carried out a site view. There was no justification for departing from its findings.
- As to whether the proposed works involved "cladding remediation", para.8 did not require both a cladding system and an external wall system: there was no justification for limiting the applicability of para.8 to structures with two separate systems, Lehner v Lant Street Management Co Ltd [2024] UKUT 135 (LC), [2024] H.L.R. 47, [2024] 5 WLUK 294 applied.
- The FTT had been correct to find that the façade at the property comprised the outer wall of an external wall system. If there had been only one composite wall, the requirement would not have been met, but that was not what the FTT had found (paras 64, 69-70, 74-75).

Almacantar Centre Point Nominee No 1 Ltd v de Valk

- **Meaning of "unsafe"**
- The lessors argued that the term "unsafe" in para.8 should be narrowly construed to mean inherently unsafe cladding posing a fire risk, not general degradation or structural decay over time.
- However, there was no justification for limiting the ambit of para.8. Its words were clear and unambiguous and the word "unsafe" had to be given its ordinary and natural meaning. The FTT had been correct to find that, on the basis of clear evidence as to the serious degradation of the condition of the façade, including the serious risk to the health and safety of the residents and public if windows became detached, the cladding system was unsafe (paras 80-82).

Almacantar Centre Point Nominee No 1 Ltd v de Valk

- **Presumption in Sch.8 para.13**
- Under Sch.8 para.13, a lease which met the conditions in s.119(2)(a) to (c) was to be treated as a qualifying lease unless the landlord had taken all reasonable steps (and any prescribed steps) to obtain a qualifying lease certificate from a tenant under the lease, and no such certificate had been provided to the landlord.
- The lessors argued that the FTT had wrongly presumed that some of the lessees held a qualifying lease because it appeared to have made findings of fact as to who held a qualifying lease.
- However, the FTT had not made any determination based on evidence; it had simply applied the presumption. It would be inappropriate for the instant tribunal to decide whether the FTT's finding was binding or might be rebutted (paras 87-88, 95, 97-98)

Application to Commercial Service Charges

- Whilst the majority of leaseholder protections in Schedule 8 only apply to a "qualifying lease", which must be a lease of a dwelling, certain provisions do extend to commercial leases
- Paragraph 2 of Schedule 8 applies to a lease of any premises in a relevant building and is not limited to a qualifying lease or to residential premises
- This provision states that no service charge will be payable for remedying a relevant defect if the landlord or any superior landlord as at 14 February 2022 was responsible for the defect, or was associated with the person responsible for the defect
- The definition of service charge in paragraph 1 of Schedule 8 is extended to apply to a lease of premises that do not include a dwelling
- This means that paragraph 2, and the protection in paragraph 11 preventing the shifting of costs to other tenants, assist leaseholders of leases that are not qualifying leases, including commercial leaseholders in certain circumstances

Application to Commercial Service Charges

- It is important to note that the BSA 2022 does not apply to all buildings or all building safety issues.
- In Essendi UK Hotels 2 Ltd v London Property Co Ltd [2026] EWHC 1354 (TCC), the High Court considered a case involving dangerous cladding on a hotel building.
- The claimant's arguments were novel in that it was relying on landlord covenants under a commercial lease to obtain what was, in substance, a building safety remediation order, even though the Building Safety Act 2022 did not apply to hotels
- The Court held that where a multi-storey building which provided sleeping accommodation was subject to a good condition covenant, that obligation included removing and replacing cladding that either created a significant fire safety risk or required remediation to comply with the Regulatory Reform (Fire Safety) Order 2005
- Even where the BSA 2022 does not apply, landlords and tenants may have obligations regarding building safety under existing lease covenants and fire safety legislation

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Adam Gadd has a common law background and undertakes a wide range of civil litigation.

His practice includes expertise in personal injury, business and commercial, property, building and construction and costs law. He is regularly instructed in these practice areas both in an advisory capacity and as an advocate in the civil courts and tribunals at all levels.

He has appeared before a variety of courts and tribunals including The Land Registry and Property Tribunals, the High Court, Court of Appeal and Courts-Martial.

Adam acts for a variety of small and medium-sized businesses and individuals as well as in high-value cases involving large multinational organisations and local authorities. He has particular expertise in personal injury fraud cases and has acted for both claimants and insurers in such cases. He regularly gives seminars and publishes articles on his areas of expertise.

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