

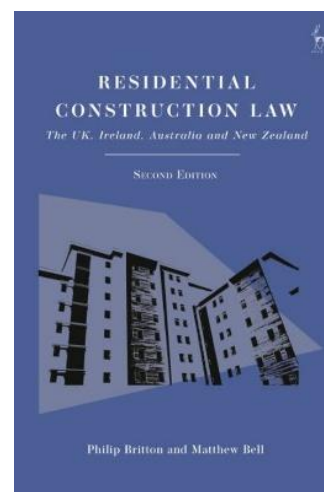
RESIDENTIAL CONSTRUCTION LAW

Updates to the 2nd edition (2025) of the [book](#)
by Philip Britton and Matthew Bell

*Entries are organised by section number in the book.
Abbreviations follow the book's List of Abbreviations at p
xiii and after. Many technical legal terms used here are
explained in the Glossary at the back of the book. Links to
other websites worked at the time of writing but their
continued functionality cannot be guaranteed.*

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*Last updated: **September 2025 (release 1)**; **February 2026 (release 2)**; **September 2026 (release 3)**. Each new version of this Update replaces earlier versions posted at the same URL; text from earlier versions is retained unless out-of-date or no longer accurate. Longer quotes (including lists) are indented, in smaller font.*



Book page/section	Update	Release
p xiv	(Abbreviations) BEIS: the UK DBT was in July 2026 renamed the Department for Business, Innovation, Science and Trade (DBIST), the DSIT now being re-integrated into it.	3
p xv	(Abbreviations) Correction: CARM refers to Compulsory (not Civil) Automatic Referral to Mediation	3
p lxxxiii	(Table of Statutes) Correction: the entry against the Leasehold (Ground Rent) Act 2022 (E&W) should be to the Leasehold Reform (Ground Rent) Act 2022 (E&W) immediately below: see also the update below to section [11.4.1].	3
1.3	(especially for n 13) On aspects of the special regime for licensing Houses in Multiple Occupation (HMOs) in E&W, see also Jamie Grierson, 'Tenants Win £260,000 of Rent Back in Legal Fight with London "Rogue Landlord"' The Guardian (31 March 2025), with a sample tribunal decision at Caton-Thick v Somerford Assets 3 Ltd (Flat 301, Olympic House, 12 Somerford Grove, London N16 7TY), FTT LON/00AM/HMF/2021/0184 (7 March 2025). At [33] the decision includes: 'We are dealing with a large portfolio landlord. There is evidence that the Respondent has failed to licence a large number of flats. The Respondent can only be characterised as a rogue landlord'. For a judicial review challenge to a local authority, see Luton Landlords & Letting	2/3

	<i>Agents Ltd, R (On the Application Of) v Luton Borough Council</i> [2026] EWCA Civ 35 . On enforcement against such landlords, see also the update below to section [4.9.2].	
1.4.2	On retentions in UK commercial contracts, including construction contracts (as defined by the Housing Grants, Construction and Regeneration Act 1996 and the NI equivalent): in July 2025 the DBT (in July 2026 renamed the DBIST) put out to consultation possible statutory reforms on Late Payments. The varied proposals all aimed further to encourage cash flow down the contractual chain. In May 2026, following Time to Pay Up (March 2026) from the DBT, many of these possibilities were included in the Commercial Payments Bill 2026 (UK, but including special NI provisions). Subject to a transitional period, its Chapter 2 would make retentions ineffective in new construction contracts, in turn modifying aspects of the HGCRA and the separate statutory Schemes (E&W, Scotland and NI): on these, see section [9.9.1] in the book. The new legislation would also impose a rate of statutory interest on late payments (as defined). However, the Bill looks primarily to ‘commercial’ contracts (between those acting in the course of a business). It does not appear to modify the scope or effect of the ‘residential occupier exception’ in the HGCRA s 106, so its changes relating to payment will not affect B2C construction contracts (or hybrid construct-and-transfer contracts) within this exception: see sections [9.9.2]ff and their updates below. For retentions provisions not caught by the new legislation, there appears to be no plan to copy Australia and NZ in imposing trust structures to protect these sums against employer insolvency; nor to ensure that quick and cheap adjudication is available to enforce release of retention sums, when due. For the Victorian developer bond regime foreshadowed in n 26, see the update below to section [10.2].	1/2/3
1.5.1	(n 34) Correction: ‘House Builder Federation’ should read ‘Home Builders Federation’.	3
1.5.2	In October 2025, Consumer Scotland started an investigation into the used car market in Scotland: ‘Common issues include faults, misleading information, poor after-sales support and difficulties resolving problems’. The final report, Consumer Challenges in Scotland’s Used Car Sector (June 2026) recommends better information for potential buyers; stronger standards imposed on sellers; and clearer redress, including more accessible ADR. The same might be said of home improvement projects, though the legal framework there is also relatively clear and supportive of consumers: see the updates below to section [4.9.1] and (on possible regulatory intervention) [6.5.4].	2/3

1.6	Dawn v Carlisle Homes Pty Ltd [2025] VSCA 58 provides an object lesson in the limits for homeowners (here, a largely self-represented claimant) to assert legal rights against their builder. The Court (Niall CJ, Emerton P and Gray AJA) dismissed all 14 grounds on which the homeowner asserted that VCAT had erred below, observing at [1]: To make the system work as it is intended, parties need to remain focussed on achieving practical resolutions and to avoid overly technical or inflexible approaches. Otherwise, as this case illustrates, relatively minor issues can lead to protracted processes and costly outcomes. The Court laid out in some detail the case’s impact on the claimant, noting for example at [36]-[38] that he had been ‘feeling overwhelmed and suicidal’ and that he ‘had feelings of avoidance of the matter that made it difficult for him to work on it’. Although the Court regarded this as ‘very concerning evidence’, it did not justify an adjournment of the hearing: not ‘in anyone’s interests’. Ultimately, the homeowner’s original withholding of the builder’s final payment claim of A\$40,779.40 resulted in the Court upholding a payment to the builder exceeding A\$100,000, plus doubtless very significant legal costs. On litigants in person (‘party litigants’ in Scotland), see section [9.7.1] in the book and its updates below. (especially for n 59) For discussion of the three types of Civil Restraint Order under English law, limiting for a period a party’s ability to undertake civil litigation without judicial permission, see Crypto Open Patent Alliance v Wright [2025] EWHC 1139 (Ch) at [5]ff (Mellor J); on the further remedy, a Civil Proceedings Order under the Senior Courts Act 1981 s 42(1), see [98]ff of the same judgment. Singapore has the Supreme Court of Judicature Act 1969 ss 73-74, providing for civil restraint orders as well as the power to label litigants as vexatious, barring them from participating in legal proceedings without court permission: see AG v Ng Kai Hoe Raymond [2026] SGHC 162 (Hoo Sheau Peng J). On <i>Isaac Wunder</i> orders in Ireland, see the update below to section [9.12.4], also Dunne J in M v M [2026] IESC 2. For an example of a litigant’s family being excluded from court proceedings, see The Board of Management of Wilson’s Hospital School v Burke (No. 8) [2026] IEHC 509. In NZ, ss 7-9 of the Judicature (Timeliness) Legislation Amendment Act 2025 extend powers in the Senior Courts Act 2016 (NZ) to stop ‘plainly abusive civil proceeding’ and to restrain persons from commencing or continuing civil proceedings.	2/3
1.7.1	(especially for n 63) On civil penalties in Australia, a recent textbook is Matthew Peckham, Cam Troung, Ian Latham and Amanda Storey, Civil Penalties in Australia (LexisNexis, 2025).	1

1.8	We use as a reference point throughout the book the Lacrosse building fire (Melbourne 2014) and its aftermath’ especially via the cases which made their way through VCAT and the Courts. A case of similar landmark proportions in relation to combustible cladding and its rectification – this time, involving Sydney’s Star Casino – was decided by Rees J in <i>The Star Entertainment Sydney Properties Pty Ltd v Buildcorp Group Pty Ltd trading as ‘Buildcorp Interiors’</i> [2026] NSWSC 27. While a commercial rather than residential building and therefore not of such direct relevance to the book, the case includes relevant insights into a number of matters including: a detailed description of the ACM system: [19]-[33]; the applicable BCA requirements during construction (around 2014): [34]-[66]; and the impact of post-Grenfell interventions: [419]-[427]. The earthquakes in northern Venezuela on 24 June 2026 (the most serious in impact of the eight quakes of that magnitude so far recorded worldwide in 2026) caused hundreds of buildings, including high-rise residential buildings, to collapse (partly or completely), with thousands of deaths and many more thousands missing. And then, in late August 2026, landslides and floods, triggered by a glacial collapse in the Himalayas, swept away further immense numbers of buildings and lives in Nepal. The longer-term focus for both disasters may identify inadequate construction standards and their implementation as contributing to the scale of damage and death. (especially for n 78) New 2025 eruptions caused a further evacuation of Grindavík: Miranda Bryant, ‘Icelandic Town and Blue Lagoon Spa Evacuated After Volcanic Eruption’ <i>The Guardian</i> (1 April 2025). A later eruption took place between 16 July and 5 August 2025, but unless there is further activity, tourist groups can visit Grindavík, and the Blue Lagoon is open.	1/3
1.9	(especially for n 80) For a video profile of Hayley Tillotson – ‘first-time buyer at 27, and bankrupt at 28’ – see www.bbc.co.uk/news/av/business-55847260. (especially for n 90) Some of the negative features of shared ownership in E&W are summarised in the National Audit Office Investigation into Shared Ownership (March 2026) and in the Fabian Housing Centre research report On The Ladder (July 2026). There is now a Shared Ownership Code (E&W), aiming to ‘ensure transparency, fairness, and improved support for shared owners through the process of choosing, purchasing, and living in a shared ownership home’. The <i>Code</i> is open for adoption by registered shared ownership providers, including housing associations, for-profit providers and local authorities. Since 2025, the New Homes Quality Board has been its Code Operator; by August 2026, four providers had adopted the Code, covering	2/3

	more than 22,000 shared ownership homes across the UK. On the NHQB, see section [6.7.3] in the book and its updates below.	
1.11.2	On the CE mark and construction products in the UK, see the update below to section [3.4.13].	1
1.12.1	(especially for the main text to n 103) For the first time in 2025, the Māori <i>tikanga</i> became a compulsory topic in NZ's law schools.	2
2.1	(especially for n 4) <i>George Clarke's Remarkable Renovations</i> (Channel 4) takes as its starting-point home improvement and extension projects in the UK which have been left incomplete, often because 'the builder' has walked off site, or has been excluded by the homeowner, following a dispute. The TV show does not engage with the financial or legal aspects of such scenarios, often involving issues of breach, termination and entitlements to money (for work done and as damages) on both sides, as well as questions of the available forms of redress (formal and informal). See sections [4.12] (on remedies for breach) and [9.2.4] (on termination) in the book and their updates below; on possible regulation of home improvement traders, see the update below to section [6.5.4]. (especially for the main text to n 7) A research report from the UK's Fabian Housing Centre (supported by the New Homes Quality Board), <i>On The Ladder</i> (July 2026) notes: Demand for new-builds from first-time buyers appears to be falling. This has contributed to a 39 per cent reduction in the number of new-build homes sold in 2024-25 compared to 2000-01. This lack of demand is due to the higher cost of new-build properties and because they are perceived to be low quality (although they can be more energy efficient).	3
2.2.1	Unpacking the concept of 'quality': the NHBC July 2025 report – see the update below to section [2.6.3] – suggests that for new homes it has five aspects, though some overlap: • <i>Perceived quality</i> – the quality of finishes, aesthetics and materials used • <i>In-built quality</i> – structural and technical details • <i>Design quality</i> – the overall design of a home and how well it functions • <i>Fundamental quality</i> – achieving compliance with minimum standards • <i>Transactional quality</i> – the service provided through the purchasing process. For the Victorian developer bond regime foreshadowed in n 12, see the update for section [10.2] below.	1/2
2.2.3	For the 2026 edition of the <i>Victorian Guide to Standards and Tolerances</i> (now published by the Office of the State Building Surveyor and Building and Plumbing Commission):	1/2/3

	https://www.bpc.vic.gov.au/resource-hub/guides/guide-to-standards-and-tolerances-2026 ‘The man on the Clapham Omnibus’ was further analysed by Lord Reed (with whom Lords Mance, Kerr, Sumption and Hughes agreed) in <i>Healthcare at Home Ltd v The Common Services Agency</i> [2014] UKSC 49: [1] The Clapham omnibus has many passengers. The most venerable is the reasonable man, who was born during the reign of Victoria but remains in vigorous health. Amongst the other passengers are the right-thinking member of society, familiar from the law of defamation, the officious bystander, the reasonable parent, the reasonable landlord, and the fair-minded and informed observer, all of whom have had season tickets for many years. [2] The horse-drawn bus between Knightsbridge and Clapham, which Lord [Justice] Bowen is thought to have had in mind [as Collins MR suggested in n 33], was real enough. But its most famous passenger, and the others I have mentioned, are legal fictions. They belong to an intellectual tradition of defining a legal standard by reference to a hypothetical person, which stretches back to the creation by Roman jurists of the figure of the <i>bonus paterfamilias</i>. As Lord Radcliffe observed in <i>Davis Contractors Ltd v Fareham UDC</i> [1956] AC 696, 728: ‘The spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is and must be the court itself.’ [3] It follows from the nature of the reasonable man, as a means of describing a standard applied by the court, that it would [be] misconceived for a party to seek to lead evidence from actual passengers on the Clapham omnibus as to how they would have acted in a given situation or what they would have foreseen, in order to establish how the reasonable man would have acted or what he would have foreseen. Even if the party offered to prove that his witnesses were reasonable men, the evidence would be beside the point. The behaviour of the reasonable man is not established by the evidence of witnesses, but by the application of a legal standard by the court ... Respectfully deferring to Gething J (<i>Buck v BGC Residential Pty Ltd</i> (ACN 052 543 450) [2026] WASC 134 [80]), we will, for the Australian equivalent to the Clapham Omnibus, refer in future editions to the ‘person on the Mandurah train (who, I add, in their daily commute would have gone past many of the estates in which the houses the subject of this action were being built).’ On the <i>Bolam</i> test (n 35), applied to the liability of valuers in English (and Scots) law, see the update below to section [5.9.6]. On its continued currency, with ‘the <i>Bolitho</i> addendum’ (from <i>Bolitho v City and Hackney Health Authority</i> [1998] AC 232), see <i>Parvathy v National University Hospital (S) Pte Ltd</i> [2026] SGHC 7 at [64]ff (Mavis Chionh Sze Chyi J).	
2.3.2	(especially for n 65) The UK <i>New Homes Quality Board</i> now publishes data searchable by developer name (for those developers actively registered with it), showing their 2025 scores	1/2/3

	in the annual National New Home Customer Satisfaction Survey. The results from the 2026 National New Home Customer Satisfaction Survey and HBF Star Ratings are now published. (especially for n 70) The current NZ Government has adopted policies intended to encourage residential renovation work needing building consent (like-for-like replacement often not needing consent) and other smaller projects. As part of this, the Building Amendment Bill 2026 will repeal the Building Research Levy Act 1969 (NZ). The plan appears to be to replace completely BRANZ's research levy – payable on projects over NZ\$20,000 in value. The separate Building Levy on successful consent applications over NZ\$65,000 in value under the Building Act 2004 (NZ) ss 53ff and 402(1), under the Building (Levy) Regulations 2019 (LI 2019/310), may be maintained. This goes directly to MBIE, part in future perhaps to be ring-fenced for research. The Minister claimed (November 2025) that overall levy costs will fall for all, some no longer having to pay at all, but BRANZ's guaranteed funding and independent national status would end. There are uncomfortable echoes in these proposals of the privatisation of the UK's Building Research Establishment in 1997; and its role in testing materials implicated in the Grenfell Tower fire. On other changes in the Bill, see the update below to section [5.13.3].	
2.4	Insights into the frequency of different categories of defects occurring during construction of new homes in the UK come from analysis by third-party warranty providers, and by their own building control subsidiaries. Premier Guarantee, second in volume of business to the NHBC, published its Industry Insight Report 2025. This summarised observations of defects or non-compliances made by its surveyors or Registered Building Inspectors between July 2020 and July 2024 – 'all resolved to the satisfaction of the surveyor and in compliance with our Technical Manual or building regulations'. For individual homes (mostly detached), the largest category in the period (35% to over 40%, depending on the year) concerned external walls, followed in descending order – but all far behind in frequency – by roofs, internal walls, upper floors, windows and doors, basements, ground floors, foundations, balconies and drainage. This conflates all inspections; for the final pre-handover inspection, observed potential defects were at levels between 12% and over 18%, depending on the year. Analysed for non-compliance with Building Regulations (presumably in E&W alone), structure (Part A) and fire safety (Part B) were almost equal top scorers for problems, with Part C (Site Preparation and Resistance to Contaminants and Moisture) in the next category below. Problems in relation to Part L (Conservation of Fuel and Power) showed a notable year-on-year increase in relation to both houses and apartments. Figures for	1

	apartments show roof structures as problematic far more often than for houses, with more than 60% noted on inspection in 2024. The report notes similar patterns in claims under Premier Guarantee’s warranties: defects in external windows and doors, external walls, roofs, drainage and water services were all categories of problems regularly reported by homeowners.	
2.5.1	(especially for the main text to n 89) On extending buildings’ use safely beyond their design life – or repurposing them for a different new life – see the CROSS-UK Topic Paper An Ageing Built Environment (December 2025). From its introduction: The challenge lies in understanding, maintaining, and safely extending the life of assets that were not designed with modern expectations in mind. Materials may have degraded, documentation may be incomplete, and design philosophies may differ from today’s standards. Decisions about continued use must be informed by careful investigation, sound engineering judgement, and a clear understanding of risk. Safety must be central to this process. Structures that are not properly assessed or maintained can pose serious hazards, and the consequences of failure can be severe. The opportunity is equally significant. Reusing or repurposing existing structures supports sustainability, reduces carbon emissions, and aligns with the principles of the circular economy. It helps to reduce the environmental and financial costs of demolition and new construction, and can preserve heritage and character in the built environment... Doing nothing is not a viable option. By recognising both the potential and the limitations of existing structures, we can make choices that are safe, sustainable, and economically sound. This is a shared responsibility that requires collaboration and competence, as well as a long-term view.	2
2.5.2	(especially for the main text to n 98) For multi-issue and multi-party litigation (including cross-claims) arising out of pre-fabricated modular bathroom units installed in residential high-rise towers in NSW, see Buildom Pty Ltd v Rawson Constructions NSW Pty Ltd [2025] NSWSC 1608 (Coleman J). The Consumer Legislation Amendment Act 2026 (Vic) – these provisions to come into force on a date to be proclaimed – adds to the Building Act 1993 (Vic) via a new pt 2A a detailed specific provisions around modular (‘pre-fabricated work’). For NSW pre-fabricated buildings, see pt 3 div 2-4 of the Building (Approvals and Practitioners) Act 2026 (NSW) (update to section [3.6.1] above). In February 2026, major UK home developer Bellway opened its own new Home Space factory in Mansfield (Notts), prefabricating major components for new homes, claiming to improve quality, speed and productivity.	2/3

2.6.1	Misdescribing the size of a unit in a building: contrasting with the new build Australian example of <i>Birch v Robek</i>, the usable floor space of existing business premises in Singapore turned out to be smaller than the buyer understood (some of the walls sloped outwards rather than being vertical). She sued the real estate agent acting for her in the purchase, and the agency as her employer. In Crystal Beauty Pte Ltd v Xu Jasmine [2025] SGHC 86, the claim failed at the initial stage, Mohammed Faizal JC holding – crucially – that the buyer had failed to assert or to prove a misrepresentation (express or implied) by the agent about the new premises’ usable floor area – contrasted with the strata lot area, which was correctly described as such. Even if a misrepresentation had been made, the judge would have found that it did not impact enough on the plaintiff’s decision to buy to make it actionable. See also the update below to section [4.4].	1
2.6.3	The August 2025 NHBC Foundation report, Maintaining Quality in the Design and Construction of 1.5 Million Homes, confirms the close association between the level of construction activity and defects (as evidenced by claims under third-party warranties like the NHBC <i>Buildmark</i>): as activity increases, so normally do defects. Cutting this well-established knot, in the context of UK government policy to build 300,000 new homes a year is therefore a challenge, intensified by post-Grenfell regulatory changes; the report suggests a range of measures, principally to do with training, skills and labour capacity. (especially for n 152) In January 2026, the FCA fined two former Carillion finance directors £232,000 and £138,000 respectively for failing to reflect their knowledge of the company’s serious financial difficulties in public statements or to alert Carillion’s Board or audit committee. The FCA’s earlier fine of £237,000 in relation to Carillion’s former CEO, Richard Howson, stood after he withdrew his referral to the Upper Tribunal; in October 2023, the Insolvency Service had imposed an eight-year ban on his acting as a company director. In May 2026, the Financial Reporting Council added further fines and bans, preventing all three and two other senior accountants for Carillion from acting as accountants for defined periods.	1/3
2.9.3	In another Australian waffle slab example (this time from rural NSW), the trial judge held that the builder of the plaintiffs’ new home was in breach of the basic statutory warranties of quality under the Home Building Act 1989 (NSW) s 18B (see Table 4.2 in the book), as well as of the duty of care under the Design and Building Practitioners Act 2020 s 37 (see section [5.12.4] in the book and its updates below): Di Lullo v JG King Pty Ltd [2025] NSWDC 213. At a later hearing, the Di Lulllos argued that the cost of remediating the damage to the house, as well as the defectively installed waffle slab, would exceed the cost of demolition and rebuilding. In Di Lullo v JG King Pty Ltd (No 3) [2026] NSWDC	3

	218, Cole DCJ relied on the principles of law set out by Ball JA in the NSWCA in <i>85 Princess Pty Ltd v Fleming</i> – see the update below to section [4.13.5]. In the light of this and updated expert evidence, the judge rejected the defendant’s claim that the owners were guilty of contributory negligence; on the measure of damages, she concluded at [92]: Had the contract been performed, the Di Lulos would have been handed a structurally sound house on a stable slab, with the expectation that the house would have a life of decades of soundness, in about mid-July 2017. All of the slab would have continued to rest on the natural soil for the life of the house... The closest scenario to the performance of the contract, in time and in delivery of a structurally sound house on stable footings which will continue to comply with AS 2870, is the demolition and rebuilding scenario, which should, therefore, form the basis for the award of damages [A\$1,250,000 – the maximum the District Court can award]. This is the most reasonable course. It would be unreasonable to impose on the Di Lulos the many uncertainties and vulnerabilities to further damage and repair costs involved in the remediation proposed by the Builder. For a contrasting recent English example of inadequate foundations and a different outcome on remedy, see <i>Mallas v Persimmon Homes</i> in the update below to section [4.12.3].	
3.1.1	(especially for n 4) Expanding on the same point – and directly relevant to the arrival of the Building Safety Regulator (E&W) and the Building and Plumbing Commission (Vic) – is this advice from Issue 15 (2026) of The Dart Digest from Melbourne’s Dart Legal & Consulting: Regulators invariably operate with finite resources and cannot address every issue with the same level of attention. Capable regulators use risk, intelligence and evidence to focus their efforts on the areas of greatest potential harm and public benefit. This allows them to achieve better outcomes without necessarily increasing resources. Most importantly, capability enables regulators to move from a reactive approach to a proactive one. Rather than responding to non-compliance and harm after they occur, capable regulators are better able to identify emerging risks, influence behaviour, encourage compliance and prevent harm before it arises. This preventative focus is increasingly recognised as a hallmark of effective regulation and is central to achieving sustainable public protection and positive regulatory outcomes... The real measure of success is whether a regulator contributes to safer, fairer and more trustworthy outcomes for the community. Achieving this requires more than legislative powers. It requires capable people, sound systems, reliable intelligence, effective decision-making and a culture of continuous learning. (especially for n 8) Litigation by the Royal Borough of Kensington & Chelsea and its TMO continues against the manufacturer of the fridge-freezer which was the initial cause of the Grenfell Tower fire – and many other defendants, including cladding and insulation manufacturers. Preliminary procedural issues, notably	2

	about imposing or encouraging ADR, were considered in <i>The Royal Borough of Kensington & Chelsea v Beko Poland Manufacturing</i> [2025] EWHC 3276 (KB). The same litigation has already produced three other judgments on preliminary issues; Cristina Lago in <i>Construction News</i> (18 December 2025) reports that the trial will not take place before October 2028.	
3.2.1	(especially for n 28) A survey by the HomeOwners Alliance and the Federation of Master Builders (FMB) (May 2025) revealed that nearly half of UK adults (47%, and 39% of homeowners) believe wrongly that builders are legally licensed. Amongst UK homeowners surveyed (as summarised at https://hoa.org.uk/news/licensed-builders/): • 81% support a proposal to introduce a mandatory licensing scheme for residential builders • Two-thirds (65%) wrongly expect builders to have insurance to cover accidental damage (they don't have to) • Almost a third (32%) think builders must register with a government or regulatory body (no such requirement) • Younger homeowners (18-34) are more likely to believe that builders must be registered with a government agency (66% vs 32% homeowners) • Female homeowners are more likely to expect UK builders to have a licence to trade (46%) than male homeowners (32%). As a result of this research, both organisations called for a mandatory licensing scheme for residential builders, arguing that the continued absence of regulation leaves homeowners vulnerable to rogue traders and unqualified operators. See further FMB, Licence to Build: A Model for Licensing Domestic Building Companies (May 2025). This echoes the CIOB proposals in New-Build Housing – How Regulation Can Improve the Consumer Journey (2023): see the main text to n 88 in the book's section [9.3.2]. Research by the FMB for its proposals, reported in Roofing Today (5 September 2025) revealed distinctly different patterns of behaviour in Scotland, with fewer north of the Border (25%) than south (36%) ever having hired a builder. Scots consumers of construction typically lost more (£2,647) to unqualified or unlicensed tradespeople than the UK national average (£1,759); Scots were also statistically less likely to offer their intended or actual builder a hot drink... In relation to home improvements, a LinkedIn post (May 2026) by the Chartered Trading Standards Institute (UK) summarised a local radio broadcast by Dr Tim Day, its Lead Officer for Doorstep Crime, Scams and Consumer Vulnerability. Dr Day criticised the limitations of existing 'Trusted Trader' schemes, arguing for an official licensing regime for all traders offering RMI services, in effect a statutory version of TrustMark: see section [6.5.3] and n 248 in section [6.7.3]. The CTSI has approved and now monitors several Codes for traders in the RMI sector, as well for new home	1/2/3

	developers (CCHB, CCNH, NHQC and more): see the update below to section [6.5.4], also section [6.6.1] in the book and its update below.	
3.2.2	On regulation in general, see Christopher Hodges, Regulation That Works (Hart Publishing, 2026). He is Emeritus Professor of Justice Systems at the University of Oxford and Chair of the Regulatory Horizons Council , a Government-appointed independent expert committee, now integrated into the Regulatory Innovation Office.	3
3.3	(especially for the main text to n 49) The situation in the UK is further complicated by ‘the Construction Minister’ – a junior Minister without a seat in Cabinet – being based in the DBT (now DBSIT), a different department from the MHCLG, which oversees construction standards, safety and regulation (see below), also taking in tenants’ rights and leasehold reform. Over the last 10 years, chronic political instability has led to each ‘Construction Minister’ on average staying in post only 9 months; the new holder of that post, Blair McDougall MP, arrived in August 2026. Ministers at the MHCLG have done little better, though Rt Hon Angela Rayner MP did stay in post as Secretary of State on the arrival of Andy Burnham as PM. Matthew Pennycook MP also remained in the MHCLG Ministerial team, which newly included Baroness Blake of Leeds CBE, responsible for building safety regulation (including the BSR), cladding remediation, response to the Grenfell Inquiry and Net Zero energy efficiency in buildings.	3
3.4.1	Regulatory divergence between Wales and England is increasing: in August 2025, the Welsh Government published consultation proposals to revise for Wales the Regulations, Approved Documents and performance metrics for Part L of the Building Regulations (Conservation of Fuel and Power), with consequential changes to the Regulations and ADs for Parts F (Ventilation) and O (Overheating). The resulting top-level changes were included in the Building etc. (Amendment) (Wales) Regulations 2026 (WSI 2026/60) , some not taking effect until 4 March 2027. On the comparable changes in England, implementing the <i>Future Homes and Buildings Standards</i> , see the update below to section [3.4.4]; on wider post-Grenfell changes in Wales, see the updates below to sections [3.4.10] and [11.5.2].	1/3
3.4.4	(especially for the main text to n 93) Revisions to the Building Regulations 2010 were adopted for England in March 2026 to implement the <i>Future Homes and Buildings Standards</i> . These <i>Standards</i> aim to ensure that new homes and non-domestic buildings are built with low carbon heating and high levels of energy efficiency, so that buildings constructed to these standards will not require retrofitting to become zero carbon in use as the electricity grid decarbonises. The new regulations come into force on 24 March 2027, but some aspects come into force on 24	1/3

	September 2027 for higher-risk building work and work to existing HRBs. The linked changes to Building Regulations and Approved Document L include requiring developers of new homes to supply the buyer at handover with a Home User Guide, whose content and form are laid down. This complements – or may in part duplicate – the New Home Demonstration required from developers subject to the New Homes Quality Code by its section [2.11], as well as the content of the possible new Digital Property Logbook: see Louisa Fletcher, ‘Alphabet Soup Spells Confusion’ <i>Show House</i> (July 2026). On the UK Government’s conveyancing reforms (E&W), see the update below to section [8.7]. (especially for the main text to n 97) In August 2025, the MHCLG announced membership of the Guidance Panel to review Approved Documents, as part of the <i>Fundamental Review of Building Regulations</i> led by the BSR. The panel comprises Danielle Michalska-Morris, director of research and technical innovation at Taylor Wimpey; Rachel Ferguson, senior development manager at Pocket Living; Dinah Bornat, architect and director & co-founder of ZCD; Dan Rossiter, built environment sector lead at the BSI; Professor Luke Bisby, chair of fire and structures and director of discipline at the University of Edinburgh; and Dr Hywel Davies, technical expert at CIBSE. The original aims – an interim report early in 2026 and a final report by the summer – have not been met. (especially for the main text to n 102) For a similar reform in Wales, see the update below to section [11.5.2]. (especially for the main text to n 103) The BSR now calls ‘Competent Person’ schemes in E&W ‘self-certification’ schemes, as do pt 5 and sch 3 of the Building Regulations 2010 (E&W). From the BSR there is now a new Mandatory Technical Competence Framework document (n.d.), including a minimum of £2m of public liability insurance for each business within such a scheme and criteria for each Scheme Operator, including consumer protection.	
3.4.9ff	In June 2025, Government announced that the Building Safety Regulator, the overall statutory regulator for the building control system in England newly created following the Hackitt Report, was to be relocated. This follows widespread criticism of the BSR for its unhelpful lack of communication of the new procedures applying to Higher-Risk Buildings; its failure to meet the statutory time-limits for processing building control applications for HRBs (now typically down from a year to 34 weeks for remediation projects, as reported by Peter Apps); and unexpected top-level management departures. On 11 November 2025, Samantha Dixon, Minister for Building Safety, Fire and Democracy, laid draft regulations in the House of Commons enabling the BSR’s functions to be transferred from the Health and Safety Executive to a new Executive Non-	1/2/3

	Departmental Public Body sponsored by the MHCLG. Her written statement included: This change will position the BSR for the coming years. It will strengthen lines of accountability and give a dedicated focus to BSR operations; it is an important first step towards establishing a single construction regulator [for England], the lead recommendation of the Grenfell Tower Inquiry Phase 2 report. Under the Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (SI 2026/20), the transition took place on 27 January 2026, though the HSE will continue to support the BSR until December 2026. There appear no immediate plans to widen the former BSR's remit; to change aspects of the BSA 2022, which speaks only of 'the regulator'; or to modify the large collection of secondary legislation adopted under it. None of these organisational changes impacts directly on Wales, Scotland or NI. On a single construction regulator, see also the update below to section [3.5.3]. Directly relevant is also the Government's eagerness to minimise obstacles to the building of new homes, so a new Fast Track Process for regulatory approval for new builds (increasing the regulator's in-house staff and range of professional skills) is also announced. Less clear is how rectification work on existing HRBs with potential safety issues (on some calculations, 13,000 blocks) will be encouraged and facilitated. (especially for the main text to n 143) Following a review by the BSR of the definition of an HRB, in December 2025 the MHCLG accepted the review's conclusion that there was not enough evidence suggesting a need to change the current definition. In July 2025, the BSR published the first set of data on its activities: Building Control Management Information Data (October 2023 to March 2025). This recorded that 50% of 'existing building' applications and 45% of new-build applications were initially rejected. Of the 'existing building' applications rejected, 89% did not contain sufficient detail. 80% of applications did not meet the legal requirements for approval for work to an existing HRB, 50% of applications setting out work that would 'contravene existing building regulations and longstanding functional requirements'. Only 45% of applications had a decision made within the statutory determination period, with a lower figure for new-build and remediation applications at 44% and 2% respectively to date. Equivalent reports are now issued quarterly; the latest covers the period May to July 2026. This shows the impact of additional staff recruitment to the BSR and the creation of its Innovation Unit, which has brought more multi-disciplinary teams in-house and reduced the processing time for applications for Gateway 2 approval for new higher-risk buildings down to a median of 22 weeks; external remediation applications for existing HRBs are now at a median of 34 weeks.	
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	Approval rates are also up to 91% for new build and 85% for external remediation. ‘(At Gateway Three) an HRB must pass final BSR checks before occupancy’: on 20 August 2025, <i>PBC Today</i> reported that the HSE (in effect the BSR) was granted an interim injunction, based on alleged violations of Building Regulations, stopping a new block in Newcastle-under-Lyme, Staffordshire being occupied; it would have housed around 230 students from the start of September. Adam Jogee, the local MP, commented: ‘It is utterly unacceptable that – in 2025 – a brand-new building can get to the point of opening with such serious safety concerns that the [BSR] has had to step in at the eleventh hour to protect lives.’ The judgment by Freedman J, establishing that the BSR’s statutory position gives it the power to request injunctions, will be reported as <i>HSE v Integritas Property Group (IPG) Ltd</i> [2025] EWHC 2613 (TCC); meanwhile, there is detailed analysis of the case from Joanna Lewis and Daniela Parfitt on the Beale & Co website. On improving skills across the industry in the UK, see the National Audit Office report Increasing Construction Skills (July 2026), examining the progress of the Government’s £625m construction skills package, which aims to support up to 60,000 more skilled construction workers by 2029. The NAO found the package a positive step, but its success will depend on employers having the confidence and capacity to offer placements, apprenticeships and jobs. Without this, skills shortages could drive up costs and put major delivery commitments at risk. A related initiative is the MHCLG’s Call for Evidence to help build a Strategy for the Built Environment Professions, Trades and Occupations (June 2026).	
3.4.10	On dutyholders, competence etc, new regulations in December 2025 extended to Wales a version of the provisions already inserted via Regulations 11A to 11Q into the Building Regulations 2010: new Welsh-specific regulations 11R to Z8, adopted via the Building etc. (Amendment) (No 2) (Wales) Regulations 2025 (SI 2025/1320), coming into force on 1 July 2026. The regulations also modify procedure, enforcement, rights of appeal and charges in relation to local authorities and building control in Wales, some specifically in relation to HRBs. Alongside, the Building Act 1984 (Commencement No 1) (Wales) Order 2025 (SI 2025/1367) extends to Wales, also from 1 July 2026, BCAs’ increased inspection and testing powers under the current text of the Building Act 1984 s 33 (in force in England since 1 October 2023). For other changes to the regulatory landscape for residential buildings and construction in Wales, notably under the Building Safety (Wales) Act 2026, see the updates below to section [11.5.2].	3

3.4.11	(especially for n 165) For possible public procurement restrictions in the UK on companies and products used in the Grenfell Tower refurbishment project, see the update below to section [6.2.3].	1
3.4.12	The implementation of the ‘Golden Thread’ idea, via Accountable Persons and Principal Accountable Persons, operates by HRBs needing a <i>Building Assessment Certificate</i> – a Safety Case for an existing occupied building, submitted to the BSR for review and approval under the BSA 2022 pt 4. Peter Apps reports on the challenges of this process – potentially applicable to 14,000 HRBs – in his Substack (February 2026): Pulling this together means a lot of money spent on surveys, and then further money spent getting the BSR to review it. Figures from cladding campaigners UKCAG show the average cost <i>just for the BSR review</i> is £23,804, with the most expensive reaching £69,094. So far, of 610 reviews there have been 446 rejections - which means leaseholders pay tens of thousands on surveys and tens of thousands on a BSR review to be told that they may need to spend potentially hundreds of thousands on repair work to their blocks. On the ‘Golden Thread’, see also C Lockhart and P Hayes, Implementing the Golden Thread for Higher-risk Buildings under the Building Safety Act (IStructE, 2025). In July 2026, the BSR published a revised approach (‘more proportionate and targeted’) to the processes for <i>Building Assessment Certificates</i>: • ensure building safety legal duties remain in place for more than 6,000 legally responsible PAPs and accountable persons (APs) of HRBs across England while the plan is developed • apply learning from the introduction of the BAC regime to improve assessment processes • only call in new applications when necessary until improved processes are agreed and communicated to duty holders • prioritise applications already undergoing an assessment • explore options for proportionate, fast-track reassessments for previously refused certificates once standards are met • provide greater, more targeted support to resident-led PAPs • help protect residents and leaseholders from unnecessary or unexpected costs • continue to work with the Ministry of Housing, Communities and Local Government (MHCLG) to inform potential long-term legislative changes. Future changes may include legislative or regulatory reform of the <i>Building Assessment Certificate</i> regime. On sanctions for failure to register, see the update below to section [5.7.2]. (especially for n 170) In March 2026, the MHCLG put to consultation the possible recategorisation of some work on HRBs, making the Gateway 2 approval procedure less onerous for work objectively less risky. If a version of these possibilities is adopted,	2

	this will involve changes to the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (SI 2023/909) .	
3.4.13	Explaining in the House of Commons the UK Government decision to continue accepting the CE mark on construction products indefinitely, Rushanara Ali MP, at the time Secretary of State for Building Safety and Homelessness, acknowledged the findings of the Morrell-Day Review (Written Statement, 2 September 2024). She agreed that the UK currently has insufficient testing and certification capacity: ‘[E]nding recognition of CE marking without reforming the domestic regime would create trade barriers and negatively affect the supply of products that meet recognised Standards’. The CE-mark extension is subject to the government’s system-wide reform of the construction products regime, started in the Construction Products Reform Green Paper 2025. Any subsequent changes to the recognition of CE marking would be subject to a minimum two-year transition period. In February 2026, the Green Paper was followed by a White Paper, open for public consultation until May 2026; and a consultation on The General Safety Requirement for Construction Products. The White Paper was immediately criticised by Peter Apps in his Substack as ‘not doing enough to tackle the dark heart of the cladding scandal’; and by Paul Morrell, co-author of the original 2023 review calling for reform. Proposals on construction products regulation are developed further in the MHCLG’s July 2026 response to the consultation on its prospectus for a Single Construction Regulator. In July 2025 the Product Regulation and Metrology Act 2025 (UK) gained Royal Assent. Its ss 1-2 empower the Secretary of State to regulate products (as defined) with a wide range of statutory aims, including setting requirements with which products must comply, applicable to those connected with products (including via online marketplaces) and including mandatory technical standards; s 3 provides for different forms of sanctions and enforcement. The Act repeals Parts II and IV (consumer safety regulations and their enforcement) of the Consumer Protection Act 1987, leaving Part I unchanged, as discussed in section [5.10.5] of the book and the update below. In August 2025, the Construction Industry Council (UK) published a Guide to Products Critical to Safe Construction, complementing the Code for Construction Product Information.	1/2/3
3.5.1	(especially for the main text to n 203ff) Criminal penalties for contravening the law of building control (E&W): the report of the Independent Review of the Criminal Courts (the Leveson report, July 2025) does not recommend lifting the 12-month imprisonment maximum in Magistrates’ Courts. Aware of the backlog of jury trials in the Crown Court, it recommends the	1/2/3

	Ministry of Justice to consider removing the right to elect jury trial in the Crown Court for certain low-level offences: those with a maximum sentence length of less than or equal to two years; and creating a new intermediate court of a full-time judge sitting with two magistrates for middle-tier offences currently carrying the right to jury trial. For more on the Crown Court backlog and other possible remedies, see the National Audit Office report, Reducing the Backlog in the Crown Court (March 2025). These proposals would affect offences under the pre-2022 text of the Building Act 1984; for new offences created by the BSA 2022, see n 187ff in section [5.7.2] of the book. In November 2025 the Government confirmed its intention to implement at least some of the Leveson recommendations. However, the MoJ's proposals differed significantly; opposition in the Lords reflected critical responses from the legal profession and rights groups. The Leveson proposal for intermediate courts would require significant recruitment to the magistracy, as would an increase upwards of the maximum sentence available to magistrates. Even if implemented as presented, the proposed reforms may take 10 years to reduce the Crown Court backlog to acceptable levels. In February 2026, Deputy PM David Lammy confirmed that in the Courts and Tribunals Bill 'several key measures... will be taken forward from Part Two of Sir Brian Leveson's Independent Review of Criminal Courts'. But Mr Lammy's departure from the MoJ on the arrival of the new PM led quickly to headlines like 'Andy Burnham Signals He Will Scrap Plans to Curb Jury Trials' <i>The Guardian</i> (31 July 2026). On enforcement by the new BSR of building control in relation to HRBs by way of injunctions in the civil courts, see the update above to sections [3.4.9]ff. (especially for the main text to n 205ff) Staff shortages in public sector building control departments in England are being reported on <i>LinkedIn</i> (July 2025): some of their websites announce that no new projects can be taken on, and even ongoing projects may not be able to be inspected. This resources issue is also noted by the Building Control Independent Panel for England: see the update below to section [3.6.5]. Making matters worse, a major private sector building control body, Assent Building Control, ceased trading in November 2025, with winding-up orders made against it and two subsidiaries; similarly, in May 2026, Corporate Approved Inspectors Ltd entered insolvent liquidation (250 non-HRB ongoing projects and 2 HRBs). In Peter's Substack, Peter Apps summarised the implications: Assent had around 16,000 construction projects underway at the time of its collapse (it advises on 30,000 projects a year), and all of them now need a new inspector to sign them off. There was a seven day period where projects could have been handed over to another private firm (which has now expired). Even in this window, other private firms were only allowed to take this work on if they found no	
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	defects (if they attend site, assessed the work and found issues, they must pass it to the local authority). This means that very few private firms have stepped in to take on Assent's workload and the projects will instead move to public sector building inspectors at the relevant local authority. The trouble is that these Town Hall teams are often understaffed and underfunded - with many of their most specialist and experienced staff having disappeared off to the private sector many years ago. But they will inherit Assent's work and have to assess it, regardless of their existing workload or its complexity. An individual homeowner attempted to get Building Regulations sign-off for his almost completed extension from the local authority, after his private sector Approved Inspector became insolvent. After unhelpful and Kafka-esque responses from his London Borough, he appealed to the BSR (with no accurate or up-to-date online guidance), then successfully challenged the BSR's determination of his appeal, see <i>Thursfield v Building Safety Regulator (30 Burstock Road SW15)</i>, FTT Property Chamber (RP) Decision LON/00AG/BUM/2025/0001 (2 December 2025). LABC, as a collective marketing tool for the Building Control functions of local authorities, also permits 'repeat players' in construction to join the <i>Partner Authority Scheme</i>, allowing a single point of contact with the same local authority surveyor for all pre-application and design work, wherever the project is located in England & Wales	
3.5.3	(especially for the main text to nn 276-277) In May 2026, the Building Control Independent Panel, chaired by Dame Judith Hackitt, published its <i>report</i> to the MHCLG on the future of building control in England; for the background and its definition of the issues, see the update below to section [3.6.5]. The report discusses the structural issue identified by Phase 2 of the GTI: 'whether it is in the public interest for building control functions to be carried out by organisations with commercial interests, and whether, in the interests of professionalism and consistency, those functions should instead be delivered by a national authority'. The report adopts the long-term goal of removing the present competition – fuelled by the choice enjoyed by parties on individual projects – between public (250 local authority departments) and private (about 80 RBCAs) providers of building control: The [present] competitive dynamic risks driving down fees to a level not reflective of the resource needed to carry out the building control function effectively and therefore may incentivise lighter touch inspections. It also increases the risk of late reversions to local authorities [where a private sector BCB abandons its role or goes into liquidation – see the Apps quotation in the update above to section [3.5.1]]. Although the BSA 2022 removed choice for HRBs, most work remains within a model that embeds the conflicts highlighted by the [Grenfell Tower] Inquiry. The report advocates a gradual and carefully managed transition – requiring legislation and more – away from the current 'uneven	3

	and fragile' landscape of dual provision and removing choice from project parties. The goal is for fewer, larger, publicly accountable BCBs for the statutory aspects of all non-HRB work, with a Single Construction Regulator along the lines of the BSR, responsible for oversight and enforcement (an especially weak feature of the present system). These new BCBs must be adequately funded, with consideration given to setting fixed fees and their income ring-fenced for building control; and with a national digital recording system. More immediately, the report suggests that the rules for applications and notices, differing between public and private sectors, should be harmonised; minimum inspection levels for standard build types and stages, such as typical house builds, extensions, and routine refurbishment work, should be (re)established by law; and local authority charging should permit full cost recovery. RBCAs should be empowered to issue compliance and stop notices – but prosecution would remain a public sector monopoly. The BSR-run registration, revalidation and monitoring systems also need reviewing to improve their effectiveness and to reduce unnecessary burdens on individual RBIs (encouraging many to leave the profession early). In July 2026 the MHCLG published its response to a wider but connected consultation on a prospectus for a Single Construction Regulator – a key GTI Phase 2 recommendation. This includes a positive response to the proposals from the Independent Panel summarised above. It is not clear how far implementation of the SCR proposals – building on the BSR as current standalone regulator, also to take on responsibility for construction products – will be national or (more likely) limited to England; they seem unlikely to see implementation before 2028. No comparably radical reappraisal has taken place in Wales, but the Welsh approach to building safety issues, notably in high-rise residential buildings, includes new 2026 measures: see the update below to section [11.5.2].	
3.6.1	The NSW Parliament's passage on 4 August 2026 of the Building (Approvals and Practitioners) Act 2026 (NSW) (progressively to come into force by Proclamation) signals very significant changes to NSW's legislative scheme, including: • repeal of the Design and Building Practitioners Act 2020 (NSW) and Building and Development Certifiers Act 2018 (NSW) and their associated regulations (s 202) • moving the DBPA's (s 37) statutory duty of care into pt 8 of the replacement Act, the Second Reading Speech indicating that the government has decided not to substantially amend the regime • consolidated and expanded approval, registration, disciplinary and investigation powers (pts 3-6)	1/2/3

	a vast range of consequential amendments to other relevant Acts (including the Environmental Planning and Assessment Act 1979 (NSW) and Home Building Act 1989 (NSW)), including that the 10-year limitation period for building defects actions is to be taken out of s 6.20 of the EPAA (which will just deal with defective subdivision work) into s 192 of the new Act. In August 2025, the Treasury of the Federal government published for consultation an Issues Paper containing proposals to apply the revitalised National Competition Framework to create a national licensing regime for electrical occupations. This would replace the different regulatory requirements in each state and territory and their licence categories, short-circuiting the complications and costs of the Mutual Recognition Act 1992 (Cth): A harmonised national approach to electrical licensing could provide a balance that maintains or improves safety and quality standards without imposing excessive compliance costs ... good for workers and businesses and [making] our economy more productive and competitive ... an ongoing boost to economic output of up to A\$62m per year. If statute imposes a requirement for someone undertaking defined functions (or using a specific occupational title) to be licensed, what is the impact of failure to be licensed (potentially a criminal offence) on the enforceability of a contract entered into by a person exercising those functions or claiming that title? This raises the issue of <i>illegality</i> in a contractual context: the statute may not be clear about the private law consequences of not complying with the licensing regime. The issues are discussed by the Privy Council in Hawkins v Abarbanel Ltd (Cayman Islands) [2025] UKPC 5.	
3.6.4	In the course of his judgment primarily on entitlements to staged milestone payments for a (commercial) warehouse project, Donaghue JA (Beach and Richards JJA agreeing) gave an outline of the Victorian regime for inspection by private building surveyors (ASD Corporation Australia Pty Ltd v Babicka [2026] VSCA 27 [35]-[38]), including observing that ‘[t]here is no requirement under the Building Act for an affirmative “approval” of building work’ – the requirement is just that it be ‘inspected in person’ ([36]). For the results of research on municipal building surveyors in rural Victoria, showing significant overwork affecting an ageing workforce, with recommendations for reform, see Weir and Hall, Building Surveying Resources in Rural Victoria (2025). (especially for the main text to n 340) Building surveyors accredited by the Australian Institute of Building Surveyors are committed to the AIBS’s own Professional Practice Standards (2021). These have statutory approval in all states and territories	1/3

	(eg under the Professional Standards Act 1994 (NSW) and Professional Standards Act 2003 (Vic)), allowing for the limitation of liability of those belonging to an approved professional scheme. AIBS Standard 1 looks to the public interest: Public interest underpins all other practice standards. Building Surveyors must prioritise the safety, welfare, and rights of the community in the built environment above any related private interests. Building Surveyors engaged in a statutory role act as public officials. Whereas Building Surveyors engaged as consultants do not have a statutory role. Regardless of the role, Building Surveyors must carry out their duties impartially and honestly. They are expected to serve in the best interest of the public, always act with integrity, adhering to legislative requirements of the jurisdictions that they operate and exercise their role with the highest of professional standards. The same standard also requires AIBS members to have systems meeting basic principles on the handling of complaints; others include specific principles on engagements by clients (Standard 3); inspections (Standard 4) and compliance enforcement (Standard 6).	
3.6.5	The Building Control Independent Panel for England (chaired by Dame Judith Hackitt and serviced by the MHCLG) was set up to consider concerns from Phase 2 of the Grenfell Tower Inquiry about the impact of the ‘mixed economy’ private/public model of building control in England. Before moving on to gather evidence and make recommendations, it published a ‘problem statement’ (July 2025). This includes: 24. One of the outcomes of the commercial interest model, certainly in the period up to 2017 and beyond to the introduction of the Building Safety Act 2022, was that behaviours led to an inadequate inspection and oversight service of building work. 25. Developers and clients who wanted to move forward quickly and seamlessly would often choose the lowest quote that gave them the quickest route to sign off for their buildings to be sold. We will test whether this is still happening and the drivers for clients choosing a building control body. We will look at whether inspections and supervision of work is taking place regularly based on an assessment of key building safety risks. We are keen to hear evidence of good practice where this exists so that lessons can be learned and shared 26. We are concerned that there is no certainty on inspection and supervision arrangements across the building control sector and that there is an incentive for a minimalist service to be offered to win work. This raises serious concerns about the extent of such inspections as well as the efficiency and effectiveness of them. For the resulting report and next stages in this debate, see the update above to section [3.5.3]. (especially for the main text to n 362) On the activities of Victoria’s first <i>Building Monitor</i> – ‘an independent advocate for consumers to improve their experience of the building system’ – see the Strategic Plan 2024-25; the first Annual Issues Report	1/2

	(July 2025) lists 11 recommended reforms to further improve outcomes for consumers. For the Victorian developer bond regime foreshadowed in the book's p 134, see the update for section [10.2] below.	
3.6.7	(especially for n 379): the rectification order regime under Part VA of the Building Act 1993 (Vic), introduced (with effect from 1 July 2026) by the Building Legislation Amendment (Buyer Protections) Act 2025 (Vic), is in one significant measure broader than the equivalent NSW regime: the definition of 'defective' in s 75A allows the Authority to issue a rectification order not just for apartment buildings (as does the NSW scheme) but also for 'building work' generally (where there is a 'failure to maintain a standard or quality of building work specified in the contract under which the work is carried out'). For 'domestic building work' (both apartments and low-rise residences), in addition to non-conformances with the contract, 'defective' includes breaches of the warranties under s 8 of the DBCA. See also the update below to section [9.6.2] on the Building Amendment (Rectification Orders) Regulations 2026 (Vic).	2/3
3.7.3	(especially for n 400) Changes to the statutory regime under the Building Act 2004 for earthquake remediation and strengthening, already modified by the Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Act 2024 (NZ) were joined in September 2025 by significant further proposed amendments, signalling a substantial re-write of the country's earthquake-prone building (EPB) regime. The stated objective is to simplify seismic risk regulation and reduce compliance costs; the legislative component of these further changes is in the Building (Earthquake-prone Building System Reform) Amendment Bill (NZ) (not yet adopted in August 2026).	1/2
3.7.4	In June 2025, the NZ Government introduced private sector building control, appointing Selwyn-based Building Consent Approvals Ltd as a Building Consent Authority nationwide for residential construction. The company claims to offer 'a trusted alternative to council consent processes', focussing specifically on low-risk residential housing such as single-storey homes and offering building consents issued in 10 working days or less for eligible projects; a two-day turnaround for replicated, pre-approved designs; remote inspections for up to 30% of assessments; and Code Compliance Certificates issued within 2 working days. The insurance and solvency requirements are not yet clear, though the potential liability of this BCA for its statutory functions appears identical to the public sector equivalents. This was a step towards a wider opt-in self-certification scheme, announced by Building and Construction Minister Hon Chris Penk MP in April 2025. Under the Building and Construction Sector (Self-certification by Plumbers and Drainlayers)	1/3

	Amendment Act 2026 (NZ), this will apply to ‘approved’ plumbers and drainlayers; all fully qualified electricians and gasfitters can already self-certify. https://www.nzlii.org/nz/legis/consol_act/ba200491/https://www.nzlii.org/nz/legis/consol_act/pgada2006364/. In a dress rehearsal for this new scheme, in June 2025 Auckland Council started trialling a system under which two homebuilders are permitted to sign off their own work via a mobile app, but construction is still supervised by the Council, which remains the BCA. In July 2025, the MBIE published the first edition of <i>Building Product Specifications</i>, concerning manufacture, fabrication, testing, quality control, physical properties, performance, installation, and/or maintenance. They can be used with an acceptable solution or verification method to show compliance with the Building Code, and cross-refer to international standards. It is ‘intended to be a living document and will be updated over time’. Two other pathways to enable greater use of overseas building products are being developed under the 2025 Act (the main text to n 409 in the book): endorsement of overseas standards by the MBIE, and recognition of products certified overseas as complying with New Zealand’s Building Code. (especially for the main text to n 410) The Building and Construction (Small Stand-alone Dwellings) Amendment Act 2025 (NZ) simplified the consenting and building control system for ‘a small stand-alone dwelling that an owner builds, or intends to build’ – the sch 1A definition limits the scope of this ‘light touch’ regime to completely new single-storey dwellings with a floor area of not more than 70m².	
3.8.1	(especially for the main text to n 412) For a consolidated version of the Building Control Act 2007 (Ire), see the update below to section [3.8.2]. The new Construction Industry Register Ireland (CIRI) will start to accept applications for registration in 2027. The different classes (Divisions) of registrable activities will have separate start dates for registration, with providers of residential dwellings in the first Division; those in each category will then have 12 months to register. Under s 20 of the 2022 Act, CIRI has adopted a Code of Practice for Providers of Building Works which all those on the register will be required to follow. Failure to comply with the <i>Code</i> can be the ground for a complaint to CIRI; as the <i>Code</i> requires compliance with all legislative and regulatory requirements (but obligations at common law are not expressly mentioned), scope for complaining to CIRI seems relatively wide, though the available sanctions are limited.	2/3

3.8.2	The Law Reform Commission (Ireland) has published consolidated versions of the current text of the Building Control Acts 1990 and 2007 (Ire); of the Building Regulations 1997 (Ire); and of the Building Control Regulations 1997 (Ire).	3
3.9.2	(especially for n 450) The Scottish Building Standards Procedural Handbook (3rd ed) was relevant in court in an action related to a local authority's duty in relation to dangerous buildings under the Building (Scotland) Act 2003 s 29: see Petition of Aldi Stores Ltd for Judicial Review of a decision to refuse or delay performing its statutory duty under section 29 of the Building (Scotland) Act 2003 [2025] CSOH 110 (Lord Braid). On the post-Grenfell review of aspects of Scotland's building standards and their operation, see the update below to section [11.5.3]. (especially for n 455) The fees chargeable were last modified by the Building (Fees) (Scotland) Amendment Regulations 2026 (SSI 2026/7).	2/3
3.9.3	On wall ties ('cavity ties'), see also the CROSS-UK report 1527 (May 2026): Inadequate Cavity Ties .	3
3.11	Whatever the substance of the 'new law' in our field in England, Wales and Scotland and its impact, a striking feature overall is simply the amount of it and its relative disorganisation – making access and understanding significantly more difficult than necessary. A crude but telling measure of the scale of new legislative and regulatory material since Grenfell Tower is to search the <i>Legislation UK</i> website, using the keyword 'building'. Taking just 2022 and after, and omitting obviously unrelated material, Welsh language versions of an item also in English and all items relating only to NI, this today produces more than 55 items. Of these, almost 50 are pieces of secondary legislation; almost half of these derive from the Building Safety Act 2022. Mere counting does not do justice to the incremental character of many of the sets of regulations: they add to, modify or repeal earlier individual regulations without offering a consolidation in one place. By contrast, a fairly self-contained new statute like the BSA 2022 or the Building Safety (Wales) Act 2026 is far more manageable, whatever their length. And later amendments of primary legislation (as for the Building Act 1984) show up eventually as changes to the parent statute online. But this does not help assessing the significance of each new item as it appears, as the book and these updates attempt to do.	3
4.2	Autonomy in Contract Law (2025) by Willem H van Boom (Radboud University, Nijmegen) includes this valuable passage [footnotes omitted]:	2

	In the context of contract law, all parties are assumed to have equal bargaining power and sufficient information. In this version of autonomy, the emphasis is on the right to enter into binding contracts and to accept the responsibility that comes with it. As we all know, this ‘freedom from’ can easily lead to coercion or domination by a stronger, richer, savvier, or more powerful party, resulting in unconscionable and unbalanced contracts. Consequently, when the law safeguards individuals against such excesses, it warrants autonomy. This is autonomy viewed positively: autonomy is not the freedom to extract value from others, but rather, it is a fundamental value that may require regulatory intervention, for instance to protect against others or even against the protectee’s own actions (paternalism).	
4.3	Rescinding a contract induced by a pre-contractual misrepresentation means unwinding all its aspects: in a contract for the sale of land, returning to the buyer any deposit already paid and freeing them from any obligation to complete the purchase. Case Study 3 illustrates that, despite an actionable misrepresentation, rescission may not be available: some courts treat the remedy as always discretionary – having its origin in equity – and some have a statutory discretion to award damages instead. <i>Keci v Barnes</i> [2026] NSWSC 521 (Williams J) is an Australian example from beachside suburb Bronte NSW (south of Bondi). Rescission was granted of a A\$6.2m land purchase contract after an implied innocent (meaning not fraudulent) misrepresentation by the seller’s agent induced the decision to buy: that planned future development on adjoining land would not impact the home’s ocean views. The contract contained both ‘entire agreement’ and ‘no reliance’ clauses – see the update below to section [4.4.4] – but the defendants seem not to have relied on these in court.	3
4.4	On innocent, negligent or fraudulent misrepresentations in property sales and the conditions under which they may be actionable (in tort or contract, and under statute), see the point-by-point discussion of the legal principles by Mohammed Faizal JC in <i>Crystal Beauty Pte Ltd v Xu Jasmin</i> [2025] SGHC 86, also discussed in the update above to section [2.6.1]. The judgment offers a lesson at [82]: Conducting comprehensive due diligence in the form of a buyer assessing that any property they wish to purchase truly meets his/her needs (whatever the numbers or data points may suggest on paper, as this case sadly proves) ultimately remains essential to ensuring that a property’s value and specifications are aligned to its intended purpose.	1
4.4.1	Especially for limitation purposes, it may be necessary to decide whether there is a single representation with several related branches (negligent or – at the limit – fraudulent) or a series of distinct representations, giving rise to separate causes of action,	1/2

	which may not be ‘timed out’ at the same point, depending when they were made: in English law, with special limitation rules for ‘deliberate concealment’ and fraud, see Arif v Sanger [2025] EWHC 1540 (QB) (Steven Gazstowicz KC), also the update below to section [10.5.3]. For another NZ example of litigation about a leaky home by buyer(s) against seller, contrasting with Case Study 3, with issues about oral representations, breach of warranty and mistake, see Watson v Zhou [2024] NZCA 417. On the damages payable for negligent misrepresentations (by estate agents) which induced the purchase of a dairy farm, see Routhan v PGG Wrightson Real Estate Ltd [2025] NZSC 68, noted in the update below to section [5.9.5].	
4.4.4	(on the Misrepresentation Act 1967 (E&W, NI)) For the limitation position in relation to claims relying on the 1967 Act – and its Singapore equivalent – see the update below to section [10.5.2]. (especially for n 51) The new statutory disclosure regime in Queensland came into force for all relevant land contracts entered into on or after 1 August 2025. The required categories of disclosure and warnings are listed in the Property Law Regulation 2024 (Qld), together making up the Form 2 Seller Disclosure Statement, which the seller, their solicitor or real estate agent may complete. If no Form 2 is completed, or if it is inaccurate or incomplete in relation to a material matter, the buyer may have a statutory right to terminate the contract at any time before settlement. The new rules do not cover flooding or the property’s natural hazard history; its structural soundness or pest infestation; building or development approval; the presence of asbestos; or utility connections. This leaves scope for buyer due diligence, backed by enquiries from their solicitor. (especially for n 52) A new methodology for Energy Performance Certificates (England & Wales) for residential buildings came into force in June 2025, requiring more detailed data collection and results reporting, following the MHCLG consultation reported in the book. The RdSAP10 specification was developed by BRE (February 2024). For planned but separate reforms in Scotland, see Scottish Government, Energy Performance Certificate Reform Consultation: Government Response (January 2025). Changes in Scotland are to be delayed until 2027, aligning with the new regime in England & Wales. (especially for n 53) Ellis v John Benson Ltd [2025] EWHC 2096 (KB) concerned long-term B2B franchising contracts under English law. Freedman J held – relying on Australian case law and the UK Post Office litigation – that the relationship between franchisor and 19 individual franchisees was closer to an employer-employee than to a vendor-purchaser relationship, onerous standard terms being imposed on each franchisee: see	1/2/3

	[230]ff. This imbalance justified implying – in fact, though not in law – good faith obligations on the franchisor at [278]ff, the franchisor’s widespread and repeated breaches of these being held to be repudiatory at [459]ff. This justified each franchisee’s refusal to continue with their contract; at [497]ff, the judge held that they had not affirmed it, which would have lost them the right to terminate. For the concept of a duty to disclose ‘material information’, offsetting ‘<i>caveat emptor</i>’ (particularly between a trader and consumer), see Table 6.1. A seller of residential property in England & Wales (or their estate agent) may have to assemble and disclose such information to a potential buyer: see n 282 to section [6.7.6] and that section’s update below. On possible reforms to conveyancing in England & Wales which may increase disclosure obligations, see the update below to section [8.7]. (especially for n 53) For further English case law considering express ‘good faith’ obligations in a B2B context, see Re Compound Photonics Group Ltd [2022] EWCA Civ 1371, considered in Matière SAS v ABM Precast Solutions Ltd [2025] EWHC 1434 (TCC) at [61]ff (Alexander Nissen KC as a High Court Judge). On not implying good faith obligations into a contract described as ‘relational’, see Svella Connect Ltd v Virgin Media Ltd [2026] EWHC 2223 (TCC) (Pepperall J). (especially for n 61) Merkon Constructions Pty Ltd v Residence Company Pty Ltd [2025] VSC 151 provides a useful reminder of the elements of estoppel in a residential context and the need for sufficient proof in relation to each; here, the elements failing for want of proof included detriment: see [27]. (especially for nn 61-62) A helpful summary of the impact at common law of ‘entire agreement’ and ‘no representations’ clauses (leaving out any statutory consumer protection measures which may alter this position) comes from Mohamed Faizal J in Oon Koon Cheng v Li Hua [2026] SGHC 169 at [93] [some citations omitted]: The effect of an entire agreement clause is to deny contractual force to statements which are not contained in the contract and thereby preclude any claim based on a side agreement or collateral warranty; it does not purport to affect the status of any statement as a (pre-contractual) misrepresentation, and thus does not preclude a claim for misrepresentation. Notably, misrepresentations have been held not to be excluded by the mere inclusion of the word ‘representation’ in an entire agreement clause. In contrast, a ‘no representation’ or ‘non-reliance’ clause may give rise to a contractual estoppel where the parties bind themselves by contract to a fictional state of affairs in which no representations have been made, or if made, have not been relied on. These clauses may also be capable of operating as an evidential estoppel provided that the three requirements in <i>Lowe v Lombank Ltd</i> [1960] 1 WLR 196 are satisfied, ie (i) the statement of ‘no representation’ or ‘non-reliance’ in the clauses is clear and unequivocal; (ii) the party	
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	providing this statement had intended that the counterparty should act on this statement; and (iii) the counterparty had believed the statement of ‘no representation’ or ‘non-reliance’ to be true and had acted upon it. In effect, such clauses are terms which exclude liability for misrepresentation. For a case where such clauses did not prevent a contract for the sale of land being rescinded for pre-contractual misrepresentation, see <i>Keci v Barnes</i> in the update above to section [4.3].	
4.5.1	(especially for n 71) The same principles of interpretation also apply, at least in English law, to resolve uncertainty in the meaning of a settlement agreement ending a dispute. Where the settlement embodies the outcome of a successful mediation, the separate doctrines of ‘judicial proceedings immunity’, the ‘without prejudice’ rule and perhaps a specific ‘mediation privilege’ and duty of confidentiality may all come into play, as well as the terms on which the mediation was conducted: The Pentagon Food Group Ltd v B Cadman Ltd [2024] EWHC 2513 (Comm). Here HH Judge Tindal noted at [37]: [A]t the end of a day-long mediation, one can hardly expect the same precision in drafting settlement agreements as in detailed commercial contracts. Indeed settlement agreements at mediations are often initially drafted in manuscript and signed there and then. This may make the evidential context of the settlement relevant, including statements made during the mediation. (especially for n 73 in Table 4.1) The Renters’ Rights Bill became the Renters’ Rights Act 2025 (E only) in October 2025. Its s 12 provides for landlords to be required to give information to tenants: the Assured Tenancies (Private Rented Sector) (Written Statement of Terms etc and Information Sheet) (England) Regulations 2026 (SI 2026/324) came into force on 1 May 2026. (especially for n 73 in Table 4.1) On whether informal exchanges of WhatsApp messages between traders constitutes a signature by one of them, see Jaevee Homes Ltd v Fincham [2025] EWHC 942 (TCC) (Roger ter Haar KC); also Hudson v Hathway [2022] EWCA Civ 1648. And on the existence of WhatsApp records as relevant to deciding whether the parties had made a contract – some issues remaining still to be decided – see DAZN Ltd v Coupang Corp [2025] EWCA Civ 1083, where at [5]ff Popplewell LJ (Arnold and Newey LJ concurring) helpfully summarises how the courts approach issues about the existence of a contract. For the similar position in Singapore – that the parties’ later conduct may be relevant in deciding whether a contract was entered into (especially an oral contract) and, if so, what its terms were – see Kok Kuan Hwa v Yap Wing Sang [2025] SGHC(A) 16 at [37]ff (Ang Cheng Hock J delivering the judgment of the Court). (especially for n 75 in Table 4.1) For the courts’ general rule that pre-contractual negotiations – even if apparently agreed and	1/2/3

	recorded in documentary form but not formally incorporated into the final contract – are irrelevant to interpreting the contract itself, in a B2B construction context see John Sisk and Son Ltd v Capital & Centric (Rose) Ltd [2025] EWHC 594 (TCC) (Judge Stephen Davies). (especially for n 76 in Table 4.1) Ashdrum Lodge Ltd v Barbouti [2025] IEHC 522 is an object-lesson from Ireland (with copious references to English case law) of what can go wrong with an insufficiently formalised B2C residential refurbishment project. The scope of works (hence the eventual cost) was extended and varied by the employer repetitively and informally. A standard form contract was ‘on the table’, but never agreed between employer and builders, nor were the terms of her architects’ retainer. Her purported termination of both contracts, then excluding builders and architects from the site, led to litigation. The builders’ claims against her (and vice versa) were settled early in the trial; Stack J rejected most of the claims against the architects. Illustrating how little pressure Irish civil procedure puts on parties to move swiftly and limit the issues, the project ran between 2013 and 2017; the architects were joined as third parties in 2020; the trial ran for 32 days (!), with a 200-page judgment in late 2025, not including allocating costs. (especially for n 76 in Table 4.1) Do the courts have special interpretive techniques for standard form contracts? In English law, the issue was discussed at length about a JCT Design and Build contract in Providence Building Services Ltd v Hexagon Housing Association Ltd [2026] UKSC 1. Lord Burrows (with whom Lords Reed, Briggs, Stephens and Richards agreed) said at [31]: [W]here parties choose to use an industry-wide standard form, it can generally be taken that their objective intentions in the relevant context are that their respective rights and obligations should be consistent with those of other parties using the same form and should reflect the objective intentions of those who were concerned with the drawing up of that standard form agreement. In <i>Beaufort Developments (NI) Ltd v Gilbert-Ash (NI) Ltd</i> [1999] 1 AC 266 (HL), also dealing with a JCT standard form, Lord Hoffmann said at 274: It is also important to have regard to the course of earlier judicial authority and practice on the construction of similar contracts. The evolution of standard forms is often the result of interaction between the draftsmen and the courts and the efforts of the draftsman cannot be properly understood without reference to the meaning which the judges have given to the language used by his predecessors. This was re-affirmed by Lords Hamblen and Burrows (with whom Lords Briggs, Stephens and Doherty agreed) in Great Asia Maritime Ltd v Orion Shipping and Trading LLC [2026] UKSC 23 at [23]. On the other hand, where the parties have changed the words in a standard form, greater weight is ordinarily given to the	
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	changed terms, reflecting ‘a presumption that the words specifically chosen by the parties are more likely to reflect their intentions than the words of a standard form which they have chosen to incorporate into their contract’: Khan v Fairmont Homes (NSW) Pty Ltd [2026] NSWSC 770 [59] (Muston J, considering the variations provision in an amended Housing Industry Association contract). Using even an ‘industry-level’ published standard form does not protect against a challenge at a court or tribunal, especially by a consumer in a B2C context, that one or more of its terms are unfair – unless those terms have statutory status. See further sections [4.10], [4.13.3], [4.14.4] and [4.15.3] in the book and their updates below. (especially for n 76 in Table 4.1) For a summary of the legal principles which apply where a party argues that an existing contract has been varied (or perhaps replaced), see the judgment of the court (Buss P, Mitchell JA and Vaughan JA) in Mirabela Nickel Pty Ltd v Mining Standards International [2025] WASCA 82 at [180]ff. A party who asserts that a formal agreement has been superseded or varied by an oral agreement – of which there appears to be no documentary record – has a steep hill to climb to persuade a court of this scenario; and a party’s failure to disclose relevant documents may encourage the court to conclude that these would not support their case. An English example is Savva v Cuckoo Hill Ltd [2025] EWHC 286 (Ch), where Master McQuail held that the second defendant failed to show that an oral agreement – allegedly made the same day as the formal sale and payment agreements for the claimant’s house were signed – varied those arrangements, justifying the second defendant’s breaches of their contractual payment obligations. (especially for n 77 in Table 4.1) On the hard-to-satisfy tests in Australian law for rectifying a written document, especially where solicitors have been involved in the drafting and several versions preceded the final one, see IDP 971 Richmond Pty Ltd v Xerri [2026] NSWCA 89. (especially for n 82 in Table 4.1) For a helpful discussion about the court’s options when a contract contains two clearly inconsistent provisions, see Sarai v N1 Loans Pty Ltd [2026] NSWCA 107. The contract contained provisions for interest payments both in advance and in arrears. The contract was not void for uncertainty; instead, interpreting the whole agreement, the Court held that the parties intended interest in advance. (especially for n 83 in Table 4.1) For a more recent restatement of English law’s approach to interpretation of contracts, see Lord Hodge in National Commercial Bank Jamaica Ltd v NCB Staff Association [2024] UKPC 2 at [32]. Common law courts differ in their readiness to consider evidence of the parties’ conduct <i>after</i> the contract was made (or allegedly made) as an aid to interpretation: for the English rule making such evidence	
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	inadmissible in relation to a written contract, see <i>L Schuler AG v Wickman Machine Tools Ltd</i> [1974] AC 235 (HL). The situation is more flexible in Singapore: see <i>Lam Kin Hing Kenneth v Yung Man Tung</i> [2026] SGHC 153 at [30]ff (Mohamed Faizal JC); in NZ, see <i>Gibbons Holdings Ltd v Wholesale Distributors Ltd v</i> [2007] NZSC 37, [2008] 1 NZLR 277. (especially for n 96) The traditional requirements of an offer by one party and a linked acceptance by the other – and the methods by which these events can take place, or be treated as taking place – are not discussed in detail in the book, but have given rise to extensive case law in each of our subject jurisdictions: see the general contract law textbooks referred to in ch 4 of the book. Statutory intervention in this area is rare, except in B2C contexts (including residential construction). The <i>Contract (Formation and Remedies) (Scotland) Act 2026</i> is one example, giving effect to proposals of the Scottish Law Commission in its 2018 report: n 2 in section [4.1] of the book. In relation to the formation of contracts in Scots law, the new Act includes: • The requirements for a contract to be formed (for example, the parties agreeing on key matters in the contract, but some matters left unresolved); • What forms an offer to enter into a contract and when an offer may be revoked by a party (for example, before the other party accepts the offer); • When an offer may lapse (for example, when there is a change of circumstance, like the person making the offer dying); • What constitutes acceptance (the end of the postal rule), rejection or withdrawal of an offer; and • The time limits for agreeing a contract. The Act's provisions in relation to remedies for breach are summarised in the update below to section [4.16.3]. (especially for n 100) See <i>Andrews & Andrews Construction Pty Ltd v Yao</i> [2025] NSWSC 322 (Stevenson J): an example involving a 'luxurious waterfront home' of the disputes which can arise from ambiguities in the wording of the parties' obligations (here, resting upon a handwritten clause) in relation to 'cost plus' arrangements. (especially for n 101) On courts' approaches to assertions of oral agreements unsupported by any contemporaneous documentary evidence, following <i>Gestmin</i>, see <i>Turner v Richards</i> [2025] NSWCA 25 (Payne and Leeming JJA, Adamson JA agreeing) at [58]ff; also <i>Savva v Cuckoo Hill Ltd</i> above. Even apparently legitimate contractual documents may be successfully challenged in court if there is no supporting body of drafts, e-mails or other evidence around the process of finalising them: <i>Notus Group Ltd v British Engineering Services Holdco Ltd</i> [2025] EWHC 1391 (Comm) at [192]ff and [246]ff (Judge Bever).	
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	On the value of contemporary documentation, see also Simetra Global Assets Ltd v Ikon Finance Ltd [2019] EWCA Civ 1413, [2019] 4 WLR 112. Here Males LJ (Peter Jackson and McCombe LJJ concurring) said at [48]: I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including e-mails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence. By contrast, in Toppan Holdings Ltd v Augusta 2008 LLP [2025] EWHC 1691 (TCC), a building defect case, Martin Bowdery KC (as judge) said at [21]: 'A dogmatic preference for documentary evidence over witnesses' recollections of what was said and was done is unhelpful'. But on the dangers of a judge over-relying on a witness's 'demeanour' in court, see Toppi v Toppi (No 3) [2025] NSWSC 733 at [19] (McGrath J), also referencing <i>Gestmin</i>. For an example of the difficulty of proving a purely oral contract, see <i>Singh v Bains</i>, summarised in the update to section [9.8] below. Similar difficulties will face a party seeking to argue that a written contract has been varied, but only orally; or that a purely oral contract collateral to the written one has been entered into: see Ever Strategy Consultants Ltd v PSA International Pte Ltd [2026] SGHC 76 (Chua Lee Ming J).	
4.5.2	(especially for the main text to n 109) On the methods available in English (and Scots) law to resolve uncertainty about the identity of one or more parties to a contract, see Lord Millett in The Starsin [2003] UKHL 12, [2004] 1 AC 715 at [175]–[176], applied to the question of whether a party acted on their own account or as an agent in DAC Beachcroft Claims (Scotland) Ltd v Mohammed Al Dahbashi Advocates [2025] CSOH 120 (Lord Lake).	2
4.6.3	(especially for n 128) For a discussion from Singapore of 'economic duress' and undue influence, as factors vitiating a party's consent to a contract, see Oon Swee Gek v Violet Oon Inc Pte Ltd [2024] SGHC 13, [2024] 6 SLR 313 (Philip Jeyaratnam J) at [49]ff. On the scope of 'duress' in the Australian law of contract, with references to the concept of unconscionability under the ACL, see SHRL Ventures Pty Ltd v Pedro-X Pty Ltd [2026] QCA 119 at [69]ff (Doyle JA giving the judgment of the Court).	2/3

4.7.1	(especially for the main text to n 131) On implying a term of <i>Type 2</i>, a useful reminder of the principles comes from the Singapore High Court in <u><i>Feida Bus Consortium Pte Ltd v Royal Autoz Exporter Pte Ltd</i> [2025] SGHC 141</u>. At [49] Christopher Tan JC quoted from the Court of Appeal in <u><i>Sembcorp Marine Ltd v PPL Holdings Pte Ltd</i> [2013] SGCA 43</u>, [2013] 4 SLR 193 at [101]: [T]he implication of terms is to be considered using a three-step process: (a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap. (b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy. (c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded ‘Oh, of course!’ had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then the gap persists and the consequences of that gap ensue.	1
4.7.3	(especially for n 144) For a summary of how each state and territory regulates ‘sunset clauses’ in off-the-plan purchases, see Lottie Twyford, ‘<u>Sunset Clause Laws Differ Around the Country. Here’s What They Are and When They Can Be Used</u>’ <i>ABC News</i> (12 October 2025). For litigation in Qld against a developer claiming (unsuccessfully) to have activated the sunset clause, see <u><i>Malligan v Chevron Apartments Pty Ltd</i> [2026] QSC 195</u>. Freeburn J decided the case primarily on basic contract law principles, including that a party (the developer) should not benefit from its own failure to fulfil a contractual obligation, though Qld’s statutory consumer protection for off-the-plan purchasers is also mentioned https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/2026/195.html. (especially for the main text to n 151) For an example of a completely oral agreement under which the homeowner appointed a firm of structural engineers for a basement project, see <u><i>Martell v Roszkowski</i> [2024] EWHC 840 (TCC)</u> (Judge Sarah Watson). The main contractor paid the engineer £10,000 (first disclosed in court) for recommending them to the client; and for being available to assist with enquiries during the project. The engineer also expected any quotation from the main contractor to the client for extra items to include a percentage for the engineer’s firm. In court – where both the engineers and the main contractors were found liable for aspects of the defective work – the impact of the engineers’ taking the ‘kickbacks’ and failing to disclose them on their potential liability was not a live issue. Even a published standard form contract appointing a professional will not necessarily include a ‘no conflicts of interest’ or ‘no other financial interest in the project’ clause. A similarly complex and	1/2/3

	expensive piece of litigation took place in <i>BPL Contracts (Scotland) Ltd v Beattie FRC Ltd</i> [2026] CSOH 22 (Lord Ericht), about B2B oral subcontracts for a harbour reconstruction project. The parties accepted that they had agreed to share the reward 50/50, but it was unclear to what figure the split related. 10 days in court were necessary, including 15 witnesses of fact and two experts. For another example of the dangers of a ‘handshake’ agreement – here for a B2C new home project costing over £1m – see <i>RBH Building Contractors Ltd v James</i> [2025] EWHC 2005 (TCC) and its sequel in the Court of Appeal, discussed in the update below to section [9.9.5]. (especially for the main text to n 152) For a B2B construction contract where no completion date was set, see <i>XJS World Pty Ltd v Central West Civil Pty Ltd</i> [2025] NSWCA 133, discussed in the update below to section [4.12.4]. (for n 153) An interesting application of the prevention principle (not in the class construction law pathway of rendering time ‘at large’ and LDs therefore unenforceable) came in <i>Lee v Big Dipper Constructions Pty Ltd</i> [2026] NSWDC 43, Weber J finding that the owner was precluded from relying upon its own wrong (denying ‘the builder’ access to the site) for a right to move to terminate the builder’s engagement. (especially for n 154) The UK Supreme Court in <i>King Crude Carriers SA v Ridgebury November LLC</i> [2025] UKSC 39 had to consider the status in English contract law of a doctrine established in the House of Lords in <i>Mackay v Dick</i> (1881) 6 App Cas 251, a Scottish appeal. Here Lord Watson held that there is a principle (or rule, or doctrine) of law that, where a party wrongfully prevents the fulfilment of a condition precedent (ie a pre-condition) to that party’s debt obligation (in that case, to pay for goods being bought), that condition is treated as being fulfilled, triggering an obligation to pay the price agreed (rather than the other party having to sue for, and prove, damages). But in the new case Lords Hamblen and Burrows (with whom Lords Reed, Hodge and Stephens agreed) accept that Scots law may differ, holding that Lord Watson’s approach is not, and should not be, part of English law, which has no overriding principle that a party may not profit from its own wrong: [68] ... Subject to terms to the contrary, where a condition precedent has not been fulfilled because of the debtor's breach of contract, that breach is appropriately and adequately dealt with in English law through the claimant’s remedy in damages. Those damages aim to compensate the claimant by putting it into as good a position as if the contract had been performed, subject to limitations such as mitigation and remoteness. For an English judge making a distinction between a breach of contract which may disallow the guilty party from terminating the contract and a situation where a contract party prevents	
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	fulfilment of a condition precedent (reached before the UKSC in <i>King Crude</i> above), see Leech J in Henley Developments 211 Ltd v Weston Homes PLC [2025] EWHC 3200 (Ch). If a contract expressly contains provisions about when and how one party may terminate it, a court may conclude that these replace, rather than adding to, the default common law right to terminate which that party otherwise would enjoy: see the update below to section [9.2.4]. Unless the contract lays down more precise conditions, the courts may imply a term that a party given a discretionary contractual power must exercise this reasonably, superimposing obligations analogous to those resting on a statutory decision-maker in public law. For an example from Queensland about the buyer of land purportedly terminating the purchase contract and the status of the deposit already paid, see Brades Property Agnes Water Pty Ltd v Skyrock Sun Pty Ltd [2026] QCA 141 (Kelly J, with whom Mullins P and Boddice JA concurred). The court interpreted a condition in the contract that the buyer was to be ‘satisfied’ about the planning position as ‘reasonably and honestly being satisfied’ – a test the buyer passed, so could retrieve the deposit. In English law, the recent origin of such debates about contractual discretions is Braganza v BP Shipping Ltd [2015] UKSC 17, considered in Ireland in Start Mortgages DAC v Simpson [2026] IECA 67; and in Singapore in Shipworks Engineering Pte Ltd v Sembcorp Marine Integrated Yard Pte Ltd [2026] SGHC(A) 22 at [226]ff (Kannan Ramesh JAD delivering the judgment of the court), also Deutsche Bank AG Singapore Branch v ARJ Holding Ltd [2025] SGHC 163 (Kwek Mean Luck J, whose decision was affirmed in 2026 by the Appellate Division), though the judge also rejected the general applicability of ‘good faith’, of which this implied term is sometimes treated as an expression. In NSW, where good faith has a firmer hold than in English or Irish law (or most other Australian jurisdictions), such limits on contractual discretion were held to apply to the termination provisions in a B2B construction contract: see <i>Renard Constructions (ME) Pty Ltd v Minister for Public Work</i> (1992) 26 NSWLR 234. See Sean Wilken KC (Keating Chambers), ‘A Constraint on or Protection from the Exercise of Contractual Discretions? Braganza Revisited’. On the broader ‘good faith’ debate, see n 53 in section [4.4.4] of the book.	
4.8.3	(especially for n 193) The legal impact of ‘temporary disconformity’ is not uniform across the common law, appearing not to be part of NSW law: see Neale v Westacres Property Consultants Pty Ltd [2026] NSWDC 209 at [24]ff (Judge Weber SC). On this case, see also the update below to section [9.2.4]. On retentions: the Fabian Housing Centre research report On The Ladder (July 2026) argues for a mandatory 5% retention on all sales of new homes in GB for the first three months. On reform of	1/3

	retentions in UK construction contracts, see also the update above to section [1.4.2]. (especially for n 195) On the effect (here, enforced) of clauses ‘deeming’ practical completion where the owner has occupied the site without ‘the builder’s’ permission: A & L Builders Pty Ltd v Porter [2026] QCAT 118 [75]. (especially for n 199) The opposite of a retention is an advance payment by employer to builder – much rarer in practice, and for good reasons. Such payments expose the employer at an early stage to the potential insolvency of the builder. Even without this, advance payments can become problematic in relation to the contract’s other provisions for remuneration: about a high value B2C home refurbishment contract in London NW8, see Westgreen Construction Ltd v Kiryukhina [2026] EWHC 2189 (TCC) (O’Farrell J).	
4.9.1	(especially for the main text to n 203) Where terms are implied by statute as a default, the parties being permitted to ‘opt out’, Paul MacMahon (LSE) points out in a LinkedIn post (November 2025) that courts and judges require clear words to achieve this, since it will deprive one party of rights otherwise theirs. A recent example in a B2B context relates to the English Sale of Goods Act 1979, whose s 14(2) requires goods to be of satisfactory quality – the same term is also implied into contracts for the <i>supply</i> of goods. When the contract provided that the seller ‘gives no other warranty or guarantee express or implied, including (without limitation) any warranties [of] merchantability or fitness for a particular purpose’, was this effective to exclude s 14(2)? (In English law, ‘merchantability’ is the pre-1995 equivalent of ‘satisfactory quality’). The Commercial Court (Nigel Cooper KC as a Deputy Judge of the High Court) held these words not incorporated into the contract; perhaps surprisingly, if they had been, they would not have been clear enough: Tullow Ghana Ltd v Vallourec Oil and Gas France SAS [2025] EWHC 3059 (Comm) at [132]ff. The international legal context meant that the ‘opt-out’, if successful, would not also have to meet the reasonableness standard of UCTA 1977; if the contract had been B2C and already subject to the law of any part of the UK, then the consumer could challenge such a term as unfair: see section [4.10] of the book and its updates below. In relation to <i>service contracts</i> (the main text to n 206), the factual difficulty of applying the CRA 2015 s 49 ‘reasonable skill and care’ standard to a kitchen refurbishment project is illustrated by Gillies v Baptie [2025] SC HAM 80 (Sheriff J Speir). In 2025 the Irish Competition and Consumer Protection Commission published The Consumer Rights Act 2022 – A Guide for Traders: Consumer Remedies in Service Contracts. This includes worked examples: ‘Carpenter Can’t Begin Job At Agreed	1/2

	Time'; and one where a trader who installed defective slabs on a customer's patio wanted to be paid extra for replacing them.	
4.9.2	A revised and simplified version of the HHSRS (21 hazards rather than the original 29, and three bands for scoring results) came into force in June 2026 under the Housing Health and Safety Rating System (England) (Amendment) Regulations 2026 (SI 2026/571), with new guidance published alongside. The original version of the HHSRS system appears still operational in Wales, alongside the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 (WSI 2022/6). (especially for the main text to n 224) For reasons of resources and finance, few local authorities in England take formal action against private sector landlords for housing defects (civil penalty notices, prosecutions and in the worst case banning an individual or entity from acting as a landlord). Based on responses to freedom of information requests, Matthew Pearce in <i>The Guardian</i> (16 November 2025) reported: 'Two-Thirds of English Councils Have Not Prosecuted a Single Landlord in Past Three Years'. Although Government committed £18m to help councils in England prepare for their new powers under the Renters' Rights Act 2025 s 107ff, together with a <i>duty</i> to enforce housing standards, this may not guarantee adequate enforcement, which would also require councils to attract and retain new staff in the field. Enforcement may be assisted by the new duty on private sector landlords – coming into force by English region in 2026-2027 – to register their identity and rented properties under pt 2 of the 2025 Act. Failure to register itself gives rise to potential penalties. For a pre-Renters' Rights Act case study of enforcement failing (so far) to dismantle a rental property portfolio built on illegality, see Andrew Kersley, 'How a Rogue Landlord Built an Empire in London's Poshest Streets' <i>The Londoner</i> (15 November 2025); see also the update above to section [1.3]. For the first regulations implementing 'Awaab's Law', see the Hazards in Social Housing (Prescribed Requirements) (England) Regulations 2025 (SI 2025/1042), under ss 10A(3) and 10B of the Landlord and Tenant Act 1985. Alongside, the MHCLG published Awaab's Law: Draft Guidance for Social Landlords (June 2025) and a more general Guide to the Renters' Rights Act (November 2025). The first aspects of 'Awaab's Law' came into force on 27 October 2025, in relation to emergency hazards and significant damp and mould; Phase 2 comes into force on 30 November 2026, newly covering excess cold, excess heat, falls, structural collapse, fire and explosion risk, electrical safety, domestic hygiene, food safety, and personal hygiene, sanitation and drainage. There is guidance on the draft Social Housing (Prescribed Requirements) (England) Amendment) Regulations 2026 (July 2026). Similar regulations will apply in Scotland to both social and private tenants, via the Investigation and	1/2/3

	Commencement of Repair (Scotland) Regulations 2026 (SSI 2026/173), coming into force on 6 October 2026. In July 2025, the UK Government published Consultation on a Reformed Decent Homes Standard for rented homes (in England alone). It notes that 10% of homes in the Social Rented Sector, and a staggering 21% of homes in the Private Rented Sector, fail to meet current (2006) standards of decency – needing modernising and expanding. The proposed new <i>Standard</i> will explicitly require freedom from damp and mould, along <i>Awaab’s Law</i> (above) lines. When the Renters’ Rights Act 2025 gained Royal Assent on 27 October 2025, this made possible application of the current (and eventually updated) <i>Standard</i> to the private rented sector (England only) for the first time. In January 2026 the definitive new <i>Standard</i> was announced, which private landlords will also need to comply with from 2035.	
4.10.1	(especially for n 231) For a useful discussion of the scope of UCTA 1977 in allowing challenges to contractual clauses, in the context of misrepresentation in relation to a B2B sale or lease of land and attempts to limit liability for that via a ‘no reliance’ clause, see First Tower Trustees Ltd v CDS (Superstores International) Ltd [2018] EWCA Civ 1396. The landlords incurred liability for a misrepresentation about the presence of asbestos in the property, having first said in response to the would-be leaseholders’ pre-contract enquiries that they were unaware of any such problem, then failing to pass on to the would-be tenants a report later received disclosing the presence of asbestos, in breach of an undertaking to do so. (especially for n 249) In July 2026, the CMA published its revised edition of Unfair Contract Terms: Guidance (CMA37) and other linked documents.	2/3
4.10.2	(especially for n 260) The principle that, at common law, a contract party may be bound without necessarily knowing (or reading) the contract’s terms, if their intention to be bound can be shown (eg by a signature), as in Toll (FGCT) Pty v Alphapharm Pty Ltd [2004] HCA 52, (2004) 219 CLR 165, has been confirmed and applied by Brown JA (giving the judgment of the Court) in Mukerji v Commonwealth Bank of Australia [2025] QCA 226 at [62]: [I]t is sufficient for a party to be legally bound if a party intends to sign a document and enter into legal relations. [T]hey will be bound to the terms of that contract even if they are not aware of those terms, whether it is because of their failure to read the terms or conditions or failure to obtain them beforehand. That is a matter which is determined objectively. (especially for the main text to n 275) Correction: in the sentence leading to the footnote reference: ‘scare’ should be ‘care’ (!)	2

	(especially for n 285) The Law Society of Ireland and the Construction Industry Federation have published a new <i>Combined Building Agreement/Contract for Sale 2026</i> (not generally accessible online) for use in new residential estates (houses and apartments). Its use is recommended from 1 February 2026 but not mandatory.	
4.12.2	The reasonableness of the damages claimed: in URS v BDW [2025] UKSC 21, the Supreme Court made clear that money spent ‘voluntarily’ on remedying a defendant’s breach of duty may be recoverable, provided the claimant already has a usable right of action and they have acted reasonably: see further the update below to section [5.3.2]. Mitigation of losses: if the innocent party in a breach of contract is able by its own actions to reduce what it costs to have the contract performed, can they still claim as damages what it would have cost in ‘the market’ (in a home construction context, employing a new builder to complete the job or rectify defects)? In a B2B sale of goods context, the Singapore High Court (Choo Han Teck J) held that only losses actually incurred could be claimed: Shri Bajrang Power and Ispat Ltd v Steel Corp Ltd [2025] SGHC 107. In a construction context, the contract (especially a published standard form) may create a defined ‘defects liability period’ (or functional equivalent) after practical completion, during which ‘the builder’ has the right to return to site and a duty to rectify defects notified by the employer. If the contract provides that this work is at the builder’s expense, the cost to the builder may be zero, if they can pass liability ‘down the line’ to a sub-contractor. In such a legal context, if the employer prevents the builder from rectifying, the damages recoverable are no more than what it would have cost the builder to do the same work: for a B2C example and the JCT Minor Works form, see Pearce & High Ltd v Baxter [1999] EWCA Civ 789, [1999] BLR 101, 66 Con LR 110; on similar issues in another B2C new home case, see Iggleden v Fairview New Homes (Shooters Hill) Ltd [2007] EWHC 1573 (TCC) (Judge Peter Coulson QC). On ‘defects correction periods’ and similar, see also section [10.1.2] of the book. (especially for the main text to n 307) It will not reduce the damages payable for a wrongdoer to show that there was an alternative way to deal with the breach; and the courts’ do not expect the innocent party to take any risks in order to mitigate: United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd [2025] SGHC 232 at [40]ff (Aidan Xu J @ Aedit Abdullah J). The impact of failure to mitigate applies equally to claims for damages framed in tort as to those in contract, and for financial losses – as in this Singapore example – as well as more tangible forms of harm. (especially for the main text to n 318) If a court grants an order for specific performance of an existing contract, can the party which	1/2

	has successfully sought the order, if the order's terms are not complied with, terminate the original contract and claim damages instead? Under what conditions? <i>Baeg v Wink Singh Pty Ltd (No 2)</i> [2025] NSWSC 873 was in a sale of land context; when the buyer (and their guarantor) failed to comply with a court-imposed deadline for completion, the seller then purported to 'terminate' the contract and claimed damages for breach. McGrath J said [authorities omitted]: [68] Once an order for specific performance has been made, the contractual rights and obligations of the parties are not superseded, but the future exercise of rights and performance of obligations fall under the control of the court. That is the very nature of the remedy ... [79] ... (1) By electing to bring an action for specific performance of a contract, a party has not irrevocably abandoned their common law rights in respect of damages for breaches of that contract, both past and future. (2) While those proceedings are maintained, or after an order for specific performance has been made, that contract can be terminated by one party by accepting the repudiation of the other but only with the court's leave or vacation of the order of specific performance. It is the order of the court, or something by authority of the order, that operates to terminate the contract. The judge went on to hold that, though the seller could not validly terminate the contract once the court order was in force, he had grounds to do so and could seek damages for failure to complete, once the Court 'vacated' (revoked) the order for specific performance, as it did. The same principles appear to apply to a residential construction case (outside a statutory framework, but subject to any relevant provisions in the contract itself) where the consumer successfully asks the court to order completion of a project by a date and 'the builder' fails to do so: the usual rules on the measure of damages then apply, assessed at the date the order for specific performance ceases to have effect. (especially for n 324) In <i>The Owners – Strata Plan 94800 v Aushome Construction Pty Ltd</i> [2025] NSWDC 143 [118], Abadee DCJ awarded the Owners' Corporation damages in lieu of a rectification works order under ss 48MA and 48O of the Home Building Act 1989 (NSW), where the OC had lost confidence in the original builder's ability to rectify the work. In <i>Grech v Biltar Pty Ltd</i> [2025] VSC 636, Efthim AsJ refused to grant the homeowner specific performance of the requirement under a deed of settlement for the builder to rectify defects (the deed expressly contemplating that specific performance might be available for such a breach). The judge noted that specific performance might only be granted under a building contract 'when it can... do more perfect and complete justice' than an award of damages, the phrase deriving from <i>Wilson v Northampton & Banbury Junction Railway Co</i> (1874) LR 9 Ch App 279, 284. Taking a narrower view of the availability of	
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	specific performance in a building case in Australian law than Harrison J in <i>Downer Construction (New Zealand) Ltd v Silverfield Developments Ltd</i> [2006] NZHC 486, [2007] 1 NZLR 785 – see the update below to section [4.14.6] – at [34] the judge required three conditions to be satisfied: 1. the building work the plaintiff seeks to enforce performance of is defined by the contract 2. the plaintiff has a substantial interest in having the contract performed which is of such a nature that it cannot be adequately compensated for breach of contract by damages; and 3. the defendant is in possession of the land on which the building work is contracted to be done. Holding that only the third of these was satisfied, damages remained an adequate remedy. In the background, it was evident that trust between builder and client had broken down. Other aspects of the court’s discretion may be in play where a contract party seeks an injunction to prevent the other party terminating the contract (in effect compelling continued performance of the contract). As with a request for specific performance, the court will wish the obligations to be precise enough to avoid it being drawn into ‘constant supervision’: see Attiwill J in <i>Fonterra Australia Pty v Platt</i> [2025] VSC 608. (especially for the main text to n 327) On contempt of court as the sanction for failure to comply with a court order in a civil case, in November 2025 the Law Commission (E&W) published Part 1 of its review of the field (Law Com No 423), proposing reform of the basic principles of liability. Meanwhile the Court of Appeal (E&W) held that it was not contempt of court to act contrary to the ‘purpose and spirit’ of an injunction, without being in breach of its terms: <i>FW Aviation (Holdings) 1 Ltd v VietJet Aviation Joint Stock Company</i> [2025] EWCA Civ 1458 (Males LJ, Falk and Baker LJJ concurring).	
4.7.3	Mortgage offers and delayed completion of new build homes: the UK consumer group the HomeOwners Alliance reports (2026) that lenders often impose lower limits on the amount they are prepared to lend on a new build than on an existing home. The loan-to-value ratio for new build mortgages is also often tiered: lenders will lend less towards a new build flat than a new build house. Most mortgage offers are only valid for a maximum of six months, so a well-advised buyer will attempt to get a ‘not later than’ completion date, ahead of their mortgage offer expiring. However, some lenders offer new build mortgages with a longer validity period: specialist mortgage brokers can advise about such products. (especially for n 148) An intending buyer who defaults on completion, following a drop in the value of the home and the unavailability of adequate finance, may even be sued by the developer for the difference between the agreed price and the	3

	lower price subsequently achieved at re-sale, as well as any legal fees incurred.	
4.9.2	(especially for the main text to n 220) On the meaning of ‘unfit for human habitation’ under the Landlord and Tenant Act 1985 (E&W) ss 9A and 10, see Harvey v Heaver [2026] EWHC 1671 (KB). (especially for n 226) On gas safety certificates and statutory protection for tenants, see now Muca v El Amrani [2026] EWCA Civ 515 (in 2026 potentially on its way to the Supreme Court with <i>Harvey v Heaver</i>, but the key landlord’s statutory power to give notice to quit came to an end under the Renters’ Rights Act 2025).	3
4.12.2	In URS v BDW [2025] UKSC 21, the leading judgment of Lords Hamblen and Burrows (with whom the other Justices agreed) considered mitigation at [60], in relation to arguments from the defendant builders that the claimants could not claim the cost of remediation work they had undertaken ‘voluntarily’: The enquiry in respect of mitigation is whether the claimant could have avoided its loss by taking reasonable action or whether expenses (or other additional losses) incurred, increasing its loss, were reasonably incurred. That is clearly a fact-specific enquiry that would have to await trial. The reasonableness of the claimant's conduct may also be of importance in determining legal causation and, even if not, it would appear that a fact-specific enquiry would be needed in order to decide whether the ‘chain of causation’ between breach of duty and loss has been broken. If the construction employer is directly in contract with – or has the ability to claim in contract against – ‘the builder’, and if that contract contains a ‘defects correction period’ (or equivalent), an unhappy construction employer should trigger the procedures laid down within the prescribed period: see further section [10.1.2] in the book. The contract may attempt to bar any complaints not notified during that period, though this could perhaps be challenged as an unfair contract term, especially in a B2C context; it may have no impact on claims brought on a different legal basis. If the contract contains no formal defects correction period, for the impact on the construction employer’s remedies of failing to give the builder a chance to remedy defects (including refusing the builder’s offer to do so), if this would have been reasonable (not just ‘an empty promise’), see also Ceerose Pty Ltd v Owners of Strata Plan No 89074 [2025] NSWCA 235 (<i>Brazis v CustomBuild Group Pty Ltd [2026] VCAT 441</i> providing an example of where the owners were not unreasonable in not having the builder rectify defects – they had ‘lost confidence in the builder’); and Bata v Pathik [2026] VSCA 148.	3
4.12.3	For a restatement of the available heads of damages for defective or incomplete construction in English law, see Wilson v HB	2/3

	(SWA) Ltd [2025] EWCA Civ 1360, summarised in the update below to section [5.5.2]. For a claim by the first buyer of a new home, nine years ago, against its high-profile national developer – a rare B2C construction case to get to trial – see Mallas v Persimmon Homes Ltd [2025] EWHC 2581 (TCC). The Court’s main task was to determine what was necessary to ‘fix the work so that it achieves the contractually agreed outcome’ – as agreed in the developer’s standard form contract (a parallel claim under the DPA 1972 s 1 led to the same result). The developer admitted failure to meet either goal, caused by under-design of the foundations for London clay, potentiated by the removal of mature trees close by. Evidenced by extensive and ongoing cracking and gaps inside the house, with doors binding, both sides agreed that the house needed additional and different foundations to protect against further differential movement, to be installed by underpinning (the developer not arguing for the chance to do the work itself). The buyer also wanted the whole prefabricated timber-framed superstructure replaced, but at [33] the judge (Alan Bates) held that extra damages on this basis would be disproportionate: ‘it is unlikely to be reasonable to demolish a house simply because there is some degree of risk that it may be subject to some defect or damage that has not yet been discovered’. Adding the cost of alternative accommodation during remediation and £10,000 as ‘general damages’ (for anxiety etc) gave a provisional total of over £400,000, but the costs were likely to come close: five hearing days, involving five expert witnesses. For examples of courts or tribunals awarding the cost of demolition and rebuilding, see Case Study 2 at section [2.9] in the book and its updates above. (especially for the main text to n 337) If a construction contract has a fixed completion date, which a consultant’s faulty designs cause to be missed, the quantum of damages payable – assuming liability is established – will be the cost of re-doing the designs, but can include the extra interest payable by the claimant developer, if reasonably foreseeably caused by the resulting 18 months delay in being able to sell the completed homes: Harvestfield Holdings Ltd v McIntyre [2026] NZHC 1019 (Andrew J).	
4.12.4	LDs and a completion date: in XJS World Pty Ltd v Central West Civil Pty Ltd [2025] NSWCA 133, the NSW Court of Appeal upheld the finding at trial that the parties’ failure to insert a completion date in a standard form meant that LDs (set at A\$1,000/day) could not be levied. Kirk JA observed at [36]: ‘[i]f the parties choose not to complete those details then they are choosing not to activate those provisions of the contract.’	1/3

	‘The alternative [to LDs] – liability for breach defined only by the general law of contract’: English law seems to permit not just either/or but both. The contract may provide that the innocent party is entitled to <i>both</i> LDs and damages under the general law for culpable delay, though this combination could be very onerous on the party in breach. The contract in Pharos Offshore Group Ltd v Keynvor Morlift Ltd [2025] EWHC 1764 (TCC) adopted this approach. A commonly adopted way of defining LDs uses a percentage of the contract price per day, rather than a defined monetary sum. Carefully choosing the right percentage for the impact of delay on the employer for the specific project is often overtaken, for ‘repeat players’, by ‘the percentage we always use’ or ‘the percentage we used on the last project’ – an arbitrary figure which fails to be a genuine pre-estimate of that loss. (especially for n 356): In Capitol Constructions Pty Ltd t/as Vogue Homes v Khosravi [2026] NSWCATCD 68, H Woods SM found that nominating as LDs ‘A\$.00’ was to be read as ‘A\$1’ (via a note in the contract that ‘if nothing stated, \$1’) and therefore to not override the right to general damages for delay ([119], [126]) but that, ‘A\$50’ under a different contract was ‘an amount of some substance’ so overriding general damages ([127]). (especially for the main text to n 377) Later cases in E&W have applied one of the <i>Makdessi</i> tests to assess the validity and enforceability of contractual provisions imposing payments in case of breach: ‘what would an objective party have thought at the time the agreement was entered into?’. In Houssein v London Credit Ltd [2026] EWCA Civ 830, Lewison LJ (with whom Newey and Arnold LJJ agreed) refused to label the default rate of interest on a secured loan (3% above the interest rate for the loan itself) as a penalty. For closely similar issues in Australia, but where the default rate was struck down, see Blackbird First Mortgage Corporation Pty Ltd v CAM Engineering & Construction Pty Ltd [2026] NSWSC 876; Muston J applied the summary of the relevant principles in Australian law – close to the pre-<i>Makdessi</i> situation in English law – from Rees J in Crescent Capital Ltd v Chanine [2026] NSWSC 371 at [4]-[11]. For the situation in Ireland, see the update below to section [4.15.4]. (especially for the main text to n 380) For other legal challenges to private parking operators, see the update below to section [6.2.2].	
4.12.5	Fraser Lyne Constructions Pty Ltd v Waba [2025] NSWSC 600 illustrates the need, in a residential construction context, to analyse in detail whether a contract has been repudiated or mutually abandoned. Peden J concluded at [48], after assessing the evidence, that the parties had conducted themselves in a	1/2/3

	manner ‘more consistent with an agreement to terminate’. On routes to termination, see also the update below to section [9.2.4]. In Hale Corp Pty Ltd v Ng [2026] VSC 492, Stynes J undertook an extensive consideration of a raft of contract-related claims arising from a home worth more than A\$6 million on the outskirts of Melbourne. Her detailed analysis of ‘the builder’s’ lost opportunity damages (concluding at [915]) emphasises that there is no one method of calculating the damages and therefore the importance of weighing up the various competing experts’ estimates of the cost of completion and other matters. Hsieh v Dreamhome Construction Group Ltd [2025] NZHC 1643 (Gardiner J) provides a striking reminder of the risk which the contractor takes on – here, including in relation to prior work and delays – under a lump sum contract, in the absence of contractual relief. An indicative passage from her judgment is at [39] (citations omitted): The common law requires a contractor under a fixed price contract to carry out not only the work expressly contracted for but all the work necessary to construct that work. Moreover, a builder takes the works as they find them and, in the absence of express terms stating otherwise, the contractor takes the site ‘as is’ and is responsible for all work necessary to complete the contracted work. Atlanta Building Pty Ltd v Abela (No 3) [2025] NSWSC 730 (appeal dismissed - [2026] NSWCA 126) provides a useful example of a court (Peden J) being willing to allow a builder to recover extra costs, on a restitutionary basis, for work done after accepting the owner’s repudiation: see [71]. Other notable aspects of the case include her order, in the face of legal costs running to hundreds of thousands of dollars on a claim for perhaps A\$200,000, that the solicitors for the parties deliver affidavits that they had explained the legal costs to their clients. For a concise statement of it being a precondition to a restitutionary claim (including for <i>quantum meruit</i>) that there is no enforceable contract under which the relevant work is being done, see Elrob Construction Group Pty Ltd v Haddad [2025] NSWDC 380 at [70] (Cole J): [G]iven that the contract has not been discharged and there has been no suggestion that it has been frustrated or avoided or has become unenforceable, [the contractor’s] claim in <i>quantum meruit</i> ... must fail. The Victorian Court of Appeal (McLeish, Lyons JJA and Nichols AJA) in Singh v Ozzie Homes Building & Construction Pty Ltd [2026] VSCA 25 disallowed a <i>quantum meruit</i> claim which had been granted to the builder at trial, largely on the basis of the particular facts (which included that the builder had not in fact reached ‘lock up stage’). The Court concluded at [152] that there was ‘nothing unjust or unconscionable in the owners retaining the benefit of the work without payment for its value’. In AMO Rifat Holdings Pty Ltd v Dib [2026] VSCA 124 (Niall CJ, Beach and	
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	Donaghue JA) the Court rejected the builder's attempt to appeal from VCAT, which had rebuffed its claim for a post-termination restitutionary <i>quantum meruit</i> because evidentially the builder did not separate work it was already entitled to be paid for contractually from work on incomplete stages. The case was complicated by the impact of an A\$110,000 cash payment 'side agreement' between the builder and the individual employers – void under the Domestic Building Contracts Act 1995 s 40 (Limits on Progress Payments); the Court of Appeal ordered the builders to refund the employers the amounts paid in reliance on that agreement. Conversely, where the parties agree (or the court or tribunal holds) that there was a contract between employer and main contractor for the project in question, but no adequately precise arrangements made for remuneration, a claim for payment is via an <i>implied term</i> that a reasonable sum would be paid for work actually done (sometimes also called <i>contractual</i> – not restitutionary – <i>quantum meruit</i>). Assessing what the builder had in fact done (where challenged, the builder has the burden of proof) and what was a reasonable sum for each of those activities was the central issue in E-Tech Building Services Pte Ltd v Foreign Domestic Worker Association for Social Support and Training (FAST) [2026] SGHC 12. This involved a meticulous line-by-line examination of the plaintiff's claim. At [101]ff, Christopher Tan J disallowed a claim for a 15% markup on what the builder was otherwise owed, for 'profit, attendance and project management'. This was not as a matter of law (as the defendants argued), but in the light of the work it actually did, at [115]: The precedents show that if a plaintiff makes a claim in contractual <i>quantum meruit</i> for a fee that is quantified as a margin of a base figure, that claim may be rejected if there is a complete dearth of evidence to assist the court as to what a reasonable margin would have been on the facts'. He also noted at [82] that the plaintiff's documentary records were 'in shambles'; this counted against them where proof was inadequate, and would do so in the eventual post-trial costs order, reflecting unnecessary court time wasted on evidential issues. See also 33Club Pte Ltd v Design Cliniq Pte Ltd [2026] SGHC 39 (Mohammed Faizal JC). The possibility of making a claim on a restitutionary basis may be excluded if the activity is regulated by statute and the statute takes priority over the common law position, eg by providing a exclusive regime of sanctions or by excluding the possibility of payment for a situation failing to comply with the statute – as in some Australia states for 'domestic' building situations if the builder fails to meet the statutory information requirements: see section [4.13.4] of the book. On the broader issue, in this case	
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	about fees payable for legal services whose cost had not been independently certified, see Gray v Lavan [2025] HCA 42. On the dangers (here, for ‘the builder’) of a building contract being ‘entire’, in GDS Building Services Pty Ltd v GB Built (Qld) Pty Ltd [2026] QCAT 192, a roofing contractor was entitled to nothing on an agreed lump sum of about A\$62,000 (and, to add insult to injury, had to pay the owner around A\$35,000 for another contractor’s rectification work) because it did not finish the work (the Tribunal indicates that the contractor may have availed itself of rights under the Qld security of payment legislation or to a quantum meruit but failed to pursue these).	
4.13.2	(especially for n 406) The Domestic Building Contracts Amendment Bill 2025 (Vic) passed the Victorian Parliament on 11 September 2025. The Act is progressively coming into force by Proclamation during 2026-7 with a final date of 31 March 2027 for it to be fully in force (shifted from 1 December 2026 by s 178ZL of the Consumer Legislation Amendment Act 2026 (Vic)). (especially for the main text to n 412) Western Australia has launched a review of its statutory and regulatory structures for building (August 2025): the Cook Labor Government is inviting homeowners and the building industry to be part of the review of WA’s home building contract laws. Builders and owners with recent experience in building or renovating their home were encouraged to participate in a survey to share their valuable insights and have a say on any improvements to the legislation. The review’s terms of reference cover the Home Building Contracts Act 1991 (WA) (except Part 3A); and the dispute resolution/complaint process in Parts 2 and 3 of the Building Services (Complaint Resolution and Administration) Act 2011 (WA). This produced a Discussion Paper (June 2026) summarising the Review’s key reform proposals, to be finalised and presented to Government later in 2026. (especially for the statutory warranties outlined in Table 4.2) The requirement to proceed with ‘reasonable diligence’ (QBCCA sch 1B s 25) was considered in the context of a kitchen project; Roney M found ‘the builder’ had acted with such a lack of diligence that it amounted to repudiation justifying the owners’ termination (and a significant rectification defects award): Dias & Butcher v Dale Hassam trading as Richters Kitchen and Glass [2026] QCAT 113 [111]. On the ACL ss 60-61 service guarantees, see the update below to section [8.7] below (<i>Shannon v Residential Reports</i>). (especially for n 418) The Owners – Strata Plan No 87231 v 3A Composites GmbH [2026] FCA 351 – supplemented by a judgment at [2026] FCA 608 setting out answers to ‘common questions’ so as to resolve the ultimate form of orders – (both, Anderson J) is a striking example of an attempt – in the end,	1/2/3

	unsuccessful – by owners of residential units in two NSW developments to rely on the ACL ss 54 (quality) and 29/33 (misleading conduct in advertising and promoting a product: see section [6.3.2] in the book) and its predecessor the Trade Practices Act against the German manufacturer and Australian supplier of two versions of Alucobond ACP cladding (PE and Plus). After 15+ hearing days (some members of the seven groups of experts earlier gave evidence in London to the GTI), the judgment tells how the two products had been specified and installed. The one with the higher polyurethane content had already been replaced at the owners' cost under a Rectification Order from the local Council, having been banned in NSW (then also under the Building Code of Australia). These owners claimed their <i>incurred</i> inspection and rectification costs, plus higher insurance until the work was complete, for which the manufacturer (as defined) would have been liable under the ACL s 271, as carrying on business in Australia. The other development's owners, unable yet to finance the work, despite assistance from NSW's <i>Project Remediate</i> (see section [10.5.7] in the book) and pressure from the local Council, were suing primarily for the <i>future</i> remediation costs of their building. For a summary of the 20 legal issues before the Court – including limitation questions – see the table at [132]. The many threshold issues about the applicability of the ACL and TPA to the relations between respondents and applicants included distinguishing the NZCA approach to a cladding claim – also against manufacturer 3A – under the more narrowly drafted Consumer Guarantees Act (NZ): see Body Corporate No DPS 91535 [2023] NZCA 647 (the failed appeal to the NZSC is noted at n 521 in section [4.14.3] of the book). Anderson J held that the cladding was 'a supply of goods' to the developers, 'of a kind ordinarily acquired for personal, domestic or household use or consumption' within the TPA and ACL; the individual unit owners and the Owners Corporations thus qualified as 'affected persons', deriving title from the developers. On the first substantive claim (quality), the judge concluded that neither product of itself – however installed - created a material risk of fire enough to fail the statutory test of acceptable quality; nor did their use necessarily fail to comply with the Building Code by creating 'an undue risk of fire spread'. At [1351]ff, he held that the products were 'as fit for the purposes for which they were commonly supplied as a reasonable consumer would expect or regard as acceptable having regard to the description of the goods and any other relevant circumstances'; the hypothetical reasonable consumers in this case were 'Qualified Professionals' – developers, builders, façade fabricators, architects, building certifiers and fire risk engineers. On the second claim (misleading conduct), the applicants relied on many representations by both respondents in marketing	
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	brochures – jointly made, the judge concluded – and on websites accessed in Australia. The judge held that these were directed at architects and persons responsible for design choices on buildings (not specialist Fire Safety Engineers); none of the pleaded examples would have conveyed to this professional audience the implications alleged that both products were safe, used in any way on any building. Many were ‘mere puffery’. The applicants therefore failed to prove that the representations made were false or misleading, or that the target audience required to be warned about the fire risk. The judgment concludes by considering the heads of damages which would have been treated as caused by the respondents’ conduct and recoverable, had liability been established under either head of claim; and limitation issues specific to claims under the TPA and ACL. The failure of this action – assuming no successful appeal to the Full Court – contrasts starkly with the success of the Victorian litigation after the Lacrosse building fire, which relied on the state’s domestic building legislation against ‘the builder’ and other project participants: see sections [2.6], [2.8.1] and elsewhere in the book.	
4.13.4	The Victorian Court of Appeal in Singh v Ozzie Homes Building & Construction Pty Ltd [2026] VSCA 25 applied a strict, rather than purposive, approach to determining whether a stage is ‘complete’ for the purpose of the stage payment provisions under the DBCA, overturning the finding at trial that ‘lock up’ had been achieved despite a number of incomplete items, including doors held closed with plywood: [101] Having decided that lock-up stage is reached when the work is complete, not when the ‘purpose’ of the lock-up stage provisions is achieved, the next question is whether the work is complete if only ‘trivial’ matters are outstanding. The judge proceeded on the basis that a failure to achieve completion of lock-up stage could be overlooked if the failure could be described as ‘trivial’... in doing so, the judge erred. Lock-up stage was either completed or not, and the contract required that it be completed before payment was due. That is not to say, however, that the significance of the matters not completed is irrelevant. ... determining whether a construction stage is complete may entail assessments of degree, having regard to the contractual definition and the specifications, and the state of the work.... [A] construction stage may be complete even though there are defects in the work, which the contract contemplates will be remedied at a later date. For the case’s <i>quantum meruit</i> aspects, see the update above to section [4.12.5]. The Consumer Legislation Amendment Act 2026 (Vic) – this provision to come into force on a date to be proclaimed or, if not, on 1 June 2027 – adds to the DBCA via a new s 38A a new and detailed process for approval of variations with a value exceeding A\$5,000. The need for such formality around variations	2/3

	approvals is emphasised by <i>Grubisa & Grubisa v Madden Developments Pty Ltd t/a Stroud Homes Sunshine Coast</i> [2026] QCAT 300, in which Howe M had to decide whether the owner texting ‘OK’ was sufficient to amount to agreement to ‘the builder’s’ variation claim (it was not; urgency did not avoid the need for ‘the builder’ to comply with the statutory notice requirements – [84]). For an example of the disputes which can arise in ‘cost plus’ delivery – here, playing out across a number of projects undertaken between the parties – see <i>Alta Vale Residential Pty Ltd (In Liq) (Rec Apptd) v STM123 Pty Ltd</i> [2026] NSWSC 882. Confirmation that a contract needs to be actually signed (‘wet’ or electronic) in order to be enforceable as a ‘domestic building contract’ under the DBCA: <i>Bajaj v Arunachalam</i> [2025] VCAT 1138 [39] (Cook M).	
4.13.5	In <i>85 Princess Pty Ltd v Fleming</i> [2025] NSWSC 407, about an allegedly defective slab in a warehouse, Brereton J ‘weigh[ed]’ the eight factors identified by Kourakis CJ in <i>Stone v Chappel</i> [2017] SASCF 72, (2017) 128 SASR 165 at [94]-[128], referring to them as a ‘useful catalogue of relevant considerations’; he did not mention the separate list in <i>Stone</i> from Doyle J (Hinton J agreeing). This ‘weighing’ led to a conclusion that repairing and monitoring the cracks was the appropriate response, not demolition and rebuilding. The NSW Court of Appeal (Ball JA; Payne and Stern JJA agreeing) dismissed an appeal at [2025] NSWCA 261, giving further detail at [66]-[69] about the onus borne by the defendant in showing that it is <i>unreasonable</i> to order rectification and observing, at [65], in relation to Kourakis CJ’s list of factors: [A]lthough this is a useful checklist, it should not be applied mechanistically and the ultimate question remains whether in all the circumstances of the case it would be reasonable to undertake the work necessary to achieve compliance with the contractual specification. For an example of the approach in <i>85 Princess Pty</i> being applied, see <i>Di Lullo v JG King Pty Ltd</i>, discussed in the update above to section [2.9]. In <i>Larsen as trustee for the Larsen Superannuation Fund v Tastec Pty Ltd (formerly Wonders Building Company Pty Ltd)</i> [2025] NSWCA 145, the NSW Court of Appeal applied to compensation for contravention of the misleading or deceptive conduct prohibition of s 18 the Australian Consumer Law essentially the contract damages measure for rectification. The <i>Stone</i> factors (here, both sets) were considered by Watson J in the Victorian Supreme Court in <i>Stanley v EWH Construction West Pty Ltd</i> [2025] VSC 699. The dispute was over a failure by the builder to meet the homeowners’ expectation that they would be able to reverse their caravan up the driveway and through a	1/2/3

	garage to store it in the back garden of the newly built home. The Supreme Court essentially upheld VCAT's findings that the failure amounted to a breach of contract, allowing the homeowners damages for the inability to store their caravan at their home; but it was unreasonable (under the <i>Bellgrove</i> limb) to award damages to demolish and rebuild the house to meet that objective. At [43], Watson J disagreed with the VCAT finding that the understanding that the caravan would be able to be stored was an express term of the contract (a key consideration was that the 'entire agreement' clause in the HIA standard form precluded reliance on what was an essentially partly oral-partly written approach to incorporation of that term). However, at [47] he accepted the Stanleys' submission that there were breaches via indications in the contract plans that there would be a flat line between the footpath and garage and that, by deviating from the floor levels in the building permit, the builder had breached the requirement in DBCA s 8(c) (incorporated into the contract via its cl 11) that the work would comply with all laws etc. As for the reasonableness limb of the <i>Bellgrove</i> exception to rectification being the default measure of damage, the Court accepted, based on <i>Tabcorp</i>, that the exception applied only in exceptional circumstances; however, at [71] Watson J found the circumstances exceptional. At [75] he regarded the Stanleys' submission, referring to the second-hand bricks example in <i>Bellgrove</i>, that <i>Tabcorp</i> limited the 'exceptional' circumstances to where 'the innocent party is merely using a technical breach to secure an uncovenanted profit' as an 'overread' of <i>Bellgrove</i> and <i>Tabcorp</i>; he went on at [85] to refer to both sets of <i>Stone</i> factors as 'giv[ing] effect to the same substantive underlying considerations'. At [86] he found that four of Kourakis CJ's factors – significant departure from the contractual stipulation; significant adverse effect; reasons for the stipulation; practical feasibility of rectification – were in favour of the appropriateness of rectification. However – emphasising once again the dispositive nature of the disproportion factor – at [88] he found that the 'degree of disproportion between the cost of rectification work and the Stanleys' interest in the performance of the contractual stipulation is such as to make that remedy unreasonable in the circumstances'. On the broader question of the state of the law in Australia, this passage at [82] is probably the most significant, again pointing to Australia <i>de facto</i> adopting the <i>Ruxley</i> consideration of disproportion as dispositive, in the shadow of arguably inconsistent High Court authority: Senior Counsel for the Stanleys submitted that <i>Stone v Chappel</i> was inconsistent with the High Court's decisions in <i>Bellgrove v Eldridge</i> and <i>Tabcorp</i> and that I should not follow it. <i>Stone v Chappel</i> is a decision of an intermediate court of appeal regarding the common law of Australia. I am bound to follow it unless persuaded that it is plainly wrong. I am not so persuaded; indeed I	
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	would reject the submission that there is any inconsistency between the approach adopted by the Full Court of the South Australian Supreme Court and the two High Court decisions. In particular, I do not accept that the High Court decisions require a binary choice between the full costs of rectification as performance based damages and an assessment of diminution in value, particularly in circumstances such as arose in <i>Stone v Chappel</i> where the former measure is not available because those costs would be unreasonable and the latter measure would leave the innocent party without a remedy. Upon the case's remission to VCAT (<i>Stanley v EWH Construction West Pty Ltd</i> [2026] VCAT 571), Lulham DP awarded the Stanleys A\$279,313.51, comprising: • A\$86,274.50 for rectification ([24]) • A\$17,500 for eight weeks' alternative accommodation ([31]: 'the Stanleys are entitled to rent reasonable accommodation. They are not expected to stay in a cheap motel, or in a five star hotel suite'; so, the valuation was based on the most similar AirBnB to their house, plus \$176 storage and \$6K removal fees) • A\$33,406 for caravan storage for 10 years (noting that the Stanleys are 'in their mid-60s... [and] intend to enjoy caravanning as long as possible' – [47]); Lulham DP rejected the builder's assertion that the Stanleys had failed to mitigate because they bought a larger caravan than could be accommodated by the (defective) garage • A\$136,000 for loss of amenity and physical inconvenience: [73], here involving fairly extensive comparison with the award given in <i>Stone v Chappel</i> concluding that 'I could not say that the Stones' enjoyment of art was worth more or less than the Stanleys' enjoyment of caravanning'. Given that <i>Stone</i> primarily involved a lower than specified ceiling (and loss of amenity damages only being awarded), it is of interest to note that, in <i>Osborn v Buildrite (Qld) Pty Ltd</i> [2025] QCAT 554 [79], Lumb M was willing to award rectification damages for a lower ceiling. Based primarily on the proportionality criterion, he accepted that a higher raked ceiling was not only an aesthetic but functional benefit for temperature control in north Queensland. Other examples of the <i>Stone</i> factors being referred to or applied, confirming their increasing currency outside SA: • <i>Bond Mayhew Pty Limited ATF Mayhew Cooper Crawford Superannuation Fund v Kerry Spicer</i> [2026] NSWDC 190 • <i>Crowe v Yako</i> [2026] VCAT 477 On comparable issues on recoverable heads of damages in English law, recently considered by the Court of Appeal, see <i>Wilson v HB</i>	
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	(SWA) Ltd [2025] EWCA Civ 1360, summarised in the update below to section [5.5.2]. On equitable remedies (injunction or specific performance) in contract contexts in Australia, Lord Hoffmann’s approach in the House of Lords to an attempt to enforce a ‘keep open’ commercial lease covenant in Co-Operative Insurance Society v Argyll Stores (Holdings) Ltd [1998] 1 AC 1 (HL) – see section [4.12.2] in the book – was followed by the plurality of HCA judges in <i>Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia</i> (1998) 195 CLR 1. The relevance of potentially constant and open-ended court supervision (which might follow from yoking together parties who have definitively fallen out) to the availability of equitable remedies was considered in Oliver Hume Property Funds (Hackham) Pty Ltd v Yas Property and Development Pty Ltd [2026] SASCA 78. Here a residential developer was refused an interlocutory injunction to restrain the development’s owner from acting as having (allegedly invalidly) terminated a development management agreement. The court (S Doyle, Bleby and B Doyle JJA) upheld the primary judge’s assessment that damages would be an adequate remedy, holding that concern about ‘constant supervision by the court’ no longer bars the court from awarding an injunction, though on the facts no injunction was justified in advance of trial. On specific performance, see also Grech v Biltar Pty Ltd [2025] VSC 636, which refused to follow the NZ approach outlined in the update below to section [4.14.6]; for Ireland, see the update below to section [4.15.4].	
4.13.6	(especially for n 497) The Consumer and Planning Legislation Amendment (Housing Statement Reform) Bill 2024 (Vic) became an Act of 2025 with the same short title, extensively modifying the Residential Tenancies Act 1997 (Vic).	1
4.14.1	Assigning existing rights of action (in tort, contract or under statute) to a third party in NZ law is explored in a case about a leaky home already rectified under the Weathertight Homes statutory regime but apparently needing further work. In To’o v Wellington City Council [2025] NZHC 216 , Skelton AJ refused to strike out the claim by the assignees (the new owners of the home) against a former owner of the home, requesting summary judgment in her favour. The judge held that the current plaintiffs had arguably taken an assignment of their predecessor owner’s claims for mistake and misrepresentation under the Contract and Commercial Law Act 2017 (NZ); under existing authority, the predecessor’s possible claim under the Fair Trading Act 1986 (NZ) would not have been assignable, like some other statutory claims. It was also arguable that the current plaintiffs had the necessary ‘genuine commercial interest’ (for English law, see n 46 in section	1

	[5.3.2] of the book) in pursuing the claim – seeking the cost of further repairs, or damages for the loss in value, to their own home on the same legal basis as their assignor (now deceased) could have done. On the argument that the assignor had suffered no transmissible loss, having sold the house for full value, see the update below to section [5.3.2]. The final issue was limitation: having started their action more than six years from the house sale to their assignor, they had to come within the ‘late knowledge’ extra three-year period under the Limitation Act 2010 (NZ) s 14, as recently interpreted in Rea v Auckland Council [2024] NZCA 313, [2024] 3 NZLR 242 (further appeal to the NZSC refused). Applying those principles, the current plaintiffs did not have the necessary knowledge (nor were they put on notice) when they bought the house, though formally told that weathertightness issues had already been resolved; knowledge under s 14 arrived only when they first became aware of leaks and water ingress, which meant that their action was in time and could go ahead. For the background, see section [10.8.1] in the book and its updates below.	
4.14.3	(especially for n 521) Correction: the cross-reference at the end of the footnote should be to section [11.5.8].	3
4.14.4	In July 2024 the NZ Commerce Commission published Enforcement Response Guidelines, one of a suite of published documents explaining the Commission’s approaches to potential or actual violations of the areas of law and regulation it has the power to enforce, with the range of enforcement tools available to it. Its key criteria comprise: the extent of detriment or harm; the seriousness of the conduct; and the public interest. Enforcement of the law against anti-competitive conduct against individuals (as well as linked businesses) is illustrated by the update below to section [6.4]. Further guidance comes from the Commission’s publication of its 2025/26 Enforcement and Compliance Priority Areas (August 2025), highlighting online sales (including fake reviews) as a specific current priority.	1
4.14.6	Here is the full passage from Harrison J’s judgment in Downer Construction (New Zealand) Ltd v Silverfield Developments Group Ltd [2006] NZHC 486, [2007] 1 NZLR 785 at [63] which Efthim AsJ in Grech v Biltar Pty Ltd [2025] VSC 636 held <i>not</i> to represent the law in Australia: In my judgment all these cases illustrate the obvious. Specific performance is an equitable and thus fact specific and discretionary remedy. Its exercise is governed by well settled principles which are flexible and adaptable to achieve the ends of equity; that is, to ‘do more perfect and complete justice’ between the parties than leaving them to their common law remedies (<i>Argyll Stores</i> at 9F-G). Building contracts present special features “of a practical nature”	2

	(<i>Argyll Stores</i> at 11H) in the areas of sufficient particularity and superintendence of work. But provided the Court is satisfied they can be accommodated by the imposition of appropriate terms within the order, as the arbitrator was here, there is no principled reason why such contracts should not be the subject of awards for specific performance. On specific performance in general, see section [4.12.2] in the book, also the update below to section [4.15.4]. (especially for n 545) On the impact of ‘betterment’ on the damages available for breach of contract in English law, see Rix LJ in <i>The Baltic Surveyor</i> [2002] 1 Lloyd’s Rep 623 (CA), applied by Snowden LJ (with whom Lewis and Newey LJJ concurred) at [106]ff in <i>Barrowfen Properties v Patel</i> [2025] EWCA Civ 39.	
4.14.7	The Residential Tenancies Act 1986 (NZ) was modified in detail by the Residential Tenancies Amendment Act 2024 (NZ), including on the powers and procedures of the Tenancy Tribunal.	1
4.15.1	The intertwined nature of the English and Irish versions of contract law is illustrated by the formation of contract issues considered by the Irish Supreme Court in ACE Autobody v Motorpark Ltd [2026] IESC 9 at [50]ff, with generous references to English authorities (Maurice Collins J, with whom Dunne, Murray and Donnelly JJ agreed; Woulfe J agreed in part but dissented on a separate estoppel issue).	3
4.15.4	(especially for the main text to n 565) Ireland’s current approach to the penalty doctrine will be revealed at Supreme Court level when it gives judgment later in 2026 on a leapfrog appeal from Governor and Company of the Bank of Ireland v O’Boyle [2025] IEHC 219, where Marguerite Bolger J found a surcharge interest rate of 9% annually, applied to the (now deceased) defendant’s loan on his default, unenforceable. The Bank argued for application in Ireland of the UKSC’s ‘recalibration’ of the penalty doctrine in <i>Makdessi</i>, but the judge held that she was bound to follow <i>Dunlop v Selfridge</i>, as applied in Ireland by Finlay Geoghegan J in Sheehan v Breccia [2018] IECA 286. (especially for the main text to n 567) The conditions under which an Irish court might impose a mandatory injunction requiring a contract party to perform an obligation – in this case, to keep a shop open – are discussed in Tesco Ireland Ltd v Multi-Home Retail Ltd [2026] IEHC 276. Marguerite Bolger J applied the approach of Lord Hoffmann in Co-Operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1998] AC 1 (HL) (n 320 in section [4.12.2] in the book – see also its update above), itself already applied in Irish case law. In the end she refused to order an interlocutory injunction against the loss-making licensee, which would have forced them to keep running their homeware shop in part of a Waterford former Tesco store.	3

4.15.5	The Residential Tenancies Board has power to carry out investigations of landlords and impose administrative sanctions for ‘improper conduct’ under the Residential Tenancies (Amendment) Act 2019 (Ire) s 28 (modifying earlier legislation), a sanctioned landlord having a right of appeal to the Circuit Court. On this appeal regime, see Xerico Ltd v Residential Tenancies Board [2025] IECA 202 (Faherty J). In January 2026, the Irish Government announced that a Bill would be introduced to implement the recommendations of a Housing Agency review of rent controls in the private sector (April 2025). The resulting Residential Tenancies (Miscellaneous Provisions) Act 2026 (Ire) heavily modifies the 2004 Act, instituting a national system of rent control, as well as limiting the scope for a landlord to bring a residential tenancy to an end, notably on a ‘no fault’ basis.	2/3
4.16.1	Changes to the Scots law of contract have been introduced by the Contract (Formation and Remedies) (Scotland) Act 2026. The reforms in relation to formation are summarised in the update above to section [4.5.1]; in relation to remedies in the update below to section [4.16.3]. For English law’s refusal to follow a Scots law principle – part of its ‘mutuality of obligations’ doctrine – see King Crude Carriers SA v Ridgebury November LLC [2025] UKSC 39, summarised in the update above to section [4.7.3].	2/3
4.16.3	Part 2 of the Contract (Formation and Remedies) (Scotland) Act 2026 makes changes in relation to remedies for breach of contract, including providing a default framework where: • Both parties have broken the terms of a contract • One party may withhold or retain performance in response to breach by the other • There needs to be a return of a benefit (like money or goods) • There is no agreed price, defining how a benefit is valued so that compensation can be given or the benefit returned (restitution) • A party suffers loss partly through their own fault and partly through the fault of the other party (contributory negligence).	2/3
4.16.4	(especially for n 603) For a failed appeal by tenants against their landlord, relying on statutory ‘reasonably fit for human habitation’ grounds in relation to alleged contamination in the Watling St site in Motherwell having caused risks to health, see the update below to section [5.7.1]. (especially for the main text to n 607) The Housing (Scotland) Act 2025 gained Royal Assent on 6 November 2025, modifying earlier legislation. Among changes relevant to the book, Part 1 introduces new forms of rent control; Part 4 allows Scottish Ministers to lay	2/3

	down new guidance on damp within housing and changes the time-limits for succession to secure tenancies.	
5.2	(especially for n 4) An ingenious argument by Victoria Evans (King's College London) and Jodi Gardner (University of Auckland) suggests the possibility of a fourth distinct tort as the basis for civil claims for construction defects: the property-based common law tort of <i>private nuisance</i>. Despite earlier authority suggesting that the lease terms may exclude any possibility of a separate common law basis in tort for a landlord's liability for defects, like Stonecrest Marble Ltd v Shepherds Bush Housing Association Ltd [2021] EWHC 2621 (Ch), the authors argue that, at least in English law, the tort is now broad enough to give a right of action by leaseholders in multi-unit developments against their landlord for failing to remediate potentially life-threatening hazards, as ongoing nuisances: see 'Defective Buildings Are a Nuisance' [2026] Oxford Journal of Legal Studies 1. Such an approach, though involving significant litigation risk, could put court-imposed pressure on a landlord, via a mandatory injunction, to 'abate the nuisance' by having remediation work done, above all in situations where the BSA 2022 protects the leaseholders against having the cost of such work passed down to them via service charges: see Table 11.1 in the book and its updates under section [11.5.2] below. For recent authority on this tort, see the update below to section [5.7.3].	2
5.2.1	(especially for the main text to n 8) The six-stage checklist in a tort claim for negligence identified by one of the judgments in <i>Manchester Building Society v Grant Thornton</i> was considered in a B2B claim in both negligence and breach of contract by residential developers – on such concurrent duties, see section [5.4] in the book and relevant updates below – in Darcliffe Homes Ltd v Glanville Consultants [2024] EWHC 3184 (TCC). The action was against consultants reporting on ground conditions, alleged to be at fault for not identifying the presence of chalk, leading to ground remediation costs. At [26], Adrian Williamson KC followed <i>URS v BDW</i> in the Court of Appeal, holding the checklist primarily designed to analyse duties of care alleged to arise in novel situations which had not previously been considered by the courts, or where the type of loss claimed was unusual or stretched the usual boundaries imposed by law. It was not primarily intended to be applied by rote to well-known and much-reported standard duties of care. The judge went on to find that the consultants were in breach of duty, but that the claimants had failed to show reliance on the ground conditions report in question. Had the defendants been found liable, the damages awarded would not have been offset by	2/3

	the unexpectedly high profits on sale of the homes, which did not derive from the allegedly negligent reports. For an alternative formulation of the elements of the tort of negligence, see Deloitte & Touche LLP v Hin Leong Trading Pte [2026] SGCA 33 at [40]ff (Ang Cheng Hock JCA delivering the judgment of the court).	
5.2.2	(especially for n 18) X v Sheriff John Brown [2024] CSIH 6 was appealed to the UK Supreme Court as X v The Lord Advocate [2025] UKSC 44. The judgment by Lords Reed and Burrows (all other judges agreeing) follows the Opinion of the Inner House, concluding that there is no employment relationship (or equivalent) between Scottish judges and the Crown, so no scope for the Crown to have vicarious liability for the allegedly delictual (tortious) acts of a member of the Scottish judiciary. The judgment also confirms the effect of the statutory background on the Crown's liability for officeholders. It was further considered, with the preceding case law, in Burger v Risk Solutions BG [2026] EWCA Civ 804 (Newey LJ, with whom Jeremy Baker and Bean LJJ concurred). Where statute protects employees' rights against a former employer, on transfer of the undertaking to a new employer – as in the UK under the EU-origin TUPE Regulations 2006 (SI 2006/246) (UK), including post-Brexit – this does not make enforceable against the new employer any rights third parties may have had against the former employer as vicariously liable for the pre-transfer acts and omissions of its employees: ABC v Huntercombe (No 12) Ltd [2026] EWCA Civ 1161 (Coulson LJ, with whom Sir Launcelot Henderson and Bean LJ concurred).	2/3
5.2.3	For remoteness in construction defect claims, see the update below to section [5.5.2]. On contributory negligence in a tort claim for negligent misrepresentation by an estate agent on sale of a farm, see the update below to section [5.9.5]. (especially for n 30) A judge's assessment of a claimant's percentage share of responsibility for their own harm, applying the tests for contributory negligence, are hard to challenge on appeal, at least in English law: see Lee v Khraud [2025] EWHC 714 (KB) (Cutts J).	1/2
5.3.2	(especially for n 43) The 'black hole' may occur where (a) a building's current owner rectifies a defect for which 'the builder' is factually responsible, but against whom the owner has no right of action in tort or under statute for those expenses ('pure economic loss'); and (b) the party with a clear right of action (usually in contract, but perhaps in negligence, if a claim in contract is already 'timed-out') against that builder for the same defect has	1/2/3

	arguably suffered no recoverable loss, no longer owning the building. A variation of this scenario occurred in <i>URS v BDW</i>: the developer BDW paid for rectification of defects in multi-unit developments which it no longer owned, seeking to recover these and other losses from the developments' original structural engineers URS (with whom it had a contract), in negligence and under the Defective Premises Act 1972 s 1 (also arguing that BDW itself owed duties under the DPA 1972 and could claim contribution from URS for its liability on that basis). Following the Court of Appeal on this issue, summarised in the book, the UK Supreme Court held at [2025] UKSC 21 that BDW's ability to sue URS for any proved breaches of its duties not to cause BDW pure economic loss was not definitively ended when BDW let go of its proprietary rights in any relevant development (by selling on the freehold), or by then choosing to pay for repairs. 'Voluntarily' incurring expenses might go to causation or suggest a failure to mitigate, but there was no rule of law that doing so necessarily broke the chain of causation or went beyond the scope of any duty of care. Nor was BDW's action in paying for repairs really 'voluntary', since safety-focussed in the post-Grenfell context; failing to act would also have caused BDW reputational damage. It made no difference that Fraser J in the TCC had already struck out BDW's claimed head of damages for reputational damage (not appealed): [2021] EWHC 2796 (TCC). On <i>URS v BDW</i>, see also the update above to section [4.12.2] and those below to sections [5.5.2], [5.10.2], [9.7.3], [10.5.1] and [10.5.2]. Because the litigation so far concerns only preliminary questions of law, an outcome on liability will require a future trial on the merits (date not known), if the case does not settle. (also in n 43) Appealed to the Supreme Court from Scotland is Forthwell Ltd v Pontegadea UK Ltd [2024] CSIH 38: in what circumstances can a party to a contract recover damages for a breach of that contract for losses sustained not by the contracting party itself but by its subsidiary? The parties in fact settled their dispute before the UKSC hearing – about water damage to Glasgow's famous <i>Rogano</i> restaurant, closing in 2020 – but the UKSC will still determine the Scots law position on the 'transferred loss' (or 'black hole') issue. One of the recognised routes around 'no loss' arguments, as explained in Darlington BC v Wiltshier Northern Ltd [1995] 1 WLR 68 (CA) at 79–81, resurfaced in an NZ assignment context in To'o v Wellington City Council [2025] NZHC 216 at [43]ff (Skelton AJ): see further the update above to section [4.14.1]. An assignment may commit the assignee to the form of dispute resolution agreed in the 'parent contract': on the range of possibilities, see section [9.2.4] in the book. These provisions (notably if deriving from a published standard form contract) may	
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	give both parties a power to refer a dispute to adjudication – in the UK, often by importing into the contract one of the statutory Schemes, as happened in Paragon Group Ltd v FK Facades Ltd [2026] EWHC 78 (TCC). Here Judge Stephen Davies confirmed the assignee’s ability (but not an obligation) to refer to adjudication. The logic of his approach to the HGCRA and the Scheme suggests that the same result may apply if the contract is silent about both assignment and adjudication, provided it otherwise fulfils the conditions making adjudication mandatorily available by statute. The case may be on its way to the Court of Appeal. By contrast, but also in a B2B construction context, Grove Construction (London) Ltd v Bagshot Manor Ltd [2025] EWHC 591 (TCC), District Judge Baldwin interpreted the words of the assignment as transferring only benefits; further, under the ‘parent contract’ only each <i>original</i> party had the right to refer a dispute or difference to adjudication – and only against the other original party. So the purported adjudication, in which the assignee had been the respondent (and lost), was a nullity. An issue not yet explored in court relates to an assignor who was an individual able to benefit from protection under the ‘residential occupier exception’ in the HGCRA s 106 against an adjudication launched by the other party to a B2C construction contract. If the assignee was also an individual, equally fitting within the statutory formula for the exception, could the assignee still claim that protection (under the statute, rather by virtue of the assignment)? It seems possible, but no authority yet makes that clear, in part because in no case law yet has a respondent to an adjudication successfully claimed the benefit of the exception. It seems more obvious that if the assignee is a legal entity, they should <i>not</i> be able to claim the benefit of the exception. On the ‘residential occupier exception’ in the law of the UK, see also section [9.9] in the book and its updates below. (especially for n 51) For other examples of uncertainty about what rights had been assigned, see McKinlay v Avellierie Ltd [2025] SAC (Civ) 6 (Sheriff Principal NA Ross); and Cape v Collis [2026] SGHC 94 (Kwek Mean Luck J) at [8]ff. (especially for n 52) <i>Technotrade</i> (as <i>Offer-Hoar v Larkstore</i>) was considered and distinguished, in a B2B construction context, by Orchard Plaza Management Company Ltd v Balfour Beatty Regional Construction Ltd [2022] EWHC 1490 (TCC), [2022] TCLR 5 (Morris J)	
5.3.3	The C(RTP)A 1999 includes provisions dealing with the situation where the ‘parent contract’ includes an arbitration clause (but only arbitration: no other form of ADR is contemplated). In some circumstances, the third party can benefit from that clause, just as it does from substantive rights under the contract. But the resulting situation is not straightforward: Fortress Value	3

	Recovery Fund I LLC v Blue Skye Special Opportunities Fund LP [2013] EWCA Civ 367, applied to the almost identical Singapore statute in Low Jun Hong v Hong Qi Yu [2026] SGHCR 11 (DR Teo Guan Siew).	
5.4	On ‘entire agreement’ clauses, see also the update above to section [4.4.4]. Does an existing contractual allocation of risk (especially if including exclusions or limitations of liability) exclude the possibility of a concurrent duty of care in tort, in line with <i>Henderson v Merrett</i> in English law? From Singapore comes Lorinet v Helu-Trans (S) Pte Ltd [2025] SGHC 66. At [34] the judge (Lee Seiu Kin SJ) asked: ‘whether the imposition of the duty of care argued for by [the plaintiff] would upset the balance of rights and obligations negotiated between the parties, so that there exist valid policy concerns negating the imposition of that duty on [the defendants]’. No such relevant limitations or exclusions applying, save an overall monetary limitation of liability clause which the judge found unenforceable under the Singapore equivalent of Part I of the UK’s UCTA 1977, the judge found a duty of care in tort established, making the plaintiff’s action unaffected by being already timed out under Singapore’s limitation rules on contract actions. But the action, brought by the nominal plaintiff’s insurer, failed for incomplete evidence: the plaintiff could not show that the damage to the Anish Kapoor sculpture when it fell two years later was the result of the defendants’ negligence in mounting it on the wall of the plaintiff’s former flat, there being no scope for the doctrine of <i>res ipsa loquitur</i>, which would have led to a conclusion that the defendants were negligent. For an example of contractual provisions which did exclude a concurrent duty in negligence, also from Singapore, see Glassberg v UBS AG, Singapore Branch [2025] SGHC(A) 13 (Woo Bih Li JAD giving the judgment of the Court). In an action for damages for (pure economic) loss caused by allegedly negligent investment advice, the key relevant contractual term was that the client ‘makes his own assessment and relies on his own judgment’ and that any advice or recommendations given to the client were without responsibility on the Bank’s part. This clause, the Court held at [23], ‘precludes a finding of the legal proximity between UBS and Mr Glassberg required to establish a duty of care’, going on to hold the relevant terms not statutorily unfair or unreasonable, largely given the plaintiff’s long career history in banking and the wide use of such clauses in the sector. Showing the factual and legal difficulty of convincing a court that an existing contractual relationship has a more demanding duty of care in negligence added on top, especially for ‘pure economic	1/2

	loss' (under-performing investments), see also Kristy Tan J in Lee Hsueh Ching v Loh Kia Hui [2025] SGHC 258. Crucially, the defendant bank's standard terms provided that the (claimant) customers should not without more rely on investment advice given by the bank, its officers or employees and were accepting 'any and all risks... and any losses suffered as a result of entering into any investment'. If a duty of care could have been established, the judge held that the customers did not show reliance, nor were they asserting an adequate causal link between the alleged breach and the losses claimed as damages.	
5.5.2	In contrast to one of the key findings in Case Study 5, URS v BDW [2025] UKSC 21 is a high-profile example of a B2B situation where English (and probably also Scots) law recognises that a construction professional may owe a duty of care in tort, resting on 'an assumption of responsibility' and leading potentially to liability for pure economic loss, often (as in this case) in parallel with comparable duties in contract. At [33], the Supreme Court judges confirmed that the remoteness test for damages in such situations is the same as in contract: 'whether the type of loss suffered was reasonably contemplated by the defendant at the time of the assumption of responsibility (ie here at the time the contract was made) as a serious possibility'. This directly echoes Fraser J at [2021] EWHC 2796 (TCC), followed by Coulson LJ in the Court of Appeal at [2023] EWCA Civ 772, 209 Con LR 24, [2023] BLR 437, [2024] KB 827 [30]ff; applied in a further B2B context in Toppan Holdings Ltd v Augusta 2008 LLP [2025] EWHC 1691 (TCC) at [60]ff. A fire safety case brought by long leaseholders of the Celestia development in Cardiff Bay (457 flats in seven buildings, completed in 2005-2007) against Redrow as developer and continuing freeholder (with Laing O'Rourke as design-and-build third party defendant) came to a preliminary hearing immediately following <i>URS v BDW</i>. In Wilson v HB (SWA) Ltd [2025] EWHC 1315 (TCC), Judge Keyser KC considered at [12] that the Supreme Court had not varied or overturned the well-known authorities on remoteness in actions for breach of contract (including, as in this case, for breaches of lease covenants): <i>Hadley v Baxendale</i>, <i>Victoria Laundry (Windsor) Ltd v Newman Industries</i> and so on. The same principles appear to apply to claims under the Defective Premises Act 1972 s 1, as applied by Jefford J in Vainker v Marbank Construction Ltd at [339] – quoted in section [5.10.3] of the book as the main text to n 326. Judge Keyser then applied these principles to strike out most heads of damages claimed by three of the claimants, leaving intact claims for special damages for the diminution in value of each apartment; loss of rental income; and damage to health from mould and damp (all subject to quantification and proof in due course); and inconvenience and distress (general damages, also	1/2

	subject to proof). For further background, see Nelli Bird, ‘Redrow to Pay for Major Repairs to Block of Flats’ BBC News (15 April 2024). On Redrow, see also the update below to section [6.2.3]. On appeal by the long leaseholders, the Court of Appeal in Wilson v HB (SWA) Ltd [2025] EWCA Civ 1360 upheld Judge Keyser’s striking-out; the claim for the cost of remedial works was dropped, since the defendant developer had agreed a programme of remedial works with the claimants. At [25], Coulson LJ (with whom Popplewell and Phillips LJJ concurred) magisterially summarised the applicable principles on recoverable damages in a construction context [cases already discussed in the book are signalled with *]: (a) Where there is defective or incomplete construction work, a claimant is entitled to claim the amount by which the work is worth less by reason of the defects: see <i>Hoenig v Isaacs</i> [1952] 2 All ER 176. That is a traditional diminution in value claim. (b) Over the last 60 years or so the courts have recognised that such diminution in value is usually best measured by reference to the reasonable cost of reinstatement works: see <i>East Ham Borough Council v Bernard Sunley & Sons Ltd</i> [1966] AC 406; <i>Dodd Properties v Canterbury City Council</i> [1980] 1 WLR 433 at 456 and <i>*Darlington BC v Wiltshier Northern Ltd</i> [1995] 1 WLR 68 (CA) at 79. But a traditional diminution in value claim may still be appropriate, such as where the building cannot be economically repaired (see <i>Applegate v Moss</i> [1971] 1 QB 406); or where any remedial works would be disproportionate (see <i>*Ruxley Electronics v Forsyth</i> [1996] AC 344 (HL), although on the facts of that case, there was no diminution in value either). (c) A claim for the reasonable cost of remedial work accrues whether or not the asset in question is subsequently sold or destroyed. In <i>The London Corporation</i> [1935] P 70, a steamship was damaged by the defendant’s vessel. The Court of Appeal upheld Bateson J’s conclusion that the diminution in value, represented by the cost of repairs, was recoverable by the claimant, despite the fact that the steamship was in fact sold to be broken up. In similar vein, a defendant cannot take advantage of the impecuniosity of owners who could not afford to carry out the remedial works and claim that they had suffered no loss: see <i>*Manchikalapati v Zurich Insurance PLC [2019] EWCA Civ 2163</i> at [83]–[89] and [96]–[111]. Both may be regarded as an “accidental circumstance which ought not to be taken into account in the way of diminution of damages”: see Greer LJ in <i>The London Corporation</i> at p 78. (d) In a case where it has been agreed that the original contractor can return to carry out the remedial works, the owners cannot claim the cost of those remedial works as damages: they will never incur the cost of such works, or a liability for those costs, so they cannot recover damages by reference to them. (e) But that does not mean that the owner will not suffer a residual diminution in value, even after the remedial works have been completed. It is common to find that, for example, flats in a block which has been the subject of extensive remedial work are worth less on the open market than flats in a block which has not been the subject of such work. This is commonly known as “blight”. Residual	
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	diminution in value is a proper head of loss in such circumstances: see <i>Thomas v TA Phillips (Builders) Ltd</i> (1985) 9 Con LR 72; <i>George Fischer Holding Ltd v Multi Design Consultants Ltd</i> (1994) 61 Con LR at [198]-[199]; and <i>Strange and Others v Westbury Homes (Holdings) Ltd</i> [2009] EWCA Civ 1247 at [12]-[18] ... (f) In addition, a claimant will normally be able to recover (subject to proof) loss of any rental income and any other special damages which are not too remote and which can be properly identified as flowing from the breaches. Special damages claims for loss of use of the property, based on the capital value of the property, have been unsuccessful: see <i>Calabar Properties Ltd v Stitcher</i> [1984] 1 WLR 287 and <i>Bella Casa Ltd v Vinestone</i> [2005] EWHC 2807 (TCC). A claim for loss of use of money was successful in the particular circumstances in <i>Earl Terrace Properties Ltd v Nilsson Design Ltd</i> [2004] BLR 273 at 290.	
5.6.7	The new <i>Architects Code of Conduct and Practice</i> – applicable to all architects registered with the ARB in the UK – came into effect on 1 September 2025, with guidance published on aspects of each Standard – notably about failure to provide adequate terms of engagement to clients: the most common cause of complaints about architects to the ARB. (especially for n 145) Correction: the paragraph starting ‘Along similar lines’ appears to continue the quotation from Coulson LJ in the preceding paragraph. In fact, it is editorial text and should have been displayed as such. Illustrating the <i>Ladd v Marshall</i> tests in operation, see the Singapore cases of <i>XCG v XCF</i> [2025] SGHCF 62 (Choo Han Teck J) and <i>Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee</i> [2026] SGHC 55 (Kristy Tan J); in relation to landlord and tenant issues in the UK Tribunal system, see <i>Szymczak v Nafeesa Begum Ltd</i> [2025] UKUT 151 (LC). On fresh evidence on appeal, see also the updates below to section [9.8].	1/2/3
5.7.1	(especially for n 147) Further Irish case law on liability to a secondary victim for ‘nervous shock’: <i>Lynch v Reynolds</i> [2025] IEHC 527 (Tony O’Connor J), applying <i>Sheehan v Bus Éireann</i> [2020] IEHC 625. (especially for n 157) The appeal in <i>Pelosi v Lanarkshire HA</i> [2026] CSIH 21 came before Lord Ericht, the tenant-pursuers continuing to rely on the ‘reasonably fit for human habitation’ statutory obligations of a residential landlord to claim damages. But the appeal failed to show errors in the Lord Ordinary’s approach to the evidence, leading to the conclusion that the tenants had not discharged the burden of proof of breach of duty: harm allegedly caused by contaminants in the soil of the development.	2/3
5.7.2	(especially for n 169) On the statutory duty of care of an occupier of premises for injury to a visitor in Irish law, case law requiring a risk to be unusual enough to require precautions or a warning	1/2/3

	from the occupier, see Kandaurova v Circle K Energy Group Ltd [2025] IECA 13 (Noonan J giving the judgment of the Court, overturning the trial judge's finding of liability). (especially for the main text to n 173) One of the consequences of the 1968 Ronan Point collapse in east London was the creation of what became Collaborative Reporting for Safer Structures (CROSS) in the UK, later also in Australia and the USA: a confidential reporting system allowing professionals working in the built environment to report on fire and structural safety issues. These are then published anonymously to share lessons learned, create positive change and improve safety. For examples of CROSS-UK reports, see the updates above to section [3.9.2] and below to sections [11.2.1], [11.2.2] and [11.5.5]. More recently, the BSR appointed CROSS to run the voluntary occurrence reporting system (VOR) for structural and fire safety until 2028. Comparable procedures exist in relation to aviation and maritime safety, eg the UK's Confidential Human Factors Incident Reporting Programme (CHIRP). To the list of many deaths caused by residential building collapse or fire must now be added the Wang Fuk Court apartment complex of eight 31-storey buildings in Tai Po, a suburb near Hong Kong's border with mainland China, built in the 1980s. It had almost 2,000 apartments and more than 4,600 residents. In November 2025, fire coinciding with renovation work on the blocks' exterior led to 168 confirmed deaths, with many other residents injured. Among extensive coverage of how the fire unfolded is this multimedia guide in <i>The Guardian</i>. See below for prosecutions under way. (especially for the main text to n 177) The Irish Government made 'recognition payments' to the relatives of all those who died in the Stardust fire during 2025; in February 2026 the Justice, Home affairs and Migration Minister Jim O'Callaghan announced an ex gratia payment scheme for the 'survivor beneficiaries' of those who died. (especially for the main text to n 178) Another night club fire, in the Swiss resort town of Crans-Montana (Valais) on New Year's Eve 2026, caused 41 deaths and many other injuries. (especially for n 180) On the Damages (Scotland) Act 2011, see also Veale v Scottish Power UK Plc [2025] UKSC 45. On Large Panel Systems in public sector housing in the UK and Ronan Point, see further Pete Apps and Hannah Brack, 'The LPS Files: Hidden Documents Shed New Light on the UK's First Building Safety Crisis' <i>Inside Housing</i> (1 September 2025); in the private sector, see also the update below to section [11.4.1]. (especially for the main text to n 185) In May 2026, the Metropolitan Police confirmed that it has 'strong evidence' on which it hopes the Crown Prosecution Service will bring criminal charges (including corporate manslaughter, gross negligence	
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	manslaughter, fraud, and health and safety offences) against 77 companies and individuals in relation to the deaths and injuries at Grenfell Tower. Jury trials, if appropriate, are unlikely to start before 2028; jurors will be able to view a purpose-built replica of the tower before, during and after the renovation. See further Vikram Dodd and Jessica Murray, ‘Police to Seek Criminal Charges against 77 Companies and People over Grenfell Fire’ <i>The Guardian</i> (19 May 2026). An August 2026 report from Leela Jadhav, commissioned by non-profit US/UK thinktank <i>Common Wealth</i>, argues for increasing the criminal penalties for corporate wrongdoing, also a punitive damages regime. Unpunished and Undeterred: Corporate Accountability After Grenfell specifically focusses on Arconic Inc, the US-based multinational which manufactured cladding found by the GTI to be ‘the primary cause’ of the fire at Grenfell Tower. The company, now owned by private equity giant Apollo Global Management, paid out more in settlements with its shareholders as a result of negative post-Grenfell publicity than with the families of those in the Tower (the <i>Abdel-Kader</i> litigation, reported in the book); and most of those payments were covered by insurance. By contrast, in Hong Kong in June 2026 (less than 9 months after the Wang Fuk Court fire) the directors of the construction contractor and the consultant firm involved in the renovation at the time of the fire, as well as an inspector, were accused of manslaughter along with their companies. Seven individuals in total, who played different roles in the estate’s renovation, were also charged with defrauding, laundering money and tax evasion: see AFP, ‘Hong Kong Files Manslaughter Charges against Seven People and Two Firms in Deadly Apartment Fires’ <i>The Guardian</i> (11 June 2026). (especially for the main text to n 187ff) For possible reform to the mode of trial in England & Wales of construction-related criminal offences, see the update above to section [3.5.1]. The BSR is starting (Summer 2026) to threaten criminal proceedings against those who are Accountable Persons or Principal Accountable Persons for occupied but not yet registered HRBs: on <i>Building Assessment Certificates</i>, see the update above to section [3.4.12].	
5.7.3	As noted, private nuisance is beyond the scope of the book, but recent apex court decisions explain and potentially expand its potential for application in construction contexts: notably Hunt Leather Pty Ltd v Transport for NSW [2025] HCA 53, in relation to claims by business owners affected by delays in the construction of the Sydney Light Rail project in the 2010s. Here the Court allowed a class action by those owners to proceed. Three of the five Justices subscribed to this definition of actionable situations:	2/3

	In broad terms, the principles of private nuisance balance a plaintiff's right to land with the liberties of a defendant to use other land. This balance is struck by imposing liability for a substantial interference with a plaintiff's right where the interference is with ordinary enjoyment of land if: (i) a defendant uses their land for a purpose that is not common and ordinary; or (ii) the defendant's use of land does not reasonably minimise the extent of the substantial interference with the plaintiff's ordinary enjoyment of land. In either circumstance, a defendant will have a defence of statutory authority if Parliament has authorised the defendant's uncommon use of land or failure reasonably to minimise the substantial interference, as the case may be. Gordon and Edelman JJ at [57] and Beech-Jones at [260] agreed with that test, while Gageler CJ and Jagot J in separate judgments preferred essentially the minority's characterisation in the UK Supreme Court decision in Fearn v Board of Trustees of the Tate Gallery [2023] UKSC 4. This case is central in arguments for a potentially more prominent role for this tort as a remedy for construction defects; see the update above to section [5.2]. Further discussion of the principles in Australian law comes from Hunter Water Corporation v The Owners of Strata Plan 16460 [2026] NSWCA 184 (McHugh JA, Ward P agreeing and Leeming JA agreeing with additional observations). In Nanos v Rossengas [2026] VCC 127, a case was unsuccessfully argued in private nuisance involving alleged damage to a neighbour's house in suburban Melbourne from a shifting wall. On the test in <i>Hunt Leather</i>, Burchell J observed at [513]: [T]he inquiry in establishing a claim of nuisance is whether the interference was substantial and unreasonable, having regard to its character and the ordinary expectations of the locality. That question does not turn on any 'unreasonableness' in [the neighbours' use of their house] ... but instead on whether the interference experienced at [the house where the wall moved], viewed objectively, exceeds what the law regards as the acceptable 'give and take' between neighbours. In English law, the Court of Appeal in Thomas v Nicholas [2026] EWCA Civ 847 considered claims in nuisance (heavily reliant on <i>Fearn</i> in the UKSC) and negligence (a further claim of harassment was also in the frame) for injury to the claimants' breeding of falcons. This had been caused by noise and visual disturbances from the defendants' adjoining land, including construction work, scaffolding operations and the placement of a digger near the boundary during the birds' breeding season. By a majority (Moylan and Nugee LJ), liability in nuisance was not made out, as the claimants' use of their land was 'particular and uncommon', rather than 'ordinary'; but a different majority (Moylan and Whipple LJ) upheld the trial judge's award of damages in negligence. This divergence between the tests for liability (hence outcomes) in nuisance and negligence may form the basis of a final appeal to the Supreme Court.	
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	There is the linked but distinct basis of tort liability for escapes of dangerous substances from land causing damage to neighbouring land: the principle in <i>Rylands v Fletcher</i> from the Exchequer Chamber (1866) LR 1 Ex 265 (E&W) (Blackburn J). This has obvious potential relevance to materials stored or used in construction which could pose a risk if they escaped. The precise conditions for (strict) liability under this principle, and its relation to the broader law of private nuisance, have long been unclear or contested, but were recently reviewed and restated for English law (and the law of the Bahamas) in Rubi Bahamas Ltd v Russell [2026] UKPC 9, discussed by Marco Cappelletti in a forthcoming issue of the <i>Modern Law Review</i>.	
5.8.2	For a magisterial restatement of the building blocks of the tort of negligence, in the context of a claim against auditors for (pure economic) losses suffered by a company which then became insolvent, see Deloitte & Touche LLP v Hin Leong Trading Pte [2026] SGCA 33 at [40]ff (Ang Cheng Hock JCA delivering the judgment of the court).	3
5.8.4	(especially for n 229) A distinctive feature of the latest apex court approach to duty of care questions in E&W is a starting point of equality between public and private defendants. Lord Reed in Robinson v Chief Constable of West Yorkshire Police [2018] UKSC 4 said at [32]ff: At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies... Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority... That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question... It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise. The Irish Supreme Court relied on this approach in Barlow, at the same time accepting that public sector cases may raise distinct issues of their own: see the update below to section [5.14.2].	1
5.9.1	For an example of litigation in Scotland about an architect's PCCs, provided to the buyers of a new home, see Spence v Graham [2025] CSOH 108, discussed below in relation to section [9.7.2]. On risks to the professional who signs a PCC, particularly in light of changes to the law in E&W under the BSA 2022, see the CIC Risk Management Briefing, UK Finance Professional Consultant's Certificate (September 2025).	2
5.9.5	'Would not have gone ahead with the transaction': an example of what is increasingly labelled a 'counterfactual': what a claimant alleges they would have done (or not done), had they not been victim of the defendant's alleged negligence. The claimant must	1/3

	persuade the court – on the usual balance of probabilities test – of this hypothetical version of events. The result will determine the court’s approach to what types of loss or other harm are recoverable – as in <i>Large v Hart</i> – then its quantification in damages. As here, such counterfactuals typically play a central role in claims for professional negligence: see also the update below to section [10.12]. (especially for n 267) On SAAMCO, see the update below to section [11.8.4]; the critical comments of the Singapore Court of Appeal in Deloitte & Touche LLP v Hin Leong Trading Pte [2026] SGCA 33 at [63]; and Routhan v PGG Wrightson Real Estate Ltd [2025] NZSC 68. For this second appeal in <i>Routhan</i>, the negligence of the estate agents in misrepresenting the farm’s milk yield, inducing the plaintiffs to buy the farm, was already established; the remaining issue was the right measure and quantification of damages in tort for ‘pure economic loss’. The already successful claim for misleading and deceptive conduct under the Fair Trading Act 1986 (NZ) s 9 was not part of the appeal, the parties accepting that the measure of damages would be the same as in tort. In <i>Routhan</i>, a majority (Glazebrook, Kós and Miller JJ) found the negligent estate agents liable for only some of the heads of damages claimed: the amount the buyers of the farm overpaid at the start because the agents exaggerated the farm’s productivity, plus the extra post-purchase costs incurred in trying to achieve milk production equivalent to that promised. The dissenting minority (Winkelmann CJ and Ellen France J) would have disallowed all the post-purchase losses claimed, as not attributable to the agents’ negligence. This divergence leaves the status in NZ law of above to section [5.9.5] and the English case law following it open to further debate. The first instance judge and Court of Appeal agreed that the plaintiff buyers in <i>Routhan</i> were entitled to rely on the milk production figures produced by the defendant estate agents; the Supreme Court judges all agreed that there was no scope for reducing, for the plaintiffs’ alleged contributory negligence, any of the heads of damage in the end awarded. <i>Routhan</i> in the CA and NZSC became relevant again in relation to damages under the FTA 1986 (NZ): see Rahal v Bhargav [2026] NZCA 176, discussed in the update below to section [6.4].	
5.9.6	On the liability of valuers in tort and contract in English law, see Bratt v Jones [2025] EWCA Civ 562, where the judgment of the court (Sir Geoffrey Vos MR, Jonathan Baker and Snowden LJJ) included at [5]: [W]hilst a valuation outside the acceptable bracket is an indication that something may have gone wrong, a claim in negligence or breach of contract against a valuer cannot succeed unless the court is	1

	satisfied that the valuer has failed to exercise due and proper professional skill, care and diligence in undertaking the valuation. In reaching this conclusion, upholding the judgment below, the court relied on a summary of the relevant principles by Eder J in Capita Alternative Fund Services (Guernsey) v Drivers Jonas [2011] EWHC 2336 (Comm) at [145], as well as SAAMCO in the House of Lords: see the updates above to section [5.9.5] and below to section [11.8.4]. <i>Bratt</i> confirmed that the <i>Bolam</i> test for liability of a professional person continues in force in English law (see section [2.2.3] and its n 35 in the book): has the defendant acted in accordance with practices regarded as acceptable by a respectable body of opinion in that profession? Showing that the valuer's figures are outside a permissible margin of error for a non-negligent valuer will answer this key question in the negative.	
5.10.2	On one of the key terms in the DPA 1972 s 1, see Sheriar Khan and Nicholas Zeolla, 'What Qualifies as a 'Dwelling' under the Defective Premises Act 1972?' <i>SCL (UK) Paper 274</i> (May 2026). The TCC (Joanna Smith J) has confirmed that an adjudicator under Part II of the HGCRA 1996 (UK) has power to determine a claim under the DPA 1972 s 1 (presumably under the new s 2A as well), in parallel with one under a qualifying construction contract: BDW Trading Ltd v Ardmore Construction Ltd [2024] EWHC 3235 (TCC). This involves applying to statutory adjudication Lord Hoffmann's views in <i>Fiona Trust (Premium Nafta Products Ltd v Fili Shipping Company Ltd [2007] UKHL 40)</i> at [5]-[13], outlining English law's approach (widely followed) to arbitration clauses. In <i>URS v BDW</i> at [2025] UKSC 21 the Supreme Court confirmed at [126]ff the Court of Appeal view (as summarised in the book): a consultants' firm under contract to a developer (performing construction services on the construction of dwellings 'to the order' of such a developer) could owe its client the same statutory duties under the Defective Premises Act 1972 (E&W) s 1 as the developer owed to dwelling owners (including long leaseholders or short-term tenants). So the DPA s 1 protects not only individual dwelling owners (or equivalent); such a developer could look to its consultants, under the statute or at common law, for a contribution towards its own liability to dwelling owners under the same DPA 1972 s 1. (especially for the main text to n 306) Recent case law seems to confirm that there is no liability under either s 1 or the new s 2A unless unfitness for habitation can be shown, though the Law Commission may have intended a 'threefold duty', each independently leading to liability (see n 319 in the book). As Jefford J said in 381 Southwark Park Road RTM Co Ltd v Click St Andrews Ltd [2024] EWHC 3179 (TCC) at [27]:	1/2/3

	It is well-established that the duty owed under section 1, which is in the same terms [as s 2A], is a single duty to see that the outcome is that the dwelling is fit for habitation. Lack of fitness for habitation is correspondingly a necessary element of breach of that duty. Liability under either s 1 or 2A seems not to require separate proof of fault, if failure to reach the defined objective standard(s) of build quality can be shown. (especially for nn 301 and 308) Ardmore Construction Ltd, with post-Grenfell claims against it from several developers including Barratts (as BDW), took on no new business after 2021 and entered administration the day before an adjudicator made an damages award of £14.9m against it – for both breach of contract and under the DPA 1972 s 1 – relating to a Portsmouth housing development where it had been design-and-build main contractor for developer Crest Nicholson. In June 2026, all the construction-related Ardmore companies entered administration, allegedly triggered by anticipatory pre-trial Building Liability Orders made by the TCC under the BSA 2022 ss 130-131 in Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd [2026] EWHC 789 (TCC). A further judgment refused both a stay of execution and permission to appeal: Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd [2026] EWHC 1089 (TCC). Constable J held that it was just and equitable to impose liability on a joint and several basis on companies <i>associated with</i> Ardmore Construction: for the adjudication award; and for Ardmore Construction’s potential future liabilities under the DPA 1972 s 1 or arising from the BSA’s definition of a ‘building safety risk’. The Ardmore defendants are likely to attempt an appeal. When a construction company with multiple projects becomes insolvent, it often costs 90% or more of its assets to identify and recover these, eventually leaving only 10% available to creditors. (also for n 308) On the different stages in the <i>381 Southwark Park Road</i> case (St Andrew’s House), including a Building Liability Order made by Jefford J in the TCC against a group holding company of the actual developer, see also David Sawtell, ‘Building Liability Orders under the Building Safety Act 2022: St Andrews House’. A BLO can also be requested by a party liable for building defects attempting to pass part or all of this liability to a third party, via a claim for contribution – discussed in more detail in section [9.7.3] and its updates below. An eloquent illustration of the new BSA rights of action is Mullaley & Co Ltd v STO Ltd [2026] EWHC 1552 (TCC). The claimant Mulalley, design and build contractor of a new block of homes in the early 2000s for a housing association, accepted liability to its employer for non-compliant cladding supplied by a British subsidiary of a German company (the product was ‘inherently defective’ under the BSA 2022 s 149, said Pepperall J). The subsidiary was now in liquidation; its German parent failed to defend Mulalley’s claim against it for a BLO under the BSA 2022 s	
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	130, so judgment was entered against it by default. The TCC then had only to decide the quantum of the damages payable by the German company, starting with the cost Mulalley incurred to remediate the defects attributable to the defendant's cladding – more than £2m, not challenged as unreasonable. Applying the ‘just and equitable’ test of the Civil Liability (Contribution) Act 1978, the judge awarded Mulalley 87.5% of this remediation cost.	
5.10.3	Liability for breach of the Defective Premises Act 1972 (E&W) s 1: see the updates above to sections [5.5.2] and [5.10.2].	1
5.10.4	No court or tribunal decisions appear yet to concern the BSA 2022 s148; on sources of information about BSA-related case law in general, see the update below to section [11.5]. On possible Law Commission review of these liability rules, see the update below to section [5.10.5]. Potentially also relevant here is the BSA 2022 s 84 (England only): in relation to occupied buildings at least 18m or seven storeys high it places a duty on ‘accountable persons’ (defined in s 72) to prevent building safety risks materialising in relation to the part of the building for which they are responsible – defined to include anyone with a legal estate (freehold or leasehold) in any part of the ‘common parts’. ‘The regulator’ – initially the BSR, but see the update above to section [3.4.9] – has a duty to enforce the part of the BSA including s 84, but it is not clear to whom (else) this duty is owed.	1/2
5.10.5	(especially for the main text to n 338) For an extended definition of ‘producer’ under the 1985 Directive, see Ford Italia v ZP (case C-157/23) (CJEU). Regulations under the Product Regulation and Metrology Act 2025 (UK) could lead to reforms in UK law matching the changes in the 2024 EU Product Liability Directive: on differences between the current UK and EU regimes, see this article by Scots lawyers Paola Sproul and Mark Gibson (Digby Brown). On product regulation, see also the update above to section [3.4.13]. In November 2025, the Law Commission (E&W) announced a review of the law on product liability, in collaboration with the Department for Business and Trade (now DBSIT). Centrally, this will examine Part 1 of the Consumer Protection Act 1987, in the light of changed EU law, but also (perhaps) the specific construction products rules imposing liability in the BSA 2022, summarised in section [5.10.4]. The review’s detailed terms of reference can be found here.	1/2
5.12.3	A rare example of circumstances in which a duty of care in negligence to protect against pure economic loss is found: Hammer v Colquist [2026] QCAT 358; as in <i>Raymond v Lewis</i>, the loss arose from (amongst other things) damage by Queensland’s voracious termites; unlike in <i>Raymond</i>, though, the	3

	claim was against an inspector rather than builder. Burke M was willing to find many ‘salient features’ in the relationship between homeowner and inspector, including assumption of responsibility, reliance and vulnerability (see [125]).	
5.12.4 (and elsewh ere)	In November 2025, the NSW Public Works and Accountability Committee published its <i>Review into the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 and related draft government bills</i>. This provides very useful background information about the NSW reforms in the wake of the <i>Building Confidence</i> report. Overall, as made clear in its introduction and its recommendations, the <i>Review</i> was hampered by not having access to the NSW Government’s draft Bills intended to replace the state’s current building legislation, including the DBPA and Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW). Notably, the Committee made no substantive recommendations in relation to the duty of care in s 37 of the DBPA, though it noted various concerns raised by stakeholders as to aspects of its operation requiring clarification ([2.52]-[2.62]). For the outcome of this consultation, via the duty being folded into the <i>Building (Approvals and Practitioners) Act 2026 (NSW)</i>, see the update to section [3.6.1] above. -	2/3
5.12.4	(especially for n 402 and its main text) In <i>Kapila v Monument Building Group Pty Ltd [2025] NSWSC 1306</i> , Richmond J provided further insights into the interplay between s 37 of the DBPA and the proportionate liability scheme, observing at [248] that ‘there is force in the contention that (at least on the majority’s reasoning) [in <i>Paftburn</i>] Part 4 CLA [proportionate liability] will only be excluded in a claim which involves the “delegat[ion] or otherwise entrust[ment]” of works’. He also found that a contributory negligence claim is available to reduce liability under s 37 – see [260]-[262] – but that the builder had not made out its claim for such reduction here.	2
5.13.1	On assignment of rights to sue in NZ law, see the update above to section [4.14.1].	1
5.13.2	In the long running ‘leaky building’ litigation against Grimshaw & Co deriving from original construction defects in ‘Spencer on Byron’ (n 441 in the book), the NZ Supreme Court refused to consider overturning the Court of Appeal’s order staying execution of the damages award against the law firm: <i>Body Corporate 207624 v Grimshaw & Co [2024] NZSC 87</i> . The outcome of the substantive appeal against the first instance finding of liability and award of damages is not yet known.	1

	(especially for n 428) In August 2024, the NZSC gave leave for a second appeal in <i>Tasman DC v Buchanan</i>, on the duty of care issue: [2024] NZSC 103. (especially for n 442) For the latest stage in the ‘Gore Street’ NZ litigation (<i>Body Corporate 366567 v Auckland Council</i>), see the update below to section [11.10].	
5.13.3	In August 2025, the Minister for Building and Construction, Hon Chris Penk MP (shortly before losing his Ministerial post), announced a plan to reform the common law ‘joint and several’ liability principles in NZ law in relation to construction: We are replacing joint and several liability with proportionate liability. Councils and ratepayers will no longer be left carrying the entire cost of defective work when others are responsible. Each party will only be accountable for the share of work they did. We’re also looking at safeguards such as professional indemnity insurance and home warranties to ensure building owners are protected. The detailed legislative implementation of these apparently simple ideas – now included in the 90+ clauses of the Building Amendment Bill 2026 – will determine the impact, and potential success, of the reform. Proportionate liability is to be inserted into Part 5 of the Building Act 2004 (NZ) via new sub-Parts 2A-2C. Many questions remain unanswered, as noted by Rosemary Killip from Building Networks (NZ) on <i>LinkedIn</i> (August 2026): Will councils reduce inspections and oversight? Will insurance and professional indemnity costs increase, and if so, who will ultimately bear those costs? Will developers favour businesses with robust quality assurance systems and strong third-party verification, making it harder for those without them to compete? Will risk simply be pushed further down the contracting chain to subcontractors? Perhaps the biggest question of all is: Will anyone actually be better off, or will the risks simply be redistributed rather than reduced? Courts, arbitrators and adjudicators will newly have to define an individual party’s ‘just and equitable’ share of liability for construction defects for which there are concurrent wrongdoers: will this add a new layer of litigation risk? The NZ Law Commission’s 2014 report on Liability of Multiple Defendants has had little relevance to the proposals now brought forward, though it discussed all the issues in the context of ‘the leaky building crisis’, making proposals for limited reform, including capping the liability of territorial authorities: the book summarises these in sections [5.13.3] and [9.7.3]. Australia’s individual states already offer a range of statutory models to choose between (or avoid), as well as variously named mandatory home warranty regimes, subject to reform in at least Victoria and NSW: see further the update below to section [7.5.1]. The NZ reform, designed primarily to reduce the impact on territorial authorities as ‘last persons standing’ for building defects, is linked to making PI cover mandatory for many	1/2/3

	categories of parties contributing to construction, better ensuring their ability to be serious defendants in claims by building owners; and making insurance-based warranties available to most new home buyers. The book's section [7.5.1] records doubts whether the NZ insurance industry would have been capable of offering new home warranties universally, had the Law Commission's modest proposals requiring such products to be <i>offered</i> to residential construction consumers been enacted. However, the NZ proposals now before Parliament in the Building Amendment Bill revive and expand the idea: an approved form of home warranty insurance will become <i>mandatory</i> on defined categories of new residential builds and alterations costing NZ\$100,000 or more, with a 1-year defect period and a 10-year structural warranty period. The capacity of existing providers, and the NZ insurance industry in general, to take on this new business is unclear, as well as its impact on SME builders. Carl Taylor on <i>LinkedIn</i> (August 2026): If solid, capable builders can't qualify for warranty products – not because of poor workmanship, but due to tight financial models or limited insurer appetite – the industry risks losing hundreds of small and medium operators from residential work altogether. Fewer builders. Less competition. Higher costs for Kiwi homeowners. The disappearance of private sector insurers for home warranties in most Australian states suggests that the NZ Government may in the end become 'insurer of last resort' for any new forms of construction insurance. The present coalition would hardly welcome this outcome; the Bill therefore empowers the Governor-General (on the recommendation of the Minister for Building and Construction) to temporarily disapply some or all home warranty and professional indemnity insurance requirements where there is, or is likely to be, a material impact on the availability or affordability of these products (for example, due to major market disruption or insurer withdrawal), and a resulting risk to building sector continuity or housing delivery. On the current products, see the update below to section [7.5.1]. Changes to the building control ('consenting') system are also included in the Building Amendment Bill – all with the aim of encouraging more construction to take place at greater speed. Further changes flagged in June 2026 could include creating a separate Building Consent Authority concerned with large commercial buildings, Territorial Authorities retaining their existing role for all other projects; and requiring councils to accept producer statements - professional documents from qualified experts supporting a consent application – as meaning that the work complies with the Building Code. The Bill also proposes changes to the Licensed Building Practitioners (LBP) scheme, including increasing maximum disciplinary fines from NZ\$10,000 to NZ\$20,000 and extending maximum suspension periods from 12 to 24 months.	
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5.14.2	Under what conditions may public authorities in Ireland exercising statutory functions owe a duty of care in negligence to those foreseeably suffering harm (often including or comprising economic loss) as a result? The Supreme Court reviewed the existing law in depth in Barlow v Minister for Communications [2025] IESC 14, Murray J giving judgment on behalf of the five-judge court. At [137] the judgment identified eight factors that may differentiate a claim against a public authority from one against a private undertaking, going on at [138]ff to trace the intertwined evolution of case law in England and Ireland – notably Caparo, as applied in <i>Glencar</i> (n 480 in the book) and later Irish cases – trying to define the test for a ‘duty of care’, integrating this with the separate strand of liability for pure economic loss following <i>Hedley Byrne</i> (and the role, as in that landmark case, of a possible disclaimer). <i>Barlow</i> concluded at [154]: Proximity, foreseeability, and the just and reasonable inquiry remain a correct and helpful recitation of the elements of a duty of care. In new and difficult cases, each of these usefully describe the features of the inquiry, but where the court looks is in the decided cases and what it is looking for are guiding principles and analogous facts by reference to which the court can decide whether there is <i>sufficient</i> proximity and <i>sufficient</i> foreseeability of loss to impose liability in negligence. The judgment added at [155] that the first two limbs of the inquiry were of ‘limited practical use as a “test”’: the first reference point should be whether existing binding precedent mandates the conclusion that a duty of care is owed in the circumstances. But ‘just and reasonable’ remains relevant in the inquiry, in contrast to its modest status in the now outmoded <i>Anns</i> two-stage test. The appeal concerned the State’s possible liability in negligence for causing the collapse of the bottom-dredging mussel industry, principally by (unlawfully) permitting Northern Irish operators to compete in Irish waters. All the plaintiffs’ other legal grounds were definitively struck out by the Court of Appeal at [2022] IECA 179. The surviving ground was summarised by Murray J at [158]: [T]he defendants implicitly promised the plaintiffs that if they embarked upon the investments they did, the defendants would inter alia take reasonable care in the management of the mussel seed resource and process of allocation so that the plaintiffs would not be financially worse off than they would have been if they had never made those investments in the first place. The Supreme Court held that the plaintiffs should be permitted to make their case on this amended basis in the High Court, but only for investment losses (yet to be proved, together with causation, which individual plaintiffs would have to show). To claim loss of profits as well would rest on the defendants’ failure to confer a benefit – beyond the scope of any duty they could be said to have	1/2
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	undertaken. But what was the impact of the statutory context, as in <i>Siney</i> and <i>Ward</i> (n 480), in Irish law? At [198], the judgment quotes and follows Lord Reed in <i>Poole</i> (n 89) at [64], including: [P]ublic authorities can come under a common law duty to protect from harm in circumstances where the principles applicable to private individuals or bodies would impose such a duty, as for example where the authority has ... assumed a responsibility to protect the claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation. The statutory context may also define the range of choices reasonably open to the public body, hence assist in determining whether this body has acted negligently ('standard of care'): [218]. If these tests are satisfied, 'public law illegality' is not also necessary for liability in tort: [206]ff. For a further extract from the judgment, see the update below to section [5.17.2]; for a similarly unsuccessful attempt in Scotland by the public sector defendants to strike out a claim for damages for commercial losses based in part on 'assumption of responsibility' and the defendant Ministers' negligence, see the update below to section [5.15.2]. (The first line of p 350) Correction: a typographical error has turned <i>Junior Books</i> into <i>Junior Booksi</i>.	
5.15.1	As in English law, the terms of a purported assignation (assignment) may lead to uncertainty about what rights have been transferred, requiring judicial determination: see <i>McKinlay v Avellierie Ltd</i> [2025] SAC (Civ) 6 (Sheriff Principal NA Ross).	1
5.15.2	On the potential liability in quasi-delict of Scottish public authorities for economic loss, see <i>Biffa Waste Services Ltd v The Scottish Ministers</i> [2025] SCOH 9, the whole claim was rejected by Lord Sandison at [2026] SCOH 3. On the criteria for a duty of care owed by an ambulance service (yet another public sector defendant) in relation to its direct liability for a system permitting inappropriate physical touching of a patient (as well as vicarious liability for the employee who did so), see <i>NM v Henderson</i> [2025] CSIH 22 (Lady Wise), following Supreme Court authorities like <i>Trustees of the Barry Congregation of Jehovah's Witnesses v BXB</i> (n 18) and <i>Robinson v Chief Constable of West Yorkshire Police</i> (n 229, but also section [5.8.4] and its update above), as well (of course) as the 'neighbour principle' from the House of Lords (Scotland) in <i>Donoghue v Stevenson</i>: section [5.7.1].	1/2
5.17.2	The idea that the tort liability of public authorities may be shaped by different criteria than apply to private sector defendants gains eloquent support from <i>Barlow v Minister for Communications</i> [2025] IESC 14 – see the update above to section [5.14.2]. Murray	1

	J outlines the special features which may make a public context different at [2]: [A]ny impression that [the] ... elements of carelessness, proximity, foreseeability of loss and actuality of damage will, when combined, in and of themselves generate liability in private law for losses caused by the negligence of State defendants has to be set against broader issues of principle and policy which are in play when it is sought to make the State accountable in damages for injury sustained as a result of alleged negligence arising from acts or omissions undertaken on foot of statutory functions. Sometimes, decisions said to have been made without due regard to their impact upon a particular claimant are reached with a view to balancing the demands of competing policies or, for that matter, conflicting interests, and it thus cannot be said that the State body has breached an identifiable 'standard of care' as this is understood in the law of negligence. Often it can be said that a particular power or function is peculiarly governmental and without an analogue in private relations, so that it is in principle wrong to superimpose the general law of negligence on the exercise of that power. In many cases, a claim in negligence in these circumstances involves a complaint not about the infliction of a loss, but instead arises from the failure to confer a benefit – a distinction which invariably complicates the analysis of any asserted liability in the law of negligence. It will happen in some cases that the very nature of the governmental activity in play will be such that the losses are purely economic, with the attendant restrictions on liability arising from the general law of negligence. Moreover, when a defendant has been acting under the umbrella of a statutory provision, it may be right to consider whether the legislator intended that persons injured by the manner in which that provision was operated or applied could sue to recover damages. And, of course, statutory powers are regularly conferred to advance a general public interest, not to protect a discrete category of persons, so that it might be said that the law should in some situations enable broader issues of policy to trump the right of a particular plaintiff to recoup what would otherwise be categorised as a negligently inflicted loss.	
6.1	'Consumer detriment' is defined by the OECD in terms of the harm or loss that a consumer experiences when they purchase goods or services not meeting their expectations: it can have an impact in stress, money or time. As the OECD notes, it can derive from being misled by unfair market practices; paying more than they would have, if better informed; unfair contract terms; or receiving products that do not meet their quality or performance expectations. Apparent instances (meaning known to the consumer, rather than hidden) of such detriment are regularly tracked in the UK via surveys led by the CMA and conducted by the National Centre for Social Research. The Consumer Detriment Survey 2024 was published in March 2024, with additional analysis by the CMA Microeconomic Unit (May 2025). In the latest figures, services continue to create proportionally more examples of detriment than items (goods); within services, 'real estate services' (including construction)	1

	created a high volume of net monetised detriment, also showing a very negative impact on the individual consumer. Over the whole population, each average individual suffered 7.7 instances of detriment in the year surveyed, contributing to an estimated monetised total of £71.2bn. Figures from Ireland summarising consumer contacts with its Competition and Consumer Protection Commission in the first six months of 2025 showed that queries about vehicles and transport were the most frequent, with home buying and home improvement issues the second most frequent category of concern (unchanged in ranking from the same period in 2024): Consumer Helpline Report H1 2025. The top issues cited by consumers include traders refusing to resolve problems or unwilling to resolve them to the consumer's satisfaction; consumers waiting a long time for work to be started after agreeing a start date with the trader; and traders not turning up when scheduled to fix an issue reported to them by the consumer. In the light of those figures, in November 2025 the CCPC contacted traders providing home maintenance, construction and improvement services, reminding them of their obligations and warning of the possibility of enforcement action. The opposite metric from detriment is the benefit to consumers from interventions by the CCPC on their behalf: its Impact Report for 2021-2024 records a consumer benefit ratio of €21 for every euro spent, with €682m in estimated consumer benefit against a total operating cost of €32m over the period. Consumer protection work generated an estimated €220m, driven by enforcement actions against traders and providing consumers with information and guidance on their rights. In July 2026 the CCPC published its Annual Report 2025.	
6.2.2	(Table 6.1) Examples of 'misleading actions' led the CMA to take legal action (under its pre-2024 Act powers) against a seller of mattresses, Emma Sleep and associated companies. Its website included misleading countdown timers, false 'high demand' messages and 'discount' claims, where substantially the same deal was available after the purported discount period ended. The defendants consented to formal court proceedings, resulting in May 2026 in a Penal Notice from the Chancery Division; in July 2026, Richards J in the Chancery Division struck down one aspect of the CMA's enforcement order. Further investigations are underway (June 2026) into other companies' use of fictional 'limited time offers' on their websites. (especially for the main text to n 36) It could also be misleading in this specific sense for a UK trader to suggest that they are a member of a 'trusted trader' scheme, when they are not. A glazier in Plymouth threatened to damage a customer's property when he was not paid; fraudulently used the logo of 'Secured by Design', the police-supported security organisation; and carried out	1/2/3

	substandard work. Prosecuted by Trading Standards, he was given a suspended prison sentence for fraud and other offences and ordered to complete community service: ‘Rogue Glazier Given Suspended Sentence’ <i>Journal of Trading Standards</i> (31 July 2025). (especially for the main text to n 42) In Ireland, the CCPC prosecuted a former car dealer for giving a second-hand car buyer inaccurate information about the car’s history. The trader pleaded guilty and was fined €2,000, also ordered to pay costs of €8,145 and to compensate the consumer by €8,700 (the price paid for the car): see ‘Former Kildare Car Dealer Fined After Pleading Guilty to Misleading Consumer’ <i>Irish Legal News</i> (6 January 2026). (especially for n 44) Viagogo and its pricing practices were in the CMA’s sights again in November 2025, an investigation having been opened into suspected infringements of consumer law. The outcome has not yet been announced (August 2026). (especially for the main text to n 48) For the campaigners whose work led to the Leasehold Reform (Ground Rent) Act 2022 (E&W) and the end of leasehold sales of individual dwellings (other than in multi-unit developments), see Jessica Murray, ‘The Developers Got Greedy: the Women who Took On the Leasehold Scandal – and Won’ <i>The Guardian</i> (16 June 2026). (especially for n 51) In August 2025, the FCA announced that it was considering how to streamline and enhance its sustainability reporting framework, intending to: • Simplify disclosure requirements and ease unnecessary burdens on firms. • Maintain good outcomes for clients and consumers and improve the decision-usefulness of reporting, building on the work of the Sustainability Disclosure Requirements to improve trust and reduce greenwashing. • Promote international alignment and help maintain the UK’s position as a global leader in sustainable finance. (especially for n 51) In January 2026, the CMA published new guidance on making environmental claims for products and services. The CMA acquired ‘direct enforcement’ powers under the DMCCA 2024 (UK) pt 3, ch 4, for infringing conduct taking place after the commencement date. It may determine (after an oral hearing, if the CMA has reasonable grounds to suspect a relevant infringement) whether the law has been broken, without going to court; but it can request court support to prevent or stop consumer harm. For the first time, it may itself impose monetary penalties. For details, see its Direct Consumer Enforcement Guidance (CMA200, March 2025).	
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	Illustrating different new powers now available under the amended Schedule 5 of the Consumer Rights Act 2015, in February 2026 the CMA imposed a fixed penalty of £473,000 (0.75% of the company's annual turnover) on car parks operator Euro Car Parks Ltd for failing to respond to the CMA's requests for information, the High Court having refused the operator's request for an injunction to prevent it being named. The CMA is now (July 2026) investigating potential breaches of consumer law by Euro Car Parks Ltd in relation to parking charges at petrol stations and the appeals processes against its charges; the CMA has also asked Government for regulatory support in combatting aspects of private car parks' charging and appeals procedures. Local councils and courts in the UK also have additional enforcement powers under the DMCCA 2024 (UK) pt 3, ch 3. In an early example, a lettings agent in Wolverhampton, taken to court by the City Council, admitted unfair commercial practices towards tenants and gave a court-enforceable undertaking not to let residential property in England, to act as a letting agent or property manager or to hold a House in Multiple Occupation (HMO) licence: Marc da Silva, 'Letting Agent Banned for Three Years After Threatening Unlawful Eviction' <i>Property Industry Eye</i> (30 July 2025). For other examples of successful prosecution under the UK's 2008 Regulations, see 'Rogue Builder Jailed for 12 Months' <i>Journal of Trading Standards</i> (23 June 2025). Reading Crown Court heard that the trader had left projects half-finished and needing remedial work, after taking sums of £125k-£150k from four homeowners. In June 2025 he was given an immediate 12-month custodial sentence and disqualified from being a company director for 10 years. He already had three convictions for similar offences from 2021. See also, from the Insolvency Service (16 January 2026): 'Rogue Builder Jailed After Obtaining More Than £400,000 in Credit from Five Victims while Bankrupt' – also a 12-month jail term. In April 2025 the CMA published guidance on the unfair trading provisions in the DMCCA 2024 (UK): Unfair Commercial Practices (CMA207), with new guidance added in November 2025 on Price Transparency (CMA209). In August 2025, the UK Advertising Standards Authority took action to ban heat pump advertisements which misrepresent the cost to consumers as well as the availability of government grants: Rupert Jones, 'Two "Misleading" Heat Pump Adverts Banned by UK Watchdog' <i>The Guardian</i> (6 August 2025). On retrofitting UK homes, see also updates below to section [12.6].	
6.2.3	In 2024 the CMA accepted a final 'undertaking in lieu of a reference', after homebuilder Barratt took over competitor Redrow. This aimed to ensure that what was originally a Redrow development site geographically close to one of Barratt's would be	1/2/3

	developed to Redrow's standards (including after-sales care) and marketed separately via an independent agent, these arrangements then being monitored by an independent trustee approved by the CMA. (especially for the main text to n 67) In July 2025, seven major UK housebuilders investigated for possibly anti-competitive information-sharing offered a package of commitments to address the CMA's concerns. The housebuilders would: • agree not to share certain types of information with other housebuilders, including the prices houses have been sold for, except in limited circumstances • introduce enhanced compliance measures and training programmes • work with the Home Builders Federation and Homes for Scotland to develop industry-wide guidance on information sharing • make a combined £100 million payment which will be split between affordable housing programmes across all 4 nations of the United Kingdom. These undertakings were accepted by the CMA in October 2025, following public consultation, so became legally binding, without any finding whether the housebuilders broke competition law. This outcome does not protect the companies concerned against legal action by individuals in the Competition Appeal Tribunal, if the claimants can show that they have been harmed by anti-competitive conduct. Such a collective action became public in the summer 2026, aiming for compensation of between £3,100 and £6,200 each for an estimated 700,000 people who bought a new home from one of the seven between October 2015 and June 2026. See Peter Apps, ‘UK Housebuilders have Far Too Much Power. Now a £4.5bn Lawsuit could Change That for Good’ <i>The Guardian</i> (8 July 2026). In June 2025 the CMA started investigating the anticipated acquisition by Kingspan Group Ltd, maker of cladding (including at Grenfell Tower), of Coverworld Holdings Ltd, also manufacturing construction products; but in August 2025 cleared the acquisition as leading to no substantial lessening of competition in the UK. (especially for the main text to n 65) In December 2025, the CMA published a summary of the lessons to be learnt from its 2023 action against demolition companies for bid-rigging. (especially for the main text to n 68) In July 2025 the UK Government announced that it was ‘pausing’ the possibility of barring seven companies connected with Grenfell Tower from future public contracts under its new procurement regime, in order not to prejudice possible criminal proceedings: Nadeem Badshah, ‘Ministers Accused of Betrayal after Pausing Grenfell Contract Investigations’ <i>The Guardian</i> (10 July 2025). Companies criticised in the GTI final report have therefore continued to be	
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	awarded public sector contracts: see Jessica Elgot, ‘Grenfell Firms Still Receiving Multimillion-Pound Public Contracts, Analysis Finds’ The Guardian (29 December 2025). For an early example of the Procurement Act 2023 (UK) in action, see Parkingeye Ltd v Velindre University NHS Trust [2026] EWHC 1019 (TCC). Under the pre-2025 public procurement regime, an insulation manufacturer excluded by the Royal Borough of Kensington & Chelsea – like many others – from construction and maintenance projects gained permission to challenge this by judicial review: Siderise Insulation Ltd v Royal Borough of Kensington & Chelsea [2025] EWHC 1178 (Admin). Its cavity barriers were used in the Grenfell Tower refurbishment project; one of the grounds relied on in court was that the Borough’s policy, labelling it as a prohibited supplier, was based on a mistaken reading of the Grenfell Tower Inquiry reports. (especially for the main text to nn 73-75) In another housing-related issue under the Subsidy Control Act 2022, the CMA’s Subsidy Assessment Unit was asked to consider a planned subsidy of around £25m by the London Borough of Barnet to a subsidiary of the Borough’s arm’s length management organisation – a registered provider of social housing. The subsidy would fund the acquisition of properties from the residential resale market to increase the supply of affordable homes within the borough. The CMA’s November 2025 report suggests further analysis and considerations which Barnet should take into account in reaching a final decision. In January 2026, Homes England asked the SAU for a report on its planned subsidy of £29.5m to 2020 Developments (Luton) Ltd, to assist in bringing derelict land in central Luton into re-use, including for new housing, the CMA’s Final Report being published in February 2026. For another example of planned subsidies being referred to the CMA, in this case by central Government (DESNZ), see the update below to section [12.6]. In December 2025, the Subsidy Advice Unit (SAU) reported on Homes England’s Social and Affordable Homes Programme 2026-36; and in February 2026 to the Greater London Authority (GLA) on its closely similar London Social and Affordable Homes Programme 2026-36. In June 2026 the SAU published its first report on the effectiveness and impact on competition and investment in the UK of the UK’s subsidy control regime, up to March 2026.	
6.3.1	(especially for n 80) For an example of a business successfully requesting an interim injunction under the ACL s 18 to stop the negative impact of ‘trolling’ via untrue online statements about its work (suggesting that the plaintiff bought written-off vehicles, repaired and sold them), see Rafiei Commercial Pty Ltd v Dokt [2025] FCA 764 (Dowling J); but fulfilling the tests for a remedy under the ACL was not straightforward.	1

	(especially for n 81) On the measure of damages under the ACL, see Larsen v Tastec Pty Ltd [2025] NSWCA 145 at [50]ff (Adamson JA).	
6.3.2	For an attempt by two Owners Corporations and individual unit owners in NSW to claim damages by asserting – in part – that manufacturers and suppliers of combustible cladding used in their developments had engaged in misleading or deceptive conduct, see The Owners – Strata Plan No 87231 v 3A Composites GmbH [2026] FCA 351 , discussed in the update above to section [4.13.2].	3
6.3.3	(especially for n 123) On the tests for unconscionability, see now AHG (WA) (2025) Pty Ltd v Mercedes-Benz [2025] FCAFC 86 .	1
6.4	For an example of liability for misleading or deceptive conduct in NZ law, asserted in parallel with a common law claim in negligence (successful) and deceit (unsuccessful), see <i>Routhan</i> in the update above to section [5.9.5]. The FTA 1986 (NZ) part of the claim is discussed in detail in the first instance judgment, Routhan v PGG Wrightson Real Estate Ltd [2021] NZHC 3585 (Dunningham J) at [131]ff (not challenged on appeal). A further recent example is Rahal v Bhargav [2026] NZCA 176, where the court (Palmer, Dunningham and Grice JJ) affirmed the personal liability under the FTA 1986 (NZ) s 9 of a director and shareholder of the company which sold the plaintiffs a ‘leaky home’ in Auckland (the defendant company was also liable in contract for breach of an express warranty that any work on the property requiring building consent had received the necessary consent). Reviewing the case law on ‘the amount of the loss or damage’ (s 43(3)(f)) payable under the FTA 1986 (NZ) s 9, including in PGG Wrightson Real Estate v Routhan [2023] NZCA 123, the Court adopted a higher figure than the trial judge. Damages were not necessarily limited to the difference between what the buyers paid and the actual value of the house they bought, but in a case like this should include estimated repair costs, as well as a modest award for general damages (reduced from NZ\$80,000 to NZ\$35,000): [42] ... They [the buyers] could not sell the property because its value as a leaky home was less than their mortgage. Instead, they were locked into retaining the leaky property, living in it, enduring the physical and mental health consequences of doing so with their family, and repairing the property, in which it was reasonable for them to incur expenditure. It does not make sense to award damages on the basis of possible resale when resale was not possible. In 2021, anti-competitive conduct in NZ acquired new criminal sanctions in the Commerce Act 1986 (NZ) s 82B, discussed for the first time (after a guilty plea relating to a cartel agreement intended to fix prices for bridge jointing services) in R v Kumar [2024] NZHC 3955. Wilkinson-Smith J in the end imposed six	1/3

	months' community detention, coupled with 200 hours community work; the 1986 Act sets maxima for individuals of imprisonment for not more than seven years or a fine not exceeding NZ\$500,000, or both. Mr Kumar's company was fined NZ\$500,000. On enforcement by the NZ Commerce Commission, see also the update above to section [4.14.4].	
6.5.2	In July 2025, the MHCLG started consultation about additional regulation under the LFRA 2024 (E&W) of managing agents and of service charges for major works in long leasehold developments: see Strengthening Leaseholder Protections over Charges and Services: Executive Summary. See further the updates below to section [11.15]. (especially for n 160) The Data (Use and Access) Bill 2024 became the Data (Use and Access) Act 2025 (UK), Part 5 amending the UK-GDPR; the wide-ranging 2025 Act provides for the regulation of data in many areas. (especially for n 160) Craig Ballentine was released and able to travel home from Dubai for Christmas 2024 to Cookstown (NI).	1/3
6.5.3	TrustMark has reported on 'the skills gap' in the RMI sector in the UK – very large numbers of SMEs and 'micro-businesses', including sole traders: 45% of the businesses surveyed had at least one vacancy, but entry-level pay has declined over time, making such construction-related jobs unattractive to young people. For its recommendations, see Skilled to Build: Empowering the UK's Repair, Maintenance and Improvement Sector for a Better Future (2025). For TrustMark's advocacy of reform, see its September 2026 research report, Consumer Protection in Home Improvements; for its role in identifying inadequate home insulation installers, see the update below to section [12.6].	1/2/3
6.5.4	From July 2025, users of the UK property search website Zoopla can access Checkatrade's services and traders. In August 2026, the UK Government (DBIST) announced support for an Approved Code for home improvement projects: those signing up would be 'trusted traders': 'able to demonstrate that they meet higher standards of customer service, transparency and dispute resolution' (as often, 'higher than what?'). There will also be a new system to protect people's money during building projects, along lines already operating for projects using web-based Trusted Payments, with payments directly linked to key project milestones and (in all likelihood) an insurance-backed warranty. It is not clear whether adherence to the new Code (to be approved by the CTSI, like Consumer Codes in general, and with input from the Furniture and Home Improvement Ombudsman) will be mandatory as a condition of operating in the sector – which could need primary legislation.	1/3

6.5.5	Explaining the new statutory prohibitions against fake reviews in the UK, in April 2025 the CMA published guidance on the DMCCA 2024, sch 20, para 13: Fake Reviews (CMA208). The CMA then investigated 100 companies operating websites containing customer reviews; the results (July 2025) suggested that more than half could be failing to comply with its guidance. Some appeared to have no policy in place banning fake reviews, nor could a policy be found setting out their approach to incentivised reviews. Others had policies in place, but unclear, incomplete or inaccessible. This led in March 2026 to focussed investigations into five companies providing products and services online (none in construction). In August 2025, the CMA published further guidance for online review sites, as well as for businesses whose services or products are reviewed. In November 2025, National Trading Standards (UK) reported that the availability of AI had increased the potential for fake reviews (and completely fake websites). It gave advice on how consumers can protect themselves, in relation to both products and services: • Question rave reviews – if multiple similar reviews have been uploaded at the same time, if a reviewer’s account has been activated recently or has only reviewed a narrow range of products, alarm bells should ring. • See beyond the stars – whilst a star rating of 4.5 or 5 can be a good indicator of quality, don’t go by this alone – look at the reviews too and check them against these tips. • Is it AI talking? – Genuine reviews will often be personal and specific to the individual’s experience of using the item, whilst a fake is more likely to be vague, using generic words and phrases such as ‘amazing’, ‘awesome’, ‘buy this product’. • Review the reviews – Trusted online review checkers can help you decide if reviews are genuine – current options include <i>TheReviewIndex</i> and <i>RateBud</i>. • Don’t buy from an ad – If you’re tempted by a product, go back to your browser and search the company website separately. Check out a range of well-known independent review sites (such as <i>TrustPilot</i>) and see if you can find other mentions of the website online. And don’t always rely on the padlock symbol as many criminals have cottoned on to this. • Beware fake websites – Don’t automatically trust a website that you don’t know. Look for a company address, phone number and professional email address that you can verify, check out their socials and see if you can find reviews about the company elsewhere online. You can also use a web URL checker to see if it’s listed as a scam site. • Pay securely – Always pay by credit or debit card or a legitimate payment platform (such as PayPal) when shopping online. If a	1/2/3
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	seller asks for a bank transfer or other method of payment, alarm bells should ring.	
6.5.6	(especially for the main text to n 217) When a troublemaker pretends to be a former customer and posts a one-star review on a trader's website, threatening to do more and potentially impacting the trader's average star rating ('If you don't response me I will put more negative on your business profile'), the scheme operator (Google) may be unwilling to take action, as reported on <i>LinkedIn</i> (May 2025) by licensed conveyancer Rose Davis from Nottingham (UK): 'Conveyancer Refuses to Give In To One-Star Scammer'. For an example from Victoria of a builder suing a disgruntled homeowner client who posted critical material on social media (the judgment for damages also requiring the posts to be taken down), see <i>Singh Homes Pty Ltd v Singh</i> [2025] VCC 1740 (Clayton J). The judgment dealt with the consequences of the jury having found that the posts were defamatory and contravened the prohibition against misleading and deceptive conduct under ACL s 18. Clayton J accepted that there was sufficient evidence to show that the builder had lost some potential contracts, resulting in a damages award of around A\$635,000, but was not satisfied that there had been the serious harm required for compensation for defamation. On applications for leave to appeal and cross-appeal, as <i>Singh v Singh Homes Pty Ltd</i> [2026] VSCA 191, the Victorian Court of Appeal (McLeish, Walker and Donaghue JJA) upheld the primary judge's approach to the issue of whether the statements made were 'in trade or commerce' under the ACL and of quantification of the alleged 'counterfactuals': the 'loss of chances' caused by the statements. On counterfactuals, see also updates above to section [5.9.5] and below to section [10.12]. (especially for n 218) For an example of Australian protection under the ACL against inaccurate and negative reviews posted online, see the update above to section [6.3.1].	1/2
6.6.2	Checkmate's original owner stopped issuing policies in 2022; policies may be being sold under the Checkmate brand by its new owner but are no longer under the CCHB. In May 2026, the CCHB paused its normal three-year rolling review of its <i>Consumer Code</i>, pending possible legislative or regulatory changes in private estate management arrangements (applicable to many new home schemes), home buying and selling reform and material information in property listings: all directly impacting codes of conduct affecting developers. The unacknowledged elephant in the room could be the adoption of a single statutory Code and ombudsman under the BSA 2022: see section [6.7.3] and its updates below.	1/3
6.7.3	(especially for the main text to nn 254-256) Updated figures from the NHQB (April 2026) suggest that at the end of 2025 56% of all new home sales in GB were protected by its Code, the NHOS	1/3

	dealing with about 600 queries a month. Between 1 January and 25 November 2025, the NHOS received 1,328 customer complaints, with 457 new complaints accepted for investigation. It issued 129 final decisions: 20 upholding the complaint, 24 not upholding it and 85 partially upholding it. The MHCLG's online pre-tender documents for a version of the NHOS to become statutory and mandatory state: This is expected to be a concessionary arrangement [from September 2026 to September 2031, with a possible two-year extension], and the contract value would be based on estimated revenue. The value is expected to be circa £12m depending on fees and pricing model. Unless 'folded in' to an expanded statutory NHOS, the NHQB may retain its present role and status; its website gives no information on its possible futures.	
6.7.4	Clarifying the scope of the <i>Code</i>, amendments resulting from the NHQB's 2024 review are now included in 'What the Code covers' on p 2 of the 2026 edition – also entitled <i>NHQB Code of Practice</i>. These confirm that it does not apply where the home is bought by a commercial entity (ie a company, trust, charity etc); nor to a range of possible claims: • for issues that could be dealt with through the structural warranty • for blight (where a home falls in value or becomes difficult to sell because of major public work in the area) • related to the tenure or occupancy status of other properties; • related to loss of value due to changes in market conditions or other factors outside the control of the developer; • for personal injury; or • not covered by the scheme rules of the New Homes Ombudsman Service. This first item appears to prevent defects claims being made to the NHOS within Years 1 and 2 for which the provisions of NHBC <i>Buildmark</i> and its clones already impose primary responsibility on the developer. The NHOS already has no jurisdiction for potential claims relating to acts or omissions after Year 2 is over.	1/3
6.7.5	Part 1 of the <i>Code</i>, section 1.3 banning high-pressure selling techniques, now has additional items added, following the NHQB's 2024 review. These include regulating time-limited financial incentives for reserving a home or committing to buying, and barring 'drip-pricing': in stages revealing mandatory elements of the minimum price, or additional elements most buyers can reasonably be expected to choose. ['Drip-pricing' in other sectors became a CMA concern in Summer 2026, with three companies under investigation – none in construction.] Section 1.7 on commission and incentives also includes an extra paragraph requiring the developer to disclose 'any fee, commission or any other reward or advantage for introducing a	1/3

	professional adviser or recommending certain products or services to a customer’. It is unclear if this requires disclosure of the notional cost of the home’s third-party warranty, or of the ‘volume discount’ (or rebate) the developer gains from its chosen warranty provider: see further the update below to section [7.2.2]. The full text of Core Principle 2 in the 2023 edition of the UK New Homes Quality Code – unchanged in the 2026 edition – requires each ‘live’ Registered Developer to: [C]arry out and complete work in line with all regulations and requirements that apply to the new home, as set out by the Government, and have the necessary certificates from an appropriately approved body to show they have done this. The <i>Code</i>’s section [2.6.g] requires a Registered Developer to supply the buyer – before they commit to a purchase contract – with: Information relating to the standards the new home is being built to, including confirmation that it will meet the building regulations, the relevant home warranty provider’s standards and the manufacturer’s and supplier’s performance standards. On completion, sections [2.11.j and k] of the 2026 <i>Code</i> require the customer to be given: • a copy of the building regulation control inspection records if they ask for this (E, W & NI); or confirmation that the relevant local authority has inspected the new home and confirmed it is ready to be lived in (Scotland). • the building regulation completion certificate (or confirmation that the relevant local authority has inspected the new home and passed as being habitable and fit for occupation in Scotland) if this is available. If the certificate is not available, the developer must tell the customer that it will not be available until after completion (for example, if the new home is an apartment, the certificate may not be issued until the whole apartment block is completed), or signpost the customer to the organisation that can provide it. Existing buyers may have a fight, even if already taking legal action against the developer, to get access to these documents, as new home buyer Gary Prince’s <i>LinkedIn</i> posts (July 2025) reported in relation to Persimmon. It would of course be damaging for a developer to admit to a home buyer (or to the NHOS) that any of these expected documents do not exist, or that they record non-compliance. On disclosures when an existing home is for sale, see sections [4.4.4] and [8.7] in the book and their updates here.	
6.7.6	(especially relevant to n 282) A further proposed <i>Code</i> change from the NHQB 2024 review would have expanded section 1.2 to specify three categories of ‘material information’ which the developer should disclose to a would-be purchaser, but also National Trading Standards requirements. These requirements were withdrawn in May 2025 on the coming into force of the	1/3

	DMCCA 2024 (UK), when the CMA’s new ‘direct enforcement’ powers overtook those of Trading Standards officials: see the update above to section [6.2.2]. The <i>Code</i> now refers specifically to the 2024 Act and adds a catch-all disclosure category of ‘anything else which would likely impact a consumer’s decision’. Relevant here are the standard forms developed by the Law Society for home sales. The draft of its revised TA6 Property Information form was unsuccessfully challenged at a Special General Meeting in July 2024; it includes questions newly requiring sellers to provide buyers with information on domestic solar installations, electric vehicle charging, private drainage and environmental regulations, as well as about energy efficiency. TA6 comes with explanatory notes (there is also a comparable 5th edition of the TA7 form for leasehold sales). On disclosures when a home is put on the market, see also sections [4.4.4] and [8.7] in the book and their updates here. https://www.legislation.gov.uk/ukpga/2024/13/contents Version 2 of the <i>New Homes Quality Code</i> was published on 1 March 2026; some of its detailed changes, affecting reservations made after that date, are noted in updates above. The NHQB claims that the revisions will ‘further strengthen the consumer protections, improve transparency at every stage of the home-buying journey, and ensure the <i>Code</i> continues to set the benchmark for quality, service, and accountability across new-build homes’. There seems no official news on the possibility of the <i>Code</i> acquiring statutory status, though the NHQB strongly advocates a single statutory code and ombudsman, as does the Fabian Housing Centre research report <i>On The Ladder</i> (July 2026).	
6.8.2	On what ‘fair value’ means, in February 2026 Graeme Reynolds, FCA Director of Competition and Interim Director of Insurance commented: It might sound like dry regulator speak, but it’s really asking a simple question – are customers paying a reasonable price for a product, compared to the benefits they get in return? This is not us setting a particular price or level of profit which firms can make. But it’s a challenge to firms – can they provide evidence that their customers are getting a fair deal? If they can’t, then they need to look again. The FCA considers that developers registered with the NHBC for the purpose of offering new home buyers <i>Buildmark</i> cover are not themselves intermediaries subject to financial services regulation. So the NHBC is not responsible for the failure of the ‘builder’ to set up a policy before becoming insolvent, leaving the intending homeowners unprotected; and the process of being sold a policy cannot be the subject of a complaint by the homeowner against the developer before the FOS: Decision DRN114728 (9 October 2013). Nor is the NHBC responsible for any misinformation provided by the builder, as the builder’s role in forwarding the relevant policy documents is not an activity regulated by the FCA: Decision DRN1608960 (3 July 2014); or for how the builder	1/3

	responds to claims made against it in Years 1 and 2: Decision DRN2193382 (17 May 2013). All the 400+ FOS decisions since 1 April 2013 on complaints made by homeowners against the NHBC can be searched on the FOS website via the keyword 'Buildmark', showing only about 1 in 4 complaints upheld. These figures are hard to reconcile with FOS's own for 'building guarantees': see the update below to section [9.6.1]; also section [7.2.6] in the book at n 81 and its update below. An integral part of the Consumer Duty is to ensure that consumers <i>understand</i> the features of the product or service they are being offered: a 2026 FCA report, Consumer Understanding: Good Practice and Areas for Improvement discusses the issues. In July 2026, the FCA reported on measures to refine the Consumer Duty after three years of operation, making it 'more precise, proportionate and workable in wholesale markets'. The proposed changes are intended to have no impact on 'retail markets', directed at individual consumers. The FCA also reported on the need for firms subject to the Duty to focus on consumer outcomes, with adequate monitoring in place to help them understand what is happening across the customer journey, identify poor outcomes or emerging risks, and take appropriate action. This applies across all four of the Consumer Duty outcomes: products and services, price and value, consumer understanding, and consumer support.	
6.11	Recent public statements in the UK have raised the issue: is there a tension between enforcing regimes protecting consumers and promoting economic growth (the 'primary mission' of the UK Labour Government)? Or are the two goals versions of the same objective? See Department for Business and Trade, Strategic Steer to the Competition and Markets Authority (May 2025), which encourages growth-oriented interventions by the CMA, while respecting its statutory powers and independence. The CMA's own stance is in The CMA's Approach to Consumer Protection (April 2025): Effective consumer protection gives people the trust and confidence to be active participants in markets – making informed choices, taking up new products and services and driving spending across the economy. At the same time, businesses can feel confident that their competitors are playing by the same rules and cannot gain an advantage by breaking the law.	1
7.1.2	(especially for n 6) In October 2025, UK Finance published guidance to its members on New Build Warranty. This suggests minimum acceptable conditions for the status of the warranty provider and for the scope and duration of cover, including accepting a minimum claim value, if reasonable. The provider is required to show processes ensuring that the initial build will comply with Building Regulations; there must also be a final	1/2/3

	inspection of each complete property to confirm its readiness for occupation by the borrower, who must also be protected by a consumer code, either from the developer or the warranty provider. The guidance appears just to summarise existing best practice; see further the update to section [7.4] below. (especially for n 14) On the concrete block problem in Ireland, in 2025 the National Standards Authority of Ireland consulted on a draft of an updated edition of I.S. 465: Assessment, Testing and Categorisation of Damaged Buildings incorporating Concrete Blocks containing certain Deleterious Materials. In June 2025 the Government confirmed that some of its planned improvements to the remediation and compensation schemes would take effect retrospectively, with new legislation actively planned (not yet adopted by August 2026): <i>Irish Legal News</i> (5 June 2025). (especially for n 21) Ireland: further insurance law changes are on the cards, under the Programme for Government 2025 - Securing Ireland's Future. Following public consultation, in July 2025 the Irish Government revealed a new Action Plan for Insurance Reform, which intends over five years to strengthen consumer protection, improve the availability of insurance and encourage greater competition. (especially for n 21) UK: for a rare example of a court challenge to an insurer under the Consumer Insurance (Disclosure and Representations) Act 2012 (UK), see Cowie v Vitality Corporate Services Ltd [2025] CSOH 52 (Lord Sandison). The insurer could avoid liability under a life insurance policy by showing that the insured had misrepresented his medical situation, failing to take reasonable care in doing so; and that the insurer would not have entered into the policy, had it known the full facts. Because the misrepresentation was merely careless (not deliberate or reckless), under the 2012 Act the insurer had to return all the premiums paid (in fact already done). (especially for n 23) <i>Peabody Trust v NHBC</i>: the first-instance decision on the limitation point was upheld on appeal, but a ground not considered below also went in Peabody's favour. In NHBC v Peabody Trust [2025] EWCA Civ 932, Coulson LJ said at [32]: There is no principle that prohibits the parties from agreeing that the relevant event is either the incurring by the insured of a liability to pay, or the actual expenditure of monies that the insured would otherwise not have had to have paid. On either test, the main part of Peabody's claim was not out of time: the contractor's insolvency, though the trigger for a claim, did not start time running. (especially for the main text to n 30) Reaffirming Lord Hodge's statement of the English courts' approach to interpreting an insurance policy, as in the book, is the Supreme Court in Gatwick	
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	<i>Investment Ltd v Liberty Mutual Insurance Europe SE</i> [2026] UKSC 14 at [38]ff.	
7.2.1	Building Control Services, the NHBC subsidiary, is also marketed – more simply – as NHBC Building Control. By the end of 2025 it had been active for 40 years; for many years the largest private sector building control body (E&W). It now has one competitor fewer after the disappearance of Assent Building Control: see the update above to section [3.5.1]. NHBC Building Control carries out over 800,000 building control inspections each year; under the BSA 2022 regime it is now a Registered Building Control Approver (RBCA), with 400 employees registered as inspectors with the BSR: see section [3.5.3] in the book. (especially for n 40) ICW, a Belfast-based new home warranty provider with its own Consumer Code and building control service, argues for such integration: By combining insurance, technical inspection and building control services within a single group structure, the business is able to maintain oversight across the full lifecycle of a development. This integrated approach allows issues to be identified early, resolved quickly and prevented from escalating – delivering value far beyond the traditional warranty model.	2
7.2.2	(especially for n 47) The NHBC published a new version of <i>Buildmark</i>, applicable to newly built and converted homes registered with NHBC from 1 April 2025. This appears to contain no significant differences from the 2024 version discussed in the book. (especially for n 59) The success of only one of the three motor finance commission claims in the UK Supreme Court in <i>Hopcraft v Close Brothers Ltd</i> [2025] UKSC 33 means that no new attention has been directed to the comparable lack of transparency (and impact of discounts to developers) in the selling of third-party warranties to new homeowners, nor to possible non-compliance with the Consumer Duty, described in section [6.8] of the book. Developers and warranty providers would argue that the ongoing relationship between a developer registered with a warranty provider, organising warranties for all the houses or units in a development, keeps down the effective (though hidden) cost to each buyer by lowering individual transaction costs. However, it may also keep the scope and duration of cover more limited than consumers would like – as with the withdrawal post-Grenfell of fire safety defects from the main 10-year cover of new policies (the one-time <i>Buildmark</i> Section 4).	1/3
7.2.4	(especially for n 70) All three currently available NZ new home warranty products allow the benefit of the cover to be transferred to a new owner, for a fee and under conditions. It is not yet known	1/3

	whether this will be a feature of the cover imposed by law when the Building Amendment Bill (2026) is adopted. (especially for n 72) On <i>Peabody Trust v NHBC</i>, see the update above to section [7.1.2].	
7.2.6	In remedying non-compliant fire protection in multi-unit residential blocks, the scope of the ‘defect and damage’ provisions in Section 3 of <i>Buildmark</i> may be crucially unhelpful. Even before Grenfell Tower, and becoming even more significant after, flat owners in a development which had a fire in one block complained to FOS that the NHBC refused their claim for making compartmentation in their development comply with Building Regulations. In a sequence of many FOS Decisions from February 2017 about inadequate fire protection in blocks of flats – examples include DRN189960 and DRN2812182 – the Ombudsman backed the NHBC’s interpretation of the wording in the policy’s section 3 (unchanged in the current text): The <i>Buildmark</i> definitions only include damage and this is defined as ‘Physical damage to the Home caused by a Defect’. This isn’t a particularly helpful definition, as it includes the word actually being defined. But I think it depends in large part on the definition of physical. And I think physical is actual identifiable damage. And this must be to the items listed in section 3. I’ve thought about the representatives’ argument that the faulty installation of fire compartmentation has caused actual physical damage. And while I think it can be argued it affects some of the common parts listed in section 3, I don’t think it’s actually physically damaged them. I appreciate the [owners’] representatives think that the parts are damaged, as without fire compartmentation they won’t function properly if there’s a fire. But for me this means they’re defective, it doesn’t mean they’re physically damaged. The representatives have also argued that the fire compartmentation itself is damaged, but I think it’s just not been properly installed and is lacking in certain areas, which for me means it’s defective but not damaged. The problems with the compartmentation may have impaired the value of the flats individually, but I don’t think this means there’s actual physical damage to the parts listed in section 3. I appreciate the representatives think this is about semantics. But for me it’s about a reasonable interpretation of the policy terms. I’ve thought about what the representatives have said about the dangers created by the issues with fire precautions and I appreciate the flat owners are in a very difficult position. But I don’t think that’s because of anything NHBC has done wrong. <i>Buildmark</i> provides cover for lots of things, which gives homeowners peace of mind. But it doesn’t provide cover for everything a builder does wrong. For other FOS decisions concerning the NHBC and its <i>Buildmark</i> policy, see the update above to section [6.8.2].	1/3
7.2.7	Even where a third-party warranty is in place with the equivalent of ‘Section 4’ additional coverage, the arrival of statutory intervention in the Building Safety Act 2022 may bring complex	1/2

	issues about appropriate remedies for leaseholders seeking remediation: see <i>Tobias v Grosvenor Freeholds Ltd (The Central, 163-165 Iverson Road, London NW6)</i> (LON/00AG/BSA/2024/0008) (FTT (RP)) January 2025, discussed in the update below to section [11.7.1].	
7.2.9	(especially for n 113) On the <i>Third Parties (Rights against Insurers) Act 2010</i> (UK) and its application to the liability of the PI insurer for interior designers (now insolvent) on a B2C project incorporating the British Institute of Interior Design standard terms, see <i>Desai v Wood [2025] EWCA Civ 906</i> .	1
7.2.10	As in the book's Case Study 9 at section [10.6], when an insurer accepts a claim, the insured retains the theoretical right to take legal action against the wrongdoer responsible for creating the 'insured risk'. To avoid 'double recovery', they can retain as damages only the difference between what the insurer has paid out and what the court assesses as the appropriate damages. This is often expressed as a term of the policy, requiring an insured to account to the insurer for any 'recoveries' from third parties relevant to the risks covered by the policy. By contrast, Canada has a case-law 'private insurance exception'. This permits the insured to sue the third party and recover twice, based on the idea that the wrongdoer should not benefit from the fact that the claimant has taken out and paid for insurance: see <i>Faulkner v Duncan (City) 2017 BCSC 1403</i> (Thompson J) at [118]ff. Even in Canada, there are case-law and statutory limitations to this exception. If the insurer exercises its right of subrogation, the insured cannot separately take legal action against the same third party; but the insurer can retain as damages only the equivalent of the sum paid out under the policy (and its costs); the insured gets any difference; the policy booklet for <i>Buildmark</i> spells this out.	2
7.3.1	(especially for the main text to n 121) Recent new entrant to the new home warranty field (and more), Liverpool-based CIR, appears to be another example of an intermediary rather than provider, but in 2025 it became a registered user of the <i>Consumer Code for New Homes</i> (section [6.6.2] in the book), presumably requiring developers whose projects it insures also to subscribe to this Code. On <i>Checkmate</i> (Table 7.1 A), see the update above to section [6.6.2]. In October 2025, <i>LABC Warranty</i> (also Table 7.1 A) published version 13 of its <i>Technical Manual</i>, as did <i>Premier Guarantee</i> version 17 of its <i>Technical Manual</i>; both came into force in January 2026.	1/2/3
7.3.2	Building on its advocacy of Insurance Backed Guarantees for home improvement projects, in July 2025 the National Home Improvement Council (UK) published <i>Protecting What Matters:</i>	1

	<i>Financial Protection Mechanisms in Home Improvement</i>. The report concludes that current protections are inconsistent, inadequately enforced and poorly understood by consumers – placing households at risk, particularly when contractors cease trading (often causing consumers to lose upfront deposits already paid) or work is substandard (no certainty of an easy route to redress). The report advocates reform across the sector, including defined minimum standards for workmanship and materials, limits on deposits (all protected by insurance), accessible ADR for disputes and all protections transferable with the home for a defined minimum period. On government-supported reforms to the sector, including a new Approved Code, see the update above to section [6.5.4].	
7.4	There seems no reliable news (August 2026) on the possible implementation of the BSA 2022 ss 144-45 on third party warranties, but in October 2025 UK Finance published ‘best practice’ advice to its lender members about the New Build Warranty. This suggested the minimum acceptable security lenders should expect from warranty providers (they should be registered with the FCA and subject to both FOS and the FSCS); the minimum levels of build quality and of warranty cover (which may vary according to the time since completion); the duration of cover; and consumer protection by a developer’s Code or one having CTSI approval. On this guidance, see also the update above to section [7.1.2].	2
7.5.1	On the introduction in NZ of mandatory new home warranties, linked to proportionate liability in building cases, under the Building Amendment Bill 2026, see the update above to section [5.13.3]. The local context already includes a single commercial insurer: Stamford, an underwriting agent for Lloyd’s of London, offering Building Warranty Insurance for many years. This covers the cost of repairing defects in design, materials and workmanship; the builder or developer buys cover during the design or construction phase, then on satisfactory completion of the project transfers the policy to the individual homeowner. Stamford promotes its cover as better than offered by MBNZ or NZCBA, eg not excluding weathertightness (a frequent feature in NZ claims) or defective design. Stamford vets builders and the proposed building work; its rates (usually less than 1% of the cost of the project) are comparable to offerings from MBNZ or NZCBA.	1/2/3

	In June 2026 the NZ Institute of Building Surveyors published its <i>Comparative Analysis of Building Warranties in New Zealand</i>, comparing the MBNZ and NZCBA products (discussed in the book) with the Stamford offering above. The report points out – correcting the suggestion in the book – that neither the <i>Master Build 10-Year Guarantee</i> nor the NZCBA’s <i>Halo Residential Guarantee</i> are insurance products, being self-insured by the offering body against its own reserves. If, as with the MBNZ product, the warranty offering is channelled through a wholly owned subsidiary private company, the figures for policy income and payout expenditure are not publicly available. By contrast, the Stamford product does attract NZ’s national regulation of insurance and is subject to the Fair Insurance Code. Another distinctive Stamford feature is that it does not offer cover for non-completion or loss of deposit – an optional add-on with both the other products: but see ‘<i>Construction Crisis: Master Build Guarantee “Not Worth the Paper it’s Written On”</i>’ <i>Newsroom NZ</i> (7 July 2022). Like almost all UK insurance-backed warranties (NHBC etc), these products have a 2+8 structure. The MBNZ and NZCBA offer cover against workmanship and materials in the first two years after practical completion; then against structural defects and weathertightness only for the rest of the standard ten-year period. Stamford covers all defects for Years 1-2, and major defects for Years 3-10. Each product has its own definitions, exclusions and limitations, including financial limits on cover; the MBNZ and NZCBA products offer the new home buyer different levels of cover, reflected in the price.	
7.5.2-7.5.3	The Building (Statutory Insurance Scheme) Regulations 2026 (Vic) came into operation on 1 July 2026. They are aimed at implementing the insurance reforms foreshadowed on p 441 (called the ‘First Resort Home Warranty Scheme’: reg 52). The reforms –largely in force from 1 July 2026 – are extensive and represent a significant overhaul of the existing Victorian scheme for new build and renovation of houses and apartment buildings up to three storeys (but, see exceptions in reg 9) as summarised in Tables 7.2 and 7.3. In terms of the key parameters in Table 7.2, the main changes are: • minimum project value: increased from A\$16,000 to A\$20,000 (definition of ‘insurable domestic building contract’ inserted into the Building Act 1993 (Vic) s 3(1) by the Building Legislation Amendment (Buyer Protections) Act 2025 (Vic) (‘BP Act’) s 44) • cover duration remains essentially the same reg 12) • trigger: changed from ‘DDI’ to refer to ‘types of assistance available’ each with their own processes (pt 3)	2/3

	• minimum cover (as noted in n 158, in practice the <i>maximum</i> aggregate liability): increased from A\$300,000 to A\$400,000 (reg 21) but with further sub-limits (regs pt 5) • who offers: changed from VMIA to ‘Authority’ (in effect, the Building and Plumbing Commission: BP Act s 5) Significant changes have also been made to various other aspects of the existing scheme, including to the limitations and exclusions summarised in Table 7.3 (see especially regs 13-16). Government Gazette G26 (25 June 2026, p 1491), specifies the methodology for setting the premiums for the Scheme. For an unexpectedly narrow interpretation of the scope of the pre-2026 scheme for later buyers of the home (more than two years since construction had been completed), see Victorian Building Authority v Fall-Armytage [2026] VSCA 32 (Niall CJ, McLeish and Whelan JJA). (especially for n 196) Correction: in the first line, ‘(WA)’ should be inserted after ‘1991’.	
7.5.4	For an early example of an NSW strata development (excluded from the state’s statutory HWI scheme) buying insurance cover against the developer’s liability for build quality, then finding that the timing of the developer’s insolvency (despite legislative intervention) left the Owners Corporation without cover, see The Owners – Strata Plan No 81376 v Dyladam Developments Pty Ltd [2025] NSWSC 438 in the update below to section [10.2.2]. (especially for the main text to n 223): NSW took a significant step towards introduction of a decennial liability scheme through the passage of amendments to the Strata Schemes Management Act 2015 (NSW) – primarily, a definition of ‘relevant defect’ – via the passage of the Fair Trading and Building Legislation Amendment Act 2026 (NSW) on 14 August 2026; the amendments are to come into force on a date to be proclaimed. Likewise, Victoria now as the framework for a decennial liability scheme, via pt 2 div 3 of the Building Legislation and Treasury Legislation (Tax Relief) Amendment Act 2026 (Vic).	1/3
7.7	(especially for the main text to n 255) For the outcome of the consultation on permitted insurance fees in long leaseholds, see MHCLG, Permitted Insurance Fees for Landlords, Freeholders and Property Managing Agents: Government Response to Consultation and Summary of Responses (July 2025).	1
7.9.2	(especially for the main text to n 263) An FOS Decision (DRN9876410 of 29 March 2016), refusing a new home buyers’ complaint against the NHBC, well illustrates the gap between owners’ expectations and the legal reality: Mr and Mrs M have pointed out that NHBC’s website says that ‘Every home with an NHBC warranty has to be built in accordance with the	3

	NHBC Standards. Our inspectors visit NHBC registered developments at key stages during construction’. They say this amounts to a guarantee from NHBC that every home with NHBC cover will comply with NHBC standards. Even if this statement is taken in isolation, I don’t think this is the case. The statement that the home has to comply with NHBC standards – that is what is meant to happen – isn’t the same as a guarantee from NHBC that it will. And the statement can’t be read in isolation; it is part of a description of the <i>Buildmark</i> cover. The web site goes on to say ‘The builder is responsible for completing the home to NHBC Standards’. It then goes on to describe the nature of the guarantee that NHBC does provide for two years if the builder becomes insolvent or doesn’t comply with a court order or NHBC resolution report and the insurance cover in place for the next 3-10 years... I think it’s clear enough from the web site that NHBC was not guaranteeing compliance by the builder with NHBC standards. The policy booklet itself is even clearer. The need to show consumer understanding of the key features of a product like a third-party warranty is an integral part of the Consumer Duty (UK), discussed at section [6.8] in the book, with updates above.	
7.9.3	(especially for the main text to n 279) On the forthcoming (re)introduction in NZ of mandatory third-party warranties for some new homes and residential construction projects, see the update above to sections [5.13.3] and [7.5.1].	3
8.3	(especially for n 26) Anecdotal reports on <i>LinkedIn</i> (July 2025) suggest that even major developers registered with the NHQB, hence subject to the <i>New Homes Quality Code</i>, fail to tell new home buyers in the UK about their right to a pre-completion inspection; and attempt to discourage those who want one from doing so. The 2026 version of the <i>Code</i> makes clear in section [2.8] that the buyer may do the inspection themselves or via a professional representative; but it must include following the NHQB’s own checklist and conditions, the results being recorded. If the inspection reveals a breach of the warranty provider’s technical standards, the developer has up to 30 days to address these (this may be after legal completion). Not entirely consistently, section [2.10] of the 2026 <i>Code</i> now opens: ‘Legal completion (and occupation) can only take place on a complete new home which meets the building regulations and all building safety requirements that apply’. At the point of completion, the developer is newly required under section [2.11] to carry out their own final quality assurance inspection and give the buyer – if necessary – a Schedule of Incomplete Work, with a timescale for completing the work or putting right any defects. Similar obligations apply to incomplete work in the rest of the development.	1/2/3

	(especially for n 31) Warnings on <i>LinkedIn</i> (eg Russell Rafton in December 2025) suggest that some of those offering residential surveys in the UK may be falsely claiming to be RICS-accredited. ‘Surveyor’ is not a legally protected title in the UK (any more than ‘lawyer’ is), so RICS members have no monopoly on either title or functions. Rival institutions can therefore offer membership and competence schemes, for residential surveys in particular: hence in 2025 the Chartered Association of Building Engineers (CABE) opened a new three-tier ‘Residential Surveyor Section’ for members, developed in conjunction with SAVA and the Residential Property Surveyors Association (on the RPSA, see section [8.3] in the book) and including a competency framework. On the <i>New Homes Quality Code</i>, see section [6.7] and its updates above.	
8.5	On contributory negligence in buying an existing property, see also the update above to section [5.9.5].	1
8.6	On English courts’ approach to the standard of proof and to expert evidence, see the update below to section [9.7.2]. (especially for n 51) On expert evidence in construction litigation in E&W, see also section 14 of the TCC Guide 2026.	1/3
8.7	For Item 10a in Table 8.5, the Home Report in Scotland, the Housing (Scotland) Act 2006 (Consequential Provisions) Order 2008 (SI 2008/1889) prescribes in art 3 that if the buyer of a house has obtained a copy of a report under the 2006 Act in respect of that house and suffers material loss (as defined), the buyer has a right to damages against the person who prepared the report unless the report meets these criteria: (a) is based on an inspection of the house; (b) has been prepared in a fair and unbiased way; (c) has been prepared with reasonable skill and care. For these criteria in action (the surveyor in the end escaping liability for want of adequately detailed assertions of negligence and proof of the pursuer’s loss), see Comino Properties Ltd v DHKK Ltd [2025] SC EDI 78 (Sheriff O’Carroll). For separate changes to the regime for Energy Performance Certificates (E&W, and Scotland), see the update above to section [4.4.4]. For the related concept of ‘material information’, which the seller of residential property in England & Wales (or their estate agent) may have to assemble and disclose to a potential buyer, see n 282 to section [6.7.6] and its update above. In June 2026, the UK Government published a summary of consultations informing its Home Buying and Selling Reform Roadmap. Most proposals aim to speed up the selling and transferring of title to homes in E&W (notably by digitising more of the process) and to reducing the number of failed transactions:	1/2/3

	topics outside the scope of this book. Ch 4 looks to increase the minimum level of ‘upfront property information’, before a property is put on sale, notably by requiring a ‘property condition report’ (Scotland-style, though Scotland is nowhere mentioned), as part of a standardised ‘sales pack’. Legislation to implement this is promised ‘by the end of this Parliament’, but guidance to encourage its adoption may come sooner. As with the current Scottish rules, the proposals seem to focus on existing homes for sale, rather than those newly built or newly converted. One enterprising surveying service is encouraging vendors in England & Wales to have their own ‘Home Insight Survey’ ahead of putting their home on the market (Scottish-style). The RICS <i>Home Survey Standard</i> is under review, with a second edition open for consultation in 2025, but the direction and process are contentious among some RICS members, with calls for a rethink on development of the second edition (2026). Market research asked what information respondents would find useful when buying a property: • 51% said advice on problems with the property and likely repairs (compared with 49% in the 2019 survey) • 44% said energy performance certificates (EPCs) (compared with 35% in the 2019 survey) • 43% said a survey completed by the seller, at their expense, would be beneficial (compared with 39% in the 2019 survey). The reactions of respondents who had commissioned a survey, on receiving the report, were: • 25% began budgeting for necessary works to the property • 23% negotiated the property price based on the survey • 21% sought further investigation by different professionals (eg a structural engineer). ‘The Surveyor’s Surveyor’ on <i>LinkedIn</i> (September 2025) suggests that the outcome of a survey should never be to advise the client against a purchase. Instead, the report should set out the risks, recommend further investigations, and highlight the need for detailed quotations for remedial works; a realistic refurbishment budget; and a substantial contingency. ‘It’s then for the client to weigh up whether the project is feasible for them’. For a case in which a home inspection company was liable to the purchasers of a house in Canberra for around A\$1.1 million in damages (successful pathways including ACL s 18 and the consumer guarantees under ACL ss 60-61) stemming from a failure to carry out the inspection in accordance with the Australian Standard AS4349.3:2010): Shannon & Anor v Residential Reports Pty Ltd [2026] ACTSC 66.	
9.1.1	On apologies: research by Dr Shiri Lev-Ari from Royal Holloway, University of London, reported in The Guardian (15 September	2/3

	2025) showed that individuals produce longer words in their apologies than in their non-apologetic communication, presumably to express the effort they are willing to exert to express their remorse and/or correct the situation. Correspondingly, individuals interpret apologies with longer words as more apologetic: ‘An apology may appear more genuine if it costs someone more to say it – and that can mean the time taken to say or type long words’. For helpful suggestions – in a landlord and residential tenant context, but valuable more widely – about drafting and delivering an apology, see Housing Ombudsman Service (England), Apologies Guidance (2026). On collective action to change the law, see the update above to section [6.2.2] about campaigners who successfully stopped many new homes in England & Wales being sold as long leaseholds; and encouraged legislation to reduce the ground rents on existing leasehold individual homes. For ongoing campaigns for further reform to long leaseholds in multi-unit developments (E&W), see also the Leasehold Knowledge Partnership and Free Leaseholders websites.	
9.1.2	(especially for the main text to n 10 about access to justice in the face of typically-slow court or tribunal processes), in relation to cases in the Building List of the County Court of Victoria, para 583 of the Commercial Division Omnibus Practice Note 2025 provides: The trial of a proceeding is to be considered the last resort for the disposition of a proceeding. Instead, once a proceeding is issued, the Court’s processes are focussed on the steps necessary to make the parties sufficiently informed to be able to meaningfully engage in a form of appropriate dispute resolution (ADR) as early as possible, in accordance with section V.3.2 below. Similarly, from VCAT (but, this time as a ‘general observation’ in the course of a decision, by Cook M: Bajaj v Arunachalam [2025] VCAT 1138 [141]-[142]): Claims in the Building and Property List can be complex and multi-layered, with outcomes difficult to predict until the case is heard in full and deliberated upon. For this reason, parties are strongly encouraged to explore settlement options, even after evidence has been filed in a proceeding or at the commencement of the hearing if offered and feasible. The operators responsible for home safety (gas, electricity and fire) in the UK note that their success in protecting social housing inhabitants depends on powers to enter buildings where dangers may exist. These access rules are incomplete and inadequate: see Access for Safety, Safety Can’t Wait Outside (May 2026), calling on government to change the law to guarantee access, subject to proper safeguards, clear notice requirements and a consistent process: ‘If the law requires clearly defined safety checks and works, the route to completing them should be equally clear’. As	2/3

	for landlords and entry to check gas appliances, Stonewater Ltd v Harris [2026] EWCC 42 (Judge Glen, Southampton County Court) illustrates the legal uncertainty, with an injunction for specific performance of access terms in the tenancy as the aim. Local authorities used to be able to apply for a warrant (quicker and cheaper) under the UK's Environmental Protection Act 1990 s 81 and sch 3 (the 'statutory nuisance' procedure in E&W – separate provisions for Scotland), but the legality of doing so for gas inspections has become doubtful. A House of Lords amendment by Lord Best in June 2026 to the Social Housing Bill (E&W) would allow the court to authorise access to a home where a registered provider of social housing needs to comply with specified statutory safety duties. The amendment proposes clear notice requirements, prior requests for access, limits on the purpose of entry and court oversight. On access for inspection, see also Connexus Homes Ltd v Weaver [2025] EWCA Civ 655 in the update below to section [11.3.1].	
9.2.1	On retentions in UK construction contracts, see the update above to section [1.4.2].	1
9.2.3	(especially for n 45) On <i>The Architects Code</i> (UK), see the update above to section [5.6.7].	1
9.2.4	Like some of the B2C standard form contracts discussed in this section of the book, the contract between employer and 'builder' may define circumstances entitling the employer to terminate the contract, also laying down procedures for doing so. Do such provisions restrict or replace the employer's existing (default) common law right to terminate the contract – if the 'builder' demonstrates an intention not to perform, or commits a serious enough breach of contract? The courts lean in favour of preserving the innocent party's common law rights – but the contract may exclude or limit them, if doing so clearly. In MacDonald & Co Construction v Kharty Property Group [2026] VSC 336, the main contractor under a subcontract failed to follow the contractual written 'show cause' procedure, terminating the B2B contract after the subcontractor's staff behaved aggressively and threateningly at a meeting between key individuals. Craig J concluded that this behaviour put the subcontractor in breach of its fundamental express obligation of good faith and of acting reasonably in carrying out the works: the subcontractor had renounced the contract, justifying termination at common law by the main contractor without following the subcontract's formalities. A contract-given discretion, with a linked procedure, may require the party exercising it to act reasonably (and perhaps also honestly): see the update above to section [4.7.3].	3

	From English law, in a closely similar direction, is <i>Whitburn Estates Ltd v Thirteen Homes Ltd</i> [2026] EWHC 1256 (Ch). The buyer under a conditional land contract paid a £245,000 deposit and later purported to terminate the contract. Leech J held that the buyer was not entitled to rely on the contractual termination provision: the failure of the relevant conditions resulted from its own fundamental breach of contract – failing to submit the planning application the contract required. The purported termination was therefore ineffective; the seller had validly accepted what at common law was a repudiatory breach, so was entitled to retain the deposit. For an equally telling example from NSW, see <i>Neale v Westacres Property Consultants Pty Ltd</i> [2026] NSWDC 209: the owner excluded the builders from site mid-project (purporting to terminate the contract) without reference to the (HIA) standard form contract in place, which protected the builder’s access to the site and laid down a procedure the owner was to follow if they considered the builder in breach. Judge Weber held the owner in breach of an essential term of the contract and their termination therefore ineffective, so the contract remained in place: the owner could claim damages only for defective items (just over A\$25,000), not for the cost of completing the project. On this case, see also the update above to section [4.8.3]. In South Australia, <i>Treana Holdings Pty Ltd v Kakkad</i> [2026] SASCA 77 (Bleby, Stanley and B Doyle JJ) raised the difficult issue: if one party (an off-the-plan developer) terminates a contract because of the failure of the other (two buyers of the planned townhouses) to fulfil its obligations, can the termination be challenged if that other party asserts successfully that their own failure related to a failure by the first party to meet its own commitments? The Court expressed the test as: did the terminating party’s breach deprive the terminated party of a ‘substantial chance’ of complying with the contract? (Yes). The ‘substantial chance’ formulation suggests that the yardstick is not as demanding as ‘more probable than not’ – instead, something closer to a loss of a chance. Relevant too was the principle that a contracting party should not benefit from its own breach; on this, see also the updates above to section [4.7.3]. These examples show that termination (and acts which may give rise to termination or a right to treat the contract as being at an end) involves subtle legal principles whose application ‘on the ground’ may be uncertain: no construction party (B2B or B2C) should venture into this area without a clear picture of the issues, the applicable legal framework (which may be ‘common law contractual’, ‘specific contract contractual’, restitutionary or statutory) and of the impact on each side’s rights and remedies of any action already taken or which could be taken.	
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9.3.1	From 1 April 2025 for a trial 12-month period, builders under the CCHB who fail to comply with a decision of the IDRS by the stated deadline became subject to a £5 daily inconvenience charge (payable to a successful complainant accepting the IDRS decision), non-compliance being determined by the IDRS. The sanction was used fewer than 10 times in the trial period, indicating strong compliance with adjudicators' decisions. In one case, the delay was over 70 days, the home buyer 'winning' £385 extra compensation. This extra potential sanction has now been made permanent (May 2026).	1/3
9.4	On English courts' approach to the burden and standard of proof in a claim on an insurance policy for property damage, see Malhotra Leisure Ltd v Aviva Insurance Ltd [2025] EWHC 1090 (Comm) [90]ff (Nigel Cooper KC as a High Court Judge); on the evidence from two experts, each having a different technical, educational and career background, see [132]ff. On experts, see also the update below to section [9.7.2].	1
9.4.3	For a summary of the problems giving rise to warranty claims to one of the UK's leading providers, see the update above to section [2.4].	1
9.4.4	'If no agreed solution can be reached and court beckons': illustrating a different version of litigation about the terms of a third-party warranty, the defects insurer of a group of new-build homeowners in north London at 53 Agar Grove NW1, Gibraltar-based Acasta European Insurance, took the initiative to ask the court to determine the scope of its liability to them, arguing successfully that the £1m cap on its liability applies to the totality of claims in relation to the development, rather than there being an £1m cap on a claim in relation to each unit, though each new buyer acquired what looked like a separate policy: Acasta European Insurance Company Ltd v Eshiett [2026] EWHC 71 (Comm) (Philip Marshall KC). When the insurer won, the owners incurred liability for the insurer's, as well as their own, costs. On the scale of the problems at 53 Agar Grove, see Peter Apps, "A Hypocrite and a Non-Serious Politician" – Starmer's Constituents Hit Out as Building Safety Case Looms' Peter's Substack (17 October 2025) and 'Balconies – a Safety Blind Spot?' (19 February 2026).	2
9.5.1	(especially for the main text to n 110) The Regulator of Social Housing's 'nuclear option' is to remove a provider from the register, under the Housing and Regeneration Act 2008 (E&W) s 118(1)(aa), if the RSH considers that it has failed to meet a standard under ss 193, 194 or 194C. For a (rare) example of these powers in action, see the RSH Press Release of 27 July 2026 . The RSH has commissioned research (June 2026) to evaluate the	1/2/3

	impact on landlords and tenants of the reshaped regulatory regime, introduced in April 2024. The annual review of complaints made by social housing tenants in England to the Housing Ombudsman Service in 2024-25 notes that by far the largest category of upheld complaints leading to the most serious finding – of severe maladministration – related to housing quality; of all complaints made to the HOS, 71% were upheld in the period. On the impact of delayed or inadequate repairs on social housing tenants, the Housing Ombudsman Service’s Repairing Trust report (May 2025) already noted that, in England, repairs are the biggest single driver of complaints against landlords and a determining factor of residents’ trust: ‘This reflects how home is an emotional place, and a repair is more than a job’. The HOS investigated 474% more complaints about poor living conditions in 2023-24 than in 2019-20, with poor practice in 72% of cases, though in the same period almost £9bn was spent on repairs and maintenance. In December 2025, the MHCLG launched a consultation on Housing Disrepair Claims (E only), wishing to make tenants’ claims in the County Court against landlords more effective. It highlighted the role in that process played by commercial organisations offering claims management facilities and techniques: ‘there may be cases where unscrupulous activity is resulting in vulnerable tenants being exploited’. Further implementing proposals in the Social Housing White Paper, the UK Government announced in July 2025 that it intended to direct the Regulator to impose new Social Tenant Access to Information Requirements (STAIRs) on private registered providers of social housing under the Social Housing (Regulation) Act 2023 (mostly E&W only) s 25; partial implementation will be from 1 October 2026 and full implementation from 1 April 2027. (especially for n 112) The Housing (Scotland) Act 2025 was adopted in November 2025; see the update above to section [4.16.4]. (especially for the main text to n 121) In July 2026, the HOS published a report on the results of its monitoring of the <i>Complaints Handling Code</i> for the <i>Code</i>’s first two years.	
9.5.2	(especially for the main text to n 131) The Private Rented Sector Ombudsman idea resurfaced in the Renters’ Rights Act 2025 (E only), whose s 64ff contain powers to impose a ‘Landlord Redress Scheme’ on residential landlords (as defined) - expected to ‘go live’ in 2028.	2
9.6.1	Regulation by professional bodies: one of the functions of the Architects Registration Board (UK) is to protect the legally	1/2/3

	restricted title ‘architect’ (but not the design functions usually undertaken by architects) and act against those who use the title but are not registered with ARB. Its Year in Review 2024 records that 586 cases were opened against those misusing the title ‘architect’. The annual data for 2024-25 for complaints to the UK’s Financial Ombudsman Service suggest 398 complaints about ‘building guarantees’ newly arriving (a tiny fraction of the 45,606 insurance-related complaints). Of these warranty complaints, 41% were upheld (higher than the overall 34% success rate). Figures for Q1 2025-26 show 81 new complaints arriving about such warranties (out of a global total of 68,000), of which 53% were upheld. A helpful online guide from FOS outlines the kinds of complaints consumers bring before it against third-party warranty providers in construction, and when; and how FOS deals with them. A different picture of success rates appears from the analysis of individual complaints against the NHBC summarised in the update above to section [6.8.2]. The book states: ‘The [FOS] service is free (no entry fee, and no exposure to the respondent’s costs)’. From 1 April 2025, the FOS introduced a new charging model for Professional Representatives (PRs), such as claims management companies and legal firms, bringing complaints on behalf of consumers. Once a PR submits more than 10 complaints in a financial year, a fee of £250 is charged for each additional case (reduced to £75 if the complaint is upheld). This fee does not apply to complaints brought directly by consumers or by informal representatives such as friends, family members, charities or voluntary organisations, nor to PRs acting entirely pro bono. This charge followed a significant increase in complaints submitted by PRs: many poorly prepared or later withdrawn, putting pressure on the FOS’s resources and contributes to delays for other complainants. The fee aims to encourage PRs to submit better-prepared complaints and to focus on cases with genuine merit. It also ensures that those who benefit financially from the complaints process contribute to its cost. ‘Mass claims’ by PRs to the FOS were the background to claims for damages in Vanquis Bank Ltd v TMS Legal Ltd [2025] EWHC 1599 (KB). In August 2025, the FOS published a further consultation paper about the fees charged to respondents: Evolving Our Funding Model. This raises the possibility of a more differentiated fee structure, in which fees would be lower, the earlier in the FOS process a case is resolved. In July 2025, the Treasury published its own Review of the Financial Ombudsman Service; the FCA and FOS itself jointly did similarly in Modernising the Redress System (Consultation Paper CP25/22). The Treasury started from industry stakeholders’ view that the UK’s dispute resolution framework for financial services creates uncertainty, which impacts investment in UK financial	
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	services and inhibits innovation by firms, as well as having a knock-on effect on consumers as firms may offer fewer or less innovative products due to concerns about potential future redress. Consumer stakeholders have also criticised unpredictable redress outcomes as unhelpful to consumers. The remedies proposed include: a fixed longstop time limit for complaining to FOS – on which see the update below to section [10.1.3]; a new threshold test before a complaint is investigated; modifying the ‘fair and reasonable test’ so that compliance (where relevant) with the FCA’s rules and guidance will count as ‘fair and reasonable’; giving the FOS power to ask the FCA to interpret its own rules, including at the parties’ own request (one example of better cooperation and coordination between the FOS and FCA) and to ask the courts’ for a view on important questions of law; giving the FOS wider powers to dismiss a complaint better dealt with by another route (an existing ‘consumer redress scheme’); providing better machinery for ‘mass events’; lowering the interest rates for delay compensation; and attempts to reduce the delay before an FOS decision. No change is proposed to the upper limit for compensation to successful complainants. The review also suggests ways in which the principles and themes behind the 20,000 or more decisions a year could be made more transparent and accessible, without abandoning the need to publish each individual decision. Many of these changes are included in – or will be enabled by – Part 2 of the Financial Services and Markets Bill (2026) (UK). The result may limit the powers and effectiveness of the FOS (to be renamed just the Financial Ombudsman), notably by narrowing the ‘fair and reasonable’ test, to the benefit of the financial services industry but to the detriment of consumers. (especially for n 146) Applying to the FOS does not stop time passing for the possibility of a claim in court, so a wise consumer will have an eye on the applicable limitation period for litigation – see section 10.5 and its updates below – while waiting for a determination from the FOS. (especially for n 147 and its main text) On <i>Clark v In Focus Asset Management & Tax Solutions Ltd</i>, see now Bhundia v Dhar [2025] EWHC 1227 (Ch). At [155]ff, Judge Barber held that the temporarily binding quality of the decision of a UK adjudicator under the HGCRA 1996 (UK) does not attract the doctrines of merger or <i>res judicata</i> - unlike the statutory status of FOS determinations in <i>Clark</i>.	
9.6.2	On the UK’s Financial Ombudsman Service and new home warranty providers, see also the updates above to sections [6.8.2] and [7.2.6]. Victoria’s Building Amendment (Rectification Orders) Regulations 2026, along with a Ministerial Direction (S344, 25 June 2026) provide guidance to the Building and Plumbing	2/3

	Commission about how it exercises its powers under pt 5A of the Building Act 1993 (Vic) (as foreshadowed in n 151). For an illustration of the complexity and fraught nature of accusations of professional misconduct by regulators, see Snart v Victorian Building Authority [2026] VCAT 650 – the VBA being found not to have sufficient grounds to have brought the action it did against a building surveyor in relation to his approval of combustible cladding.	
9.6.3	The Financial Services and Pension Ombudsman Act 2017 (Ire) was comprehensively modified by the Financial Services and Pension Ombudsman (Amendment) Act 2025 (Ire).	3
9.7.1	The Commons Justice Committee Review – see the update below to section [9.8] – noted increased numbers of litigants in person in the County Court in England & Wales; seldom well informed about procedure, they add extra demands on court staff and judges and create delay. The House of Lords Select Committee on the Constitution said the same in its November 2025 report on The Rule of Law at [194]. The wide availability of generative AI, with its unreliability in analysing (sometimes inventing) legal materials, is certain to encourage more people to undertake litigation as litigants in person, increasing the threats to the integrity of the legal system which AI used by lawyers – taken to know better – already pose. For costs rules allowing litigants in person to recover their costs in court proceedings (E&W), see the CPR r 46.5 - also applicable to tribunal proceedings when the tribunal (exceptionally) decides to award costs: see Senada Ziga v Darren Stuart Yarnold [2026] UKUT 181 (LC). For a helpful summary of what a civil judge does at trial and the issues of burden and standard of proof, the judge as umpire and the fallibility of memory (<i>Gestmin</i>) – drafted specifically to inform the lay parties in the property dispute before him – see Judge Paul Matthews in O’Driscoll v Clayton [2025] EWHC 2607 (Ch) at [21]ff or in Rogers v Wills [2025] EWHC 1367 (Ch) at [9]ff; also Judge Richard Carter in Shan v Registrar of Companies [2026] EWHC 1058 (Ch) at [22]ff: a family share-ownership dispute reaching back ten years, with few contemporaneous documents surviving and the witness best placed to explain matters dying in 2022, the case turning almost entirely on credibility. In the closely similar Australian context, see Monland Pty Ltd v Oman [2026] VSC 240 (Waller J) at [102]ff. On evidence issues, see also the update below to section [9.7.2]. On the extent of a judge’s obligation to assist a litigant in person, see Chalik v Chalik [2025] NSWCA 136 [65]ff (Bell CJ considering conflicting views from other NSW judges); also Monteleone v Warren [2026] VSC 423 at [76]ff (Craig J). The position in	1/2/3

English law, deriving at apex court level from [Barton v Wright Hassall LLP \[2018\] UKSC 12](#), is summarised more recently by Judge Paul Matthews in [Crushcov v Hyland \[2025\] EWHC 1117 \(Ch\)](#):

[4] In most cases, a litigant in person will not be able to express his or her case with the clarity and precision of the professional lawyer. The judge will therefore take extra care to try to understand exactly what that case is. But, having once understood it, the judge cannot reformulate the case, just to make it more potent, let alone invent a new case in place of that put forward. The case to be judged must be the case which the litigant wishes to put.

[5] As the Supreme Court made clear in *Barton*, there are no special privileges attached to being a litigant in person. I cannot, for example, advise the litigant what to do, or otherwise ‘look after’ his or her interests. Nor can I add weight to the litigant in person’s case in order to compensate for the fact that he or she has no legal training, or has a fulltime job and therefore less time to prepare, or does not have access to the library, IT or backup facilities that lawyers have available. Equality of arms for this purpose is equality of procedural opportunity. All I can do is to take the cases made by each side at face value, and decide accordingly.

In 2024, The Judicial College (E&W) published the first online edition of its [Equal Treatment Bench Book](#) (updated 2025), seeking to ‘inform, assist and guide’ judges in being fair:

Fair treatment does not mean treating everyone in the same way during court proceedings; it is about taking any necessary additional steps to aid participation and achieve best evidence. For example, a [litigant in person] with little understanding of law and procedure is not in a comparable situation to a King’s Counsel (KC).

Ch 1 of the *Bench Book* specifically concerns litigants in person and lay representatives. The Equality Act 2010 (mostly E, W and Scotland only) in some situations requires those in public positions to make ‘reasonable adjustments’ for individuals; it has an exemption for judicial procedures, but case law shows that judges regard their common law duty to be fair as including such ‘adjustments’, where justified: [Sharma v University of Nottingham \[2025\] EWCA Civ 1457](#).

(especially for n 170) The legal system’s reliance on the parties to choose the legal framework for their case (as well as the evidence to put forward) means that the court or tribunal in its judgment or decision may not rely on legal points that the parties could have relied on, but in fact did not. Doing so could form grounds for a successful appeal, despite the general principle limiting challenges to what the first-instance judicial body has decided, or how: see section [9.8] in the book (especially the main text to n 246) and its update below. In [Advanced Multi-Technology for Medical Industry \(t/a Hitex\) v Uniserve Ltd \[2025\] EWCA Civ 1212](#) at [48], Males LJ (with whom Phillips and Snowden LJJ concurred) relied approvingly on Dyson LJ in [Al-Medenni v Mars Ltd \[2005\] EWCA Civ 1041](#) at [21]:

	It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness. For construction specialists, there is a more nuanced approach to a similar issue (a failed challenge to an adjudication as a breach of natural justice after the adjudicator adopted a ‘fair and reasonable’ approach to valuing a claim) in Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd [2025] EWHC 2173 (TCC). For a successful ‘natural justice’ claim, leading the TCC to refuse summary enforcement of an adjudicator’s decision in a B2B construction context, see Premier Modular Ltd v Maidstone and Tunbridge Wells NHS Trust [2026] EWHC 1404 (TCC) (Adrian Williamson KC). On the narrow scope for challenging an adjudicator’s decision at the enforcement stage, see also the update below to section [9.9.1]. (especially for the main text to n 166) The 2026 edition of the TCC Guide maintains the same text at section 4.9. (especially for n 166) On McKenzie friends in Northern Ireland, see Patterson v Rathfriland Farmers Co-Operative Society Ltd (Ruling: McKenzie Friend Application) [2025] NICA 14. (especially for n 172) For the principles justifying an award of costs on the indemnity basis in English law, see Three Rivers District Council v Governor and Company of the Bank of England [2006] EWHC 816 (Comm) at [25] (Tomlinson J), applied by Nicklin J in the high-profile litigation by Prince Harry and others against the <i>Mail</i> newspaper (August 2026); also by Sarah Clarke KC after Amy Winehouse’s father’s claims against two of the deceased singer’s friends failed following a six-day trial: Winehouse v Parry [2026] EWHC 1970 (KB) at [54]ff. Like Nicklin J in the Prince Harry case, she also held that the losing claimant should immediately pay each defendant a substantial sum (in this case, 90% of budgeted costs and 75% of unbudgeted costs) on account of costs. For examples in the book of costs being awarded on the indemnity basis, see section [5.6.6]ff; n 107 in section [9.4.4]; n 194 in section [9.7.1]; and n 296 in section [9.9.5]. (especially for n 177) In May 2025, the Chartered Institute of Arbitrators (UK) published a consultation version of a Guideline on Third Party Funding – for both litigation and arbitration. In	
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	June 2025, the Civil Justice Council (E&W) published its Review of Litigation Funding: Final Report, recommending legislative reversal retrospectively and prospectively of PACCAR and reform of litigation funding generally, where provided by an individual or a business who is not a party's legal representative (litigation funders) for the purposes of dispute resolution. On the present law, see also Sony Interactive Entertainment Europe Ltd v Alex Neill Class Representative Ltd [2025] EWCA Civ 841 (consolidated appeals from the Competition Appeal Tribunal). (especially for the main text to n 180) On the <i>Pre-Action Protocol for Construction and Engineering Disputes</i>, see also the update below to section [9.8]. (especially for the main text to n 186ff) Two further examples of judicial encouragement towards ADR come from hearings on preliminary issues in English cases where one round of mediation had already been unsuccessful. In Heyes v Holt [2024] EWHC 779 (Ch), parties to a property dispute had unsuccessfully attempted mediation before proceedings were issued. Judge Paul Matthews ordered them to make a second attempt, hoping to avoid a trial on the merits: [50] ... This is a case which cries out for mediation by the parties. I am aware that mediation has already been attempted between the parties... and on that occasion it failed. I commend them nevertheless for trying. But that was before the claim had even been issued. Now that the parties have full pleadings and disclosure, as well as (for what it may be worth) this judgment, the parties should try again. I will order a stay for that purpose. In a libel action between neighbours, Francis v Pearson [2024] EWHC 605 (KB), Judge Lewis similarly recommended the parties to 'try, try again': [88] Experience shows that it is often in entrenched cases such as this that ADR can make a real difference, often requiring honest conversations with parties as to the merits of their respective cases, and the potential downsides, as well as looking at pragmatic ways forward ... [91] The parties need to reflect on the reasons why the cases did not settle at mediation, and the costs of continuing this litigation – not just in terms of money, but the personal costs to each party for example from the time and energy spent fighting, the stress and worry the proceedings might cause, particularly in respect of outcomes, and the impact that it is going to have on the wider community in which they live. [92] I would strongly recommend that the parties re-consider some form of alternative dispute resolution process – which might include further mediation, or some other way of facilitating agreement – before matters in this case move forward and further costs are incurred. See also the update above to section [3.1.1] for ADR issues in relation to Grenfell Tower litigation.	
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	(especially for n 178) In a B2B construction-related professional negligence case, MJS Projects (March) Ltd v RPS Consulting Services Ltd [2026] EWHC 884 (TCC), Judge Kelly summarised the general costs rules, and their application to ADR in <i>Halsey</i>. These included, at [9]: (2) ... the burden is on the unsuccessful party to establish why the court should do that [apply a costs sanction]. ADR is not appropriate in every case and there is no presumption in favour of mediation as the preferred method of ADR. The fact that a party reasonably believes that they have a strong case is relevant to the question of whether they acted reasonably in refusing ADR. However, the mere fact of success at trial does not mean that the claim was unsuitable for ADR. (4) A failure to engage in ADR, even if unreasonable, does not automatically result in a costs penalty. It is one of the factors to take into account when exercising the discretion about costs. The question is whether the conduct as a whole is unreasonable. Making and standing by a reasonable offer may not be unreasonable conduct in the light of the ultimate judgment. A refusal to mediate or to accept an offer made when a party is then successful simply means the parties have lost an opportunity to resolve the case without a hearing... Having analysed the parties' pre-trial conduct in detail, she declined to penalise in costs the winning defendant's refusal to engage with mediation, noting that the projected cost of mediation (each side had budgeted £25,000) was high relative to the claim (close to £324,000). (especially for n 189) Exemplified by <i>MJS Projects</i> above, case law in England is developing rapidly on scenarios which may (or may not) expose losing litigants (especially individual claimants) to costs sanctions for failing to undertake a form of ADR, though none so far are about residential construction disputes. For an unsuccessful attempt by a claimant losing at trial to limit their exposure to costs, arguing that the successful defendants ought to have engaged with settlement offers and ADR, see Grijns v Grijns [2025] EWHC 2853 (Ch). Master Bowles characterised the claimant's case as so weak as to justify a costs order against them on the indemnity basis; the defendants were justified in not negotiating on any of the claimant's offers to settle and would have been justified in refusing to mediate. By contrast, a losing defamation claimant was liable for the defendant's costs only on the normal – not indemnity – basis; that they followed a judge's encouragement in offering to mediate (to which the defendants did not respond) was one factor in the outcome: Rodoy v Optical Express Ltd [2026] EWHC 1486 (KB) (Griffiths J). See also Fisher v Fisher [2026] EWHC 1508 (Ch) at [64]ff (Chief Master Shuman). On mediations, the resulting settlement agreements and 'satellite litigation', see The Pentagon Food Group Ltd v B Cadman Ltd	
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	[2024] EWHC 2513 (Comm), discussed in the update above to section [4.5.1]. The House of Lords Select Committee on the Constitution offered a nuanced view about the value of ADR in its November 2025 report, The Rule of Law at [213] (footnotes omitted): [D]espite the use of alternative dispute resolution being increasingly encouraged within the civil justice system, there are times when access to a court is more appropriate. There may be an inherent power imbalance in some relationships, such as between a landlord and their tenant, an individual and their local authority, or employer and employee. When a dispute arises, the stronger party may place pressure on the other to mediate and resolve the dispute without going to court. They are also more likely to have access to legal advice. In these instances, there is a risk that the weaker party forgoes their legal rights and accepts an unfair solution. For other aspects of the same point, see the <i>Blind Justice</i> report summarised in the update below to section [9.14].	
9.7.2	On proof in general, and how the court weighs evidence, especially when this is oral only – as often happens in B2C projects for modest works of home improvement, maintenance or repair which do not attract statutory regulation, like Scenario 3 in Table 1.2 – see Mohamed Faizal JC in Tao Yuegang v United Tec Construction Pte Ltd [2025] SGHC 124: [29] In this case [a damages claim for personal injury caused by an alleged workplace accident], the assessment of the Claimant’s credibility is especially critical as he represents the singular factual witness for his version of events while the Defendant [employer] has called a variety of witness in support of the narrative it advances. To be clear, the mere fact that one side is able to provide multiple witnesses while the other is able to put forth just one is far from determinative. This is because the strength of evidence lies not in numbers but in the quality, consistency, and credibility of the witness(es). A single witness, if reliable, consistent, and credible may be viewed by the court as having far greater probative value than a chorus of voices that are speculative, contradictory or otherwise tainted by bias or self-interest. The law does not weigh evidence by volume or numbers but through the lenses of veracity; what matters is not how many speak, but the consistency and credibility of the story that is being told. For a discussion of the burden of proof, and how it may be discharged by different types of evidence, see Croft J in LL UP Pty Ltd v Kegland Distribution Ltd [2024] VSC 651 [16]ff – referring to <i>Gestmin</i> (n 199). On giving a party permission to bring expert evidence, the overall position in English law is summarised by Fancourt J in Cohen v Co-Operative Food Group [2025] EWHC 526 (Ch) at [35]: The court is under a duty [under CPR 35.1] to limit expert evidence to that which is admissible and reasonably required to resolve the proceedings. Even if the evidence is not necessary to resolve an issue, it may still be admitted if it will be of assistance in determine that	1/2/3

	issue and so is reasonably required. The decision to permit or refuse expert evidence is an evaluative judgment taking into account all relevant circumstances and proportionality ... On the same issue, see also The RBS Rights Issue Litigation [2015] EWHC 3433 (Ch) (Hildyard J and Chief Master Marsh). On expert witnesses, the UK-based Academy of Experts warns, following regular judicial criticism, against experts appearing to advocate for ‘their’ side’s case. A dramatic English example is Freeman v Home Farm Ellingham Ltd [2025] EWHC 878 (Ch), where Judge Claire Jackson ruled one expert’s evidence inadmissible as failing to comply with CPR Part 35. At [41] she labelled his approach as: [N]ot impartial but rather acted to prefer the interest of the Claimant as his client and to advocate a case for it. This lack of impartiality affected both the preparation and presentation of [his] evidence, his assessment of the evidence and his findings. In an earlier example in a B2B construction context, the whole of an expert’s evidence was rejected as ‘entirely worthless’: see Van Oord UK Ltd v Allseas UK Ltd [2015] EWHC 3074 (TCC) at [80]ff (Coulson J). The many other recent TCC cases where experts’ general credibility and conduct have been key to the determination of the case are listed in Samuel Townend KC’s Master’s Address 2026 to The Worshipful Company of Arbitrators; the lecture summarises the reasons for current problems with expert witnesses and offers solutions. In <i>Hired Gun?</i> (LinkedIn, 2025) the Academy points out: [E]xpert evidence is very important to the courts and experts are rightly held to very high standards, so a good starting point to is to try to avoid even such mild criticism. The simplest way to do this is to read your own report as though you were the other side’s expert. Are there gaps in your reasoning? Is there evidence that might contradict your conclusions? If you’ve discounted witness evidence or documents, why have you done that? Is it justified? Have you set too high or too low a standard for professional conduct in your analysis? The Academy’s Judicial Committee publishes detailed guidance for expert witnesses in jurisdictions which use experts in civil cases the way most common law systems do, including a <i>Model Form of Expert’s Report</i>, available for purchase. In July 2026, the RICS published the 5th edition of its guidance for Surveyors Acting as Expert Witnesses. On expert evidence in construction litigation in E&W, see also section 14 of the TCC Guide 2026, which also considers situations where a single joint expert may be appropriate. Judges also regularly express concern that, where the case depends heavily on testimony rather than documents, witnesses of fact make the court’s job harder by failing to comply with the official guidelines for drafting their witness statements (in English law, under the CPR Practice Directions 32 and 57AC). In	
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	<i>Skycomish Ltd v Gerald Eve LLP</i> [2025] EWHC 1031 (Ch), a negligent valuation case, Richard Farnhill (as a Deputy High Court Judge) pointed out how closely the wording of two of the claimants' witness statements overlapped, suggesting that neither was their own words; a third witness simply adopted a fourth witness's recollection and version of events. At [24] he concluded, in effect pointing the finger at the claimants' legal team: [I]t would be unfair to impute these failings onto the individual witnesses themselves, none of whom are legally qualified and none of whom can therefore be expected to know the details either of the rules of evidence in general or the provisions of PD 32 and PD 57AC governing trial witness statements in particular. These points do go to their credibility, however – they call into question the extent to which their recollection has been contaminated because Mr Tellwright, Mr Taylor and Ms Ilett have obviously, to some extent, been led to adopt a description of the relevant events in terms other than their own. As in the items above, the judge also criticised one expert witness for acting as an advocate for the party which had appointed her; the whole claim failed in the end. (especially for n 173) In civil litigation in E&W, the ordinary 'costs follow the event' rule does not apply to claims for less than £10k allocated to the small claims track. In those, there is no costs order unless the court finds a party has 'behaved unreasonably': for a striking example of David & Goliath litigation, Goliath failing in its attempts to get David to pay its costs, see <i>Orton v Barclays Bank UK PLC</i> [2026] EWCA Civ 1025. (especially for n 181) The digitisation of court processes risks creating new barriers for litigants in person: <i>Blind Justice</i>, a pressure group, suggests that 'unrepresented users [of court systems] lack professional intermediaries to mitigate administrative error' – where documents are not logged correctly, correspondence unanswered or incorrect advice is given: Nick Hilborne, 'Complex Court Processes "Shut Out Litigants in Person"' <i>Legal Futures</i> (19 December 2025). On the new Online Procedure Rules in E&W, see the update below to section [9.14]. (especially for the main text to n 198) A similar result will follow if a corporate defendant, having engaged with the pre-trial process, filed a defence etc, then withdraws from all participation in the action, its parent company liquidating the SPV defendant. The residential building owner is then almost certain to be successful in court in claiming damages for construction defects: see <i>One Hyde Park Ltd v Laing O'Rourke Construction South Ltd</i> [2026] EWHC 155 (TCC) (Jefford J). If the defects constitute 'building safety risks', the next step may be to apply for a Remediation Contribution Order against the parent company under the BSA 2022 s 124: see Table 11.1 of the book, n 100 and its updates below; or perhaps a Building Liability Order under the BSA 2022 s 130ff: see the update below to section [11.5].	
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	(especially for the main text to n 202) Scots law uses contrasting terminology, under the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 (SSI 2019/75): these speak of the court ‘certifying skilled persons’ in relation to judicial proceedings; their remuneration may then be treated as part of the ‘expenses’ (costs) of a case. A couple in West Lothian bought a home from its developer; on finding numerous defects, they successfully gained judgment against the developer for £500,000, relying on reports from a range of experts. The developer was by then insolvent, so they started a new action (ongoing) claiming £1m against the architect who had provided them with PCCs attesting to build quality (on PCCs, see Case Study 7 at section [5.9] in the book). Could they continue to use the seven experts already ‘on board’ from their first action, the Court now ‘certifying’ them for the action against the architect? And could these experts’ fees already incurred now become expenses in their action against the architect? In Spence v Graham [2025] CSOH 108, Lord Braid took the pursuers’ side (disallowing one only of the experts, whose relevance to the issues in the case was not clear). At [11] he said: [I]t was both reasonable and proportionate that a range of experts be instructed to cover the panoply of defects said to exist; and indeed, in principle, it was both reasonable and proportionate, and probably necessary, to instruct expert evidence before the action was raised. Insofar as the instruction of these particular experts is concerned, it cannot possibly be a bar to their being instructed in this action that they were previously instructed by the same pursuers in a different action. So to hold would be to require the pursuers to have instructed a whole raft of new experts which would achieve the very opposite of economy in litigation... On using expert evidence to prove the value of a building (or the impact of defects on its value) via ‘comparable sales’, see the judgment of the Western Australia Court of Appeal in Fitzroy River v Tucker [2025] WASCA 118 at [66]ff, relying heavily on Megarry J in <i>English Exporters (London) Ltd v Eldonwall Ltd</i> [1973] 1 Ch 415. In a challenge to a trial judge’s conclusions which allegedly disregarded the report of a single joint expert, Eyre J in Azizi v Dama Construction Ltd [2025] EWHC 2213 (TCC) rejected the challenge, saying at [35]: [A] judge is not bound by expert evidence, even the evidence of a single joint expert. However, a judge must have regard to such evidence in respect of issues to which it is relevant and if the judge is to differ from the view of the expert on such an issue, then an explanation of the reason for doing so must be given. However, findings of fact and the determination of legal responsibility are matters for the judge and not the expert. It may be the case that findings on one or both of those matters mean that the expert evidence is irrelevant to the findings which have to be made. In such a case a judge does not have to follow the <i>ex hypothesi</i> irrelevant expert evidence nor is it necessary to engage in the exercise of explaining in detail why that is not being done.	
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9.7.3	On the planned introduction in NZ of a statutory system of proportionate liability in building cases, see the update above to section [5.13.3]. (especially for n 210) The operation in English law of the Civil Liability (Contribution) Act 1978 was considered in URS v BDW [2025] UKSC 21. Lord Leggatt confirmed at [212]: [T]he right of D1 to recover contribution from D2 arises when (1) damage has been suffered by C for which D1 and D2 are each liable and (2) D1 has paid or been ordered or agreed to pay compensation in respect of the damage to C. At that point, but not before, D1 is entitled to recover contribution from D2 and the two-year limitation period within which any claim for contribution must be brought begins. There is no further requirement that, before an action can be brought, D1's liability to pay compensation to C and the amount which D1 is liable to pay in compensation must have been established by a judgment against D1, an admission by D1 or a settlement agreement between D1 and C. For contribution claims derived from defective cladding, relying on the new English statutory framework, see Mullaley & Co Ltd v STO Ltd [2026] EWHC 1552 (TCC), discussed in the update above to section [5.7.3].	1/2/3
9.8	The value to the UK economy of the international standing of English law, its courts and judges, and the need to promote English law's positive aspects worldwide, were given a new impetus by a report to the MoJ (UK) on Harnessing English Law for Economic Growth, launched by the Deputy Prime Minister and Minister of Justice in March 2026. This followed the 2025 creation of the English Law Promotion Panel, its members drawn from legal, academic and business communities. From 1 October 2026, the TCC is to become part of the new Business and Property Division of the High Court (E&W), replacing the Chancery Division: see the update below to the Glossary. In November 2025, a consultants' report to the Ministry of Justice (UK), The Benefits of an Open and Competitive Legal Economy, stressed the contribution the legal sector makes to the economy, notably via work internationally, but noted the problems homeowners and home buyers as consumers confront in seeking appropriate legal advice: There are more law firms and lawyers than ever. All parts of the legal sector have been subject to increased competition, both from other lawyers (from elsewhere in the UK and abroad) and from non-lawyer new entrants to the sector. Clients and consumers have benefited from more choice and transparency in the sector. However, there are concerns about how well distributed the benefits of a more open and competitive legal sector have been. Delivering affordable and accessible consumer facing legal services in the face of growing demand remains a challenge ... Legislative or regulatory intervention	1/2/3

	may be needed to support society's access to justice needs. The market alone has not been able to meet these needs. These conclusions are echoed for the formal justice system (courts and tribunals) in England & Wales by a report on research by the Nuffield Foundation: People's Experiences and Views of the Justice System (July 2026), painting a picture of individuals' needs for information, assistance and emotional support not being met and negatively impacted by recent cost cutting on the justice system; but many judges help how users perceive the system. On litigants in person in E&W, see the updates above to section [9.7.1]. In May 2026, a further report for the MoJ (UK) summarised existing literature on types of free assistance (including information, signposting, advice and practical support) provided in E&W by charities, law centres and other not-for-profit organisations to help individuals understand and resolve civil, family and tribunal-related legal problems. Evidence on the Effectiveness of Legal Support Service Delivery concludes that no single delivery model works well for all people or all problems. Different models add value in different contexts, but the strongest evidence of impact comes from coordinated, well-resourced services that combine multiple delivery models within clear pathways, enabling escalation and sustained engagement when needed. The report does not include legal aid for lawyers' fees, but the current scope of civil legal aid in E&W makes it barely relevant to our field. (especially for the main text to n 226) The 2026 TCC Guide updates the existing guidance (notably making clear that claims before the London TCC with a value of less than £100,000 risk being transferred to the TCC List of the Central London County Court). The <i>Guide</i> newly includes items suggested in 2025 by the judiciary's Building Safety Act Working Group, clarifying its application to cases involving the BSA 2022 (section 9 of the <i>Guide</i>), as well as warnings against the use of AI (section 1.6) and an expanded emphasis on ADR (section 7), with a draft ADR Order as Appendix E. On collaboration between the TCC and FTT in BSA cases, see <i>Wallace Estates v Durkan Estates</i> in the update below to section [11.5]. (especially for n 227) On the near collapse of County Courts in England & Wales, its causes and remedies, see the House of Commons Select Committee on Justice, Work of the County Court (HC 677, July 2025): 'a dysfunctional operation that has failed to adequately deliver civil justice'. To appeal to the Court of Appeal (Civil Division) in England & Wales in most cases requires permission, from the first-instance court or the Court of Appeal itself. To ask the CA for permission to appeal, the court fee is now (July 2026) £663; £1,504 if a lower court or tribunal has already given permission: see also HMCTS, Appeal to the Court of Appeal Civil Division (updated April	
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	2025). The fee must be paid before the expiry of the time limit for lodging an appeal. Help with fees is available to those not legally aided and on benefits: Court of Appeal (Civil Division) Guide 2025 [2.48]. For a summary of appeal courts' approaches to challenges of first instance judges' findings of fact, see Wise v Wise [2025] WASCA 98 at [18] (Thompson P); for the English Court of Appeal's firm reluctance to allow similar challenges – including to the trial judge's evaluation of factual or expert evidence – in a request for Permission To Appeal, especially from a TCC judgment, see LZLabs GmbH v IBM UK Ltd [2025] EWCA Civ 842 at [19]ff (Coulson LJ, with whom Males LJ concurred). For an example of a failed challenge on appeal in a construction case, where the TCC judge had to decide between one party arguing an oral agreement, the other relying on a JCT standard form, see EJW Builders Ltd v Marshall [2026] EWCA Civ 911; for a more detailed analysis of types of challenge on appeal and the court's willingness to intervene, see Honda Australia Pty Ltd v Brighton Automotive Holdings Pty Ltd [2026] VSCA 142 at [23]ff. On the UK Supreme Court's unwillingness to disturb 'concurrent' findings of fact – those established both at first instance and on appeal in the same case – see R v Perry [2025] UKSC 17, [2025] 1 WLR 2055 at [33]-[35]. (especially for n 233) The creation in 2016 under the Courts Reform (Scotland) Act 2014 of the Sheriff Appeal Court for civil cases has meant that fewer of these now reach the Court of Session (notably the Inner House); even fewer Scottish civil appeals reach the Supreme Court (leave now being required). Lord Doherty suggested in the 2026 Lord Rodger Memorial Lecture that the future development of Scots law may be threatened by these trends. (especially for n 235) The 2025 Judicial Statistics for Northern Ireland (June 2026) similarly reveal no data about construction-related litigation, nor about applications to enforce decisions by adjudicators in construction cases. (especially for the main text to n 237) Figures for delay in the TCC in June 2026 record only a few weeks' wait for a short applications hearing (not more than half a day) before a judge; three months for a case management conference (up to half a day); four months for a trial of up to three days; but nine months or longer for a longer trial. (especially for the main text to n 241) The Ministry of Justice publishes helpful guidance (for E&W) on 'What to Do if You Have a Judgment but the Defendant has Not Paid'. This explains the available types of enforcement machinery, but also lists factors (paraphrased here) which those considering becoming claimants should consider, ahead of <i>starting</i> litigation:	
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	• Are you likely to get your money and court fee from the defendant? • Does the defendant owe other people money or has other court judgments against them? • Does the defendant own any goods or assets which can be taken and sold at auction? • Is the defendant working (as an employee)? • Does the defendant have other earnings, such as income from investments? • Does the defendant have a bank, building society or other account? • Does the defendant own property (such as a house)? (especially for n 244) The Court of Appeal in Optis Cellular Technology LLC v Apple Retail UK Ltd [2025] EWCA Civ 552 confirmed at [124]ff (Birss LJ) that, in English civil procedure, ordering a retrial is ‘an order of last resort’; for an example, see <i>Simetra Global Assets Ltd v Ikon Finance Ltd</i>, quoted in the update above to section [4.5.1]. For a similar approach in Singapore, relying on <i>George Bray v John Rawlinson Ford</i> [1896] AC 44 (HL), see Liau Beng Chye v Chua Wei Jiea [2025] SGHC 226 at [21]ff (Philip Jeyaratnam J). (especially for n 245) A useful summary of the principles on which an English appeal court will permit fresh evidence comes from Whipple LJ in <i>R (On the Application of A) v North Central London Integrated Care Board</i> [2025] EWCA Civ 485 at [51]ff; but see also the update above to section [5.6.7]. The parameters of the legal arguments on appeal will be those available at the trial, the central focus being on how the trial judge dealt with the evidence and its legal consequences; but the possibilities on appeal may be further limited by excluding legal points on appeal which have been abandoned via concessions made on behalf of a party during the trial: <i>Perez de la Sala v Perez de la Sala</i> [2026] NSWCA 160. (especially for n 246) On appeal courts’ approaches to findings of fact by trial judges, see also Singh v Bains [2026] EWCA Civ 408 (Miles LJ, with whom Jeremy Baker and Peter Jackson LJJ concur): the nine-day trial centred on the existence or non-existence of an alleged oral agreement, the claimant at first instance then being unsuccessful on appeal. On other aspects of oral contracts, see the update above to section [4.5.1]. (especially for n 246) Once the time for lodging an appeal (or requesting permission to appeal) is over, or if requesting extra time fails, attempting to re-open a case, claim or issue already decided by a court or tribunal is both risky and difficult. The courts’ twin doctrines of <i>res judicata</i> (‘the matter has already been judged’ – sometimes called <i>action estoppel</i>) and its cousin <i>issue estoppel</i> aim to stop collateral attacks and ‘second bites at	
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	the cherry’. There is extensive case law on their application: see eg Gunawan v Lesmana [2026] SGHC 112, where Andre Maniam J discusses both doctrines, including with English authorities, and the limits on the admissibility of fresh evidence on appeal. Issue estoppel was reconsidered and redefined by the UK Supreme Court in Skatteforvaltningen v MCML Ltd [2026] UKSC 19, where the Court’s judgment included at [38]: Issue estoppel may have the effect of restricting or denying a litigant’s access to court to vindicate what is otherwise a good claim or of preventing a litigant from raising what is otherwise a good defence to a claim against them. When it applies, it involves a serious interference with the ordinary entitlement of litigants to present their claims and to defend themselves according to a proper understanding of their legal rights. That is a powerful effect. Conscious of this, and of the availability of and ground covered by the doctrine of abuse of process as a flexible mechanism to accommodate the private and public interests involved in the conduct of successive rounds of litigation, the courts have been astute to ensure that issue estoppel is kept within the narrow limits which are appropriate for a doctrine having such an effect. Even jurisdictions like NZ, which permit re-opening an otherwise definitive judgment by <i>recalling</i> it, impose very restrictive grounds: see <i>Horowhenua County v Nash (No 2)</i> [1968] NZLR 632 (NZSC), applied in eg Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2) [2009] NZSC 122.	
9.9.1	On the impact of assignment of the benefit of a UK construction contract, the assignee’s right to refer a dispute to adjudication and their ability to claim the protection of the ‘residential occupier exception’, see the update above to section [5.3.2]. On the power of an adjudicator also to determine a claim under the Defective Premises Act 1972 (E&W), see the update above to section [5.10.2]. On the ‘provisionally binding’ character of a UK construction adjudicator’s decision, see the update above to section [9.6.1]. (especially for n 253) On Ardmore Construction, see also the update above to section [5.10.2]. (especially for n 257) On the limited scope for challenging an adjudicator’s decision in Northern Ireland, following English authorities, see Piperhill Construction Ltd v Northern Ireland Housing Executive [2025] NIKB 47 (Humphreys J). (especially for n 261) For an example of Scottish judges’ approach to challenges to an adjudicator’s award (decision), arguing that an adjudicator has violated the principles of natural justice by going on ‘a frolic of his own’, see Entexol Ltd v Sked Construction Ltd [2026] CSOH 80 (Lord Lake). (especially for the main text to n 263) A useful summary of the existing case law recognising possible grounds for resisting	1/2/3

	enforcement of an adjudicator's decision comes from Judge Kelly in Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd [2025] EWHC 2173 (TCC) at [11]; see also the updates above to section [9.7.1] and below to section [9.9.5]. In High Tech Construction Ltd v WLP Trading and Marketing Ltd [2026] EWHC 152 (TCC), Constable J refused summary enforcement of an adjudicator's decision, the respondent bringing evidence (more than had been before the adjudicator) that the contract on which the referring party and adjudicator had both relied did not in fact exist and that the work had been done on a different contractual basis. If the respondent could make out this claim, the adjudicator would have had no jurisdiction, so to enforce the decision immediately – in advance of the contract issues being determined – was inappropriate. (especially for the main text to n 265) On challenges in court on natural justice grounds to adjudicators' decisions, see also the update above to section [9.7.1].	
9.9.2	The Hong Kong Security of Payment regime (n 270) – now in force – also has its Construction Industry Security of Payment Rules, made by the Chief Judge of the High Court, providing for the courts' involvement in the adjudication system; the Rules came into force on 5 September 2025.	1/2
9.9.5	The residential occupier exception in relation to construction adjudication in the UK: building contractor RBH made a contract with the employers Mr & Mrs James to demolish an old house in Devon and build a new one. Before the new house was complete, the parties fell out and the builder left the site. With over £1m already paid, and the payment terms not contested (though the contract was entirely oral, including no dispute resolution provisions), RBH requested payment of an additional £660,000+, to which the employers responded with 'a notice of intention to withhold payment', detailing their reasons for doing so and referring to the 1998 Scheme for Construction Contracts. When RBH launched an adjudication, the James argued that they were (intending) 'residential occupiers' of the new house, so protected by the statutory exception. The adjudicator disagreed, as well as with what they claimed was a 'pay less' notice, so awarded the sum claimed to RBH, who then went to the TCC to have the decision summarily enforced – met by the James arguing for a declaration that the adjudication was a nullity in law. In RBH Building Contractors Ltd v James [2025] EWHC 2005 (TCC), Neil Moody KC (Deputy High Court Judge) held that the James had a realistic prospect of success in arguing that they were protected by the 'residential occupier exception', so refused to enforce the adjudicator's decision; whether they were so protected would only be resolved in later proceedings. This would require a	1/2/3

	detailed analysis of the factual background, with many relevant factors: • The employers asserted at the adjudication (though not before) that they were protected by the HGCRA 1996 s 106 (so had not ‘submitted to the jurisdiction’ of the adjudicator). • They might be able to persuade a judge that they did intend to live in the new house when they entered the contract with RBH (according to Judge Moody, this was the key moment, following Coulson J in Westfields Construction Ltd v Lewis [2013] EWHC 376 (TCC)), so the fact that they put the house on the market when the project went sour (having already sold a home in Essex and living in a caravan during the build) would not take them out of the exception, if they otherwise qualified. • It did not disqualify them from relying on s 106 that Mrs James alone was registered as the owner of the site, or that they originally intended to rent the house out on Airbnb for part of the year and had no other home, nor even that under the terms of a loan to finance the project they declared having no intention to live in the eventual house. But the judge was not willing to overturn the adjudicator’s decision on fees, for which liability was shared jointly and severally with the James. Would ‘the builders’ now start a fresh court action – as they could – already knowing a version of the arguments the employers would deploy as a defence (which the judge was willing to treat as a valid ‘pay less’ notice)? Instead, they launched an appeal against the judgment, reported as RBH v James [2026] EWCA Civ 511. The judgment in the CA was from Coulson LJ (Males and King LJJ concurring). In the TCC he had decided <i>Westfields Construction Piling Ltd v Lewis</i> (above, and discussed in section [9.9.2] of the book): there, as in all recorded earlier attempts, the individual construction employers failed to bring themselves within the protection of s 106. In the new case, did the employers agreeing contractually with their funders that they would not live there exclude their intention to occupy the new home when built – vital to get them within s 106? One earlier authority suggested that if occupying the home was illegal (in that case, by contravening planning permission), that excluded the situation from s 106. Another feature of the new case was analysis of comparable but different ‘intention to occupy’ statutory tests: under the Landlord & Tenant Act 1954 s 30(1)(g) and the Housing Act 1985 s 118. Armed with all that authority, Coulson LJ laid down at [52] a set of principles for deciding claims where s 106 is relied on; these are not revolutionary, but will be key in all future cases. Notably, he held that the legal position between the Jameses and their funder was not automatically fatal, nor was their intention to rent out the home via Airbnb for part of the year; these were merely aspects of	
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	the total factual and evidential background which had to be weighed. However, this part of the appeal was only on whether the judge below correctly refused to enforce the decision of the adjudicator, awarding over £600,000 against the James. This refusal stood: the CA gave no final determination whether the Jameses did or did not qualify for the exception, though their chances of success now looked stronger. The builders remained (we assume) unpaid, newly at risk of the costs of their unsuccessful appeal. Unless the parties settled, continued (or newly started) traditional court action, leaving aside the adjudication proceedings and the HGCRA payment provisions, must have been a possibility. (especially for n 295) For an insider’s view on the surprising frequency of jurisdictional challenges within adjudications and adjudicators’ responses (and the effect on the dispute itself) in the UK and Ireland, see Jonathan Cope, ‘Jurisdictional Challenges: How Often Do They Occur, and What Can We Learn from Them?’ (MCMS Blog, November 2025). (especially for n 298) On the dangers of failing to take part in an adjudication – coupled with a restatement of the limited grounds for challenging the decision of an adjudicator – see Construction Muzzy Ltd v Davis Construction (South East) Ltd [2025] EWHC 2258 (TCC); see also the update above to section [9.9.1]. (especially for n 299) For the high threshold facing a losing party in an adjudication who attempts to argue that a breach of natural justice occurred, see Project One London Ltd v VMA Services Ltd [2025] EWHC 3304 (TCC); see also the updates above to section [9.7.1].	
9.9.6	If a B2C construction contract for work in the UK includes adjudication provisions and the parties then settle a dispute under the contract, this settlement agreement is also subject to adjudication, as a variation of the original contract – as would also apply if the HGCRA 1996 (UK) had applied to the original contract: London Eco Homes Ltd v Raise Now Ealing Ltd [2025] EWHC 1505 (TCC) (District Judge Baldwin).	1
9.9.9	(especially for n 327) On Ardmore Construction, see also the update above to section [5.10.2].	1
9.10.1	(especially for n 335) In June 2025, Standards Australia released the 2025 version of its construct-only AS4000 contract. Commentaries include this one from Gilbert & Tobin.	1/2
9.10.2	(especially for n 344): issues as to whether VCAT loses its jurisdiction in respect of residential construction disputes where a federal matter is raised continue to arise: see, eg, Skordakis v Victorian Building Authority [2026] VSC 342 ; Chinnappan v	1/2/3

	<u><i>Hometec Industries Pty Ltd</i> [2026] VCC 651</u>, Kirton J in the latter observing in relation to the policy conundrum (at [70]): It cannot have been Parliament’s intention to give this Court jurisdiction to resolve domestic building disputes under the DBCA, but no power to order restitution under these sections. Nor can Parliament have intended that when a proceeding is legitimately in this Court, a builder must issue a separate proceeding in VCAT, to be managed and heard in this Court, requiring a judge ‘wearing two hats’, ongoing coordination between the heads of the Building Cases List in this Court and the Land and Environment Division in VCAT, and the cost and time of registries and support staff in both jurisdictions. Government has not allocated any extra resources to this Court or to VCAT to implement such an intent. (especially for n 351) See also <u><i>Nasseri v Wellington Builders Pty Ltd</i> [2024] VSC 200</u> and Jos Mulcahy, ‘The Victorian Security of Payment Legislation - When is a Residential Owner in the Business of Building Residences?’ (2024) 33(7) <i>Australian Construction Law Bulletin</i> 50. <u><i>Black Label Developments Pty Ltd v McMenemy</i> [2025] NSWCA 114</u> illustrates (on facts labelled by McHugh JA as ‘singular’) the balancing act between keeping cashflow moving (per <i>A-Civil</i>: the main text to n 354) and consumer protection. The Court favoured the latter by granting the homeowners a stay on being required to pay an adjudicated amount (via the NSW security of payment scheme), where this was based upon a variation to the home building contract arguably procured by an actionable vitiating factor, such as unconscionable dealing or duress. (especially for n 353) The <u><i>Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025</i></u> (Vic)’s amendments to the Victorian security of payment legislation (see n 348) and existing contracts mostly came into force on 15 April 2026. These amendments are extensive, but do not include modification to the ‘residential occupier exception’; this issue remains to be considered in future amendments.	
9.10.4	In late 2025, VCAT announced a revised structure and processes for its Building and Property List, including that a hearing date for matters likely to run for more than one day will not normally be allocated until all interlocutory steps have been completed: see https://www.vcat.vic.gov.au/case-types/building-and-construction. This led to the implementation of a new divisional structure in February 2026, with building and construction cases falling within the Land and Environment Division: https://www.vcat.vic.gov.au/about-vcat/our-structure#operational-divisions.	2/3
9.11.2	Statutory adjudication in NZ: in 2025, the Building Disputes Tribunal (<i>Te Taraipuniara Tautohe Hanga Whare</i>) published a review of its experience as a leading Authorised Nominating	1

	Authority over the regime’s first twenty years. Tracking the Trends reports that the largest category of claimants has been main contractors (not the expected subcontractors), who also form 43% of all respondents. Homeowners, as expected, form only a small category: 17% of claimants and 21% of respondents. 59% of all claimants seek a determination of the other party’s liability to pay money, with 4% seeking a determination of rights and obligations and 37% seeking both. Only 14% of cases lead to a jurisdictional challenge – successful in only 2% of cases. Adjudicators’ costs are between 17 and 19% of the amount claimed – low enough for 31% of all claims to be brought under the BDT’s Low Value Claim Scheme (current limit NZ\$100,000; average duration 28.7 days); more than half all claims are for between NZ\$30,000 and NZ\$350,000 (average duration 44.7 days, involving an extension of time). 80% of claimants are represented and 78% of respondents (overwhelmingly by lawyers). In 80% of cases, both parties had to pay the adjudicator’s fees. (especially for n 410) For recent discussion of the scope for court challenges to adjudicators’ decisions (notably interim relief against enforcement), about what will be NZ’s tallest residential building, see Shundi Customs Ltd v Green [2024] NZHC 3345 (Blanchard J).	
9.10	Substantial amendments to the dispute resolution scheme in Victoria are being implemented as the Building Legislation Amendment (Buyer Protections) Act 2025 (Vic) and Domestic Building Contracts Amendment Act 2025 are being brought into force during 2025-26, including the bringing within the new Building and Plumbing Commission of Domestic Building Dispute Resolution Victoria. For an overview, see, eg, ‘Bringing home building safety reform in Victoria, Australia: are we there yet?’	2/3
9.12.1	(especially for n 416) For a helpful summary of the costs rules in Irish civil litigation, see Egan J in Murphy v Butler [2026] IEHC 421 at [68]ff. On the costs consequences of a failed attempt to enforce an Irish adjudicator’s decision (a nullity because the contract’s own rules for service were not observed, which overrode the statutory default rules), see Tenderbids Ltd v Electrical Waste Management Ltd [2025] IEHC 339.	3
9.12.2	(especially for the main text to n 419) In Connaughton v Timber Frame Projects Ltd [2025] IEHC 469 the High Court (Garrett Simons J) held that a common law claim for (unliquidated) damages for breach of contract, made by the innocent party who had accepted the other party’s repudiatory breach and terminated the contract, was not ‘a dispute relating to payment’ (Construction Contracts Act 2013 (Ire) s 6(1)), the contract otherwise qualifying under the 2013 Act. The judge held at [20]:	1/2

	[T]he referring party must either be asserting or resisting a claim to be paid an amount which is provided for under the construction contract, ie a payment which is expressed or stipulated in the terms of the contract. There being no right to adjudicate, the adjudicator had no jurisdiction: the resulting decision was a nullity and would not be enforced. This judgment is under appeal (judgment not yet published in August 2026).	
9.12.3	The importance procedurally to civil litigation of the declaration under the Mediation Act 2017 s 14 was emphasised by Twomey J in V Media DOO v Techads Media Ltd [2025] IEHC 430 (Commercial Court): 5. ... under s 14(3) a court <i>must</i> adjourn a hearing if the proceedings were issued <i>without</i> the accompanying Mediation Declaration, so as to enable the mediation advice to be provided. In effect therefore, the courts must <i>refuse to hear a case</i>, if there is no evidence that the plaintiff was provided with the requisite advice to consider mediation. 6. While all of this amounts to a clear restriction on the constitutional right of access to the courts, it is clearly justified, since it is in the interests of prospective litigants. This is because it is as an attempt by the Oireachtas to ensure that litigation is a last resort, rather than a first resort, in order to save prospective litigants tens/hundreds of thousands of euros in legal costs and the many years of lost time and effort. Doctoral research by Bill Holohan SC in 2024 showed that most Irish solicitors are unaware of their obligation under the Mediation Act 2017 to advise clients about the advantages and benefits of mediation (including the speed with which mediation can take place) and the considerable costs savings that can result. Even those who are aware are selective in their level of compliance, assuming (incorrectly) that there are no adverse consequences for them or their clients for failing to comply and to advise clients properly. Under the Legal Services Regulation Act 2015 s 169(1)(g), a party may be penalised in costs if they act unreasonably in refusing to engage in settlement discussions or mediation, with comparable provisions about mediation in the 2017 Act s 21: see Byrne v Arnold [2024] IEHC 308 (Kennedy J); solicitors can be made personally liable for wasted costs; can be in breach of their professional obligations, leading to Legal Services Regulatory Authority sanctions; and can be liable in negligence. A new High Court Practice Direction HC141 (in effect from 3 June 2026) reminds solicitors of the requirements of the 2017 Act and other provisions on ADR; warns of the judges' approach to non-compliance; and now specifically requires the necessary 2017 Act certificate in place before a solicitor seeks a hearing date. In 2026, Twomey J gave new judicial encouragement to mediation in civil cases generally in his 72-page judgment in J Burke & Associates Ltd v O'Connell [2026] IEHC 314. He held	2/3

	that, though s 6(2) of the 2017 Act states that participation in mediation is voluntary and s 16 speaks only of ‘inviting’ the parties to consider mediation, this did not displace the Court’s inherent power to <i>require</i> parties to engage in mediation, on its own motion or on application by a party. The judgment treats <i>Churchill</i> from English law as being of persuasive authority in relation to ADR generally, as well as an early post-<i>Churchill</i> court-ordered mediation case, <i>DKH Retail Ltd v City Football Group</i> [2024] EWHC 3231 (Ch). Twomey J quotes both at length; they are discussed in the book’s sections [9.7.1] and [9.14]. <i>Burke</i> was a contract dispute between a farmer and an engineer about unpaid fees, already running for 10 years but about to be set down for trial in the High Court. As Twomey J points out, costs (starting with brief fees) would be a multiple, rather than a fraction (if mediation worked), of the value of the dispute (€252,004). The impact on the parties of such costs, as well as on them personally of such drawn-out litigation, were strong reasons in favour of mediation. Noting that all the plaintiff asked was for the court to require the defendant to <i>attend</i> mediation – not to pursue it to a settlement – Twomey J held that to do so in appropriate cases was to allow the court to make best use of its own resources, so a matter of public interest. At most this would <i>delay</i> a litigant’s ability to exercise their right of access to court and to a fair trial, protected by the Irish Constitution and the ECHR art 6. And to encourage individual litigants towards settlement in turn protected <i>other</i> citizens by increasing their access to court for those disputes which need a hearing. Twomey J at [50]: [I]f a judge did not have that power, and had to proceed with the litigation, even though she knew mediation could obviate the need for litigation, this would be akin to a surgeon being obliged to proceed with surgery, and all its attendant risks, even though she believed that non-invasive treatment could avoid the need for surgery. The court therefore had a power to order mediation, with a discretion in each case to decide whether doing so was justified. In the exercise of this discretion, the judge treated the factors suggested in <i>Churchill</i> as equally relevant in Ireland: they argued in this case in favour of mediation, despite the costs and time already spent. But when the court learnt that the defendant’s solicitor had, with conditions as to costs, offered to agree to mediation, Twomey J held that it was premature to order this right away. The focus now shifts to other judges in civil cases – notably in the Irish Court of Appeal: will they follow this reasoning and recognise this wide power to order mediation? What about other forms of ADR? At some point a party unhappy at being ordered to mediate will challenge this as inconsistent with the 2017 Act and	
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	the Practice Direction; but those who do mediate under judicial pressure and whose disputes then settle (or at least reduce the issues still outstanding) may thank Twomey J when they reflect on the costs, time and stress saved.	
9.12.4	On access to legal advice and representation, many regions of Ireland outside cities are increasingly ‘legal deserts’, with no or few solicitors’ firms present – whatever their areas of practice. 479 of 581 recent trainee solicitors accepted contracts in Dublin, as reported by the Irish Independent (13 August 2026). On litigants in person in Ireland, individuals’ right of access to the court is protected by the Constitution art 40.3, the ECHR art 6 and potentially also the UN Convention on the Rights of People with Disabilities (UNCRPD) art 13. On appeal in Kane v Judge of the Circuit Court [2026] IECA 54, a criminal defendant who dismissed her legal team and whose trial judge then refused her an adjournment in order to prepare her case was given leave to challenge her conviction by judicial review. Butler J, giving the judgment of the Court, said at [21]: Whilst a litigant who chooses to proceed in person is not entitled to preferential treatment over litigants who are legally represented, it is certainly arguable that a litigant-in-person who also has a disability may require greater accommodations than would otherwise be the case to ensure that their right of access to the courts is fully vindicated. (especially for the main text to n 438) Involvement of a solicitor is almost always essential in Ireland to issue proceedings, but Peter Shanley SC has established a new legal partnership, Barristers Direct, which aims to encourage direct access by the client if litigation is unnecessary or unlikely: <i>Irish Legal News</i> (21 May 2025) The power to dismiss civil proceedings ‘for want of prosecution’ (‘inordinate and inexcusable delay’ is one formulation of the trigger): one of the largest categories of Irish civil litigation involves defendants attempting to invoke the courts’ power to do this, notably in building defects claims, with <i>Primor v Stokes Kennedy Crowley</i> (n 439) as one of the leading cases. A high-level contribution to the discussion comes from a seven-judge panel of the Irish Supreme Court (Collins J dissenting in part) in Kirwan v Connors [2025] IESC 21. O’Donnell CJ summarises the lessons at [7]: [T]he experience of the 30 years since <i>Primor</i> was decided has shown that the test has not achieved the objectives for which it was devised; ... it would be highly desirable that the Rules of the Superior Courts should be amended to include specific provisions setting out the circumstances in which a case may be dismissed for want of prosecution; and ... whatever approach is taken, whether amended and adjusted <i>Primor</i> (Hogan J), or by reference to Order 122 Rule 11 (Murray J) or existing <i>Primor</i> jurisprudence (Collins J) the result is the same: both the High Court and Court of Appeal were correct to	1/2/3

	dismiss both the 2013 and 2012 proceedings [<i>in the case before the IESC, relating back to events in 2005-2006!</i>]. An early application of this judicial rethink led to an action being struck out in <u><i>Nowak v The Institute of Chartered Accountants in Ireland</i> [2025] IEHC 408</u>. Barry O'Donnell J said at [35]: 'Absent agreement or a court order, it is not open to the plaintiff to force a defendant to wait until the plaintiff is ready to pursue a particular case'. (Mr Nowak is a serial litigant who later had another action struck out for want of prosecution and an <i>Isaac Wunder</i> order – see n 59 in section [1.6] of the book – made against him in relation to all other litigation: <u><i>Nowak v The Courts Service of Ireland</i> [2025] IEHC 484</u>). The Supreme Court's starting point for dismissal, at two years of inactivity, was confirmed and applied in <u><i>Denis Guilfoyle Developments Ltd v Wardrop</i> [2025] IEHC 414</u> (a B2B construction case) and to a potential appeal in <u><i>O'Kelly v McGovern</i> [2025] IEHC 704</u>. In <u><i>McAteer v The Tanyard Development Co</i> [2026] IECA 38</u>, the Court of Appeal (Hyland J, with whom Whelan and Collins JJ concurred) distilled the range of conclusions in <i>Kirwan</i> at [17]: • The law should recognise the passage of time is important and can justify dismissal of a claim without more. • If there is total inactivity for 2 years, the case should only be dismissed if the claim is an abuse of process or there is prejudice to the defendant such as would ground an application under the <i>O'Domhnaill v Merrick</i> [1984] IR 151 jurisdiction. • After 2 years of total inactivity, a claim may be dismissed for want of prosecution, but it is only likely to be if a defendant can point to some additional prejudice or other factor pointing towards dismissal. • If there is 4 years of total inactivity, the claim should be dismissed if it is dependent on oral evidence unless the plaintiff can show compelling reasons why it should not be dismissed. There is no need to point to specific prejudice: the plaintiff bears the burden of showing why the case can proceed. • If there is 5 years plus of cumulative and unexplained delay, including a block of 2 years of complete procedural inactivity (as per paragraph 54 of the judgment of Murray J), it should be dismissed unless there is a pressing exigency of justice that requires the case goes to trial. A good example of the state of the law criticised by the Supreme Court, and the uncertainties to which it could lead – notably about costs – is <u><i>Central Bank of Ireland v Kealy</i> [2025] IECA 61</u>: a defective construction claim in effect run by (and between) insurers, about a structural collapse in 2015. A plenary summons was first issued in 2019, with notice of intention to proceed served in 2022 and a statement of claim in 2023, which the nominal defendant took almost two further years then to challenge, in 2024 coming before a judge in an attempt (unsuccessful) to strike	
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	the whole action out. Another is Ashdrum Lodge Ltd v Barbouti [2025] IEHC 522: see the update above to section [4.5.2]. For the Judicial Committee of the Privy Council discussing ‘want of prosecution’ and the separate ground of challenge of ‘abuse of process’, in the context of delay and civil appeals in the Eastern Caribbean, see Baird v Goldgar [2026] UKPC 23. On funding solicitors’ fees in Ireland by their taking a share of their clients’ litigation recoveries, and the remedies available to the party successfully arguing that such an arrangement is tortious and/or criminal, see Howley v McClean [2025] IECA 77. On appeal at [2026] IESC 34 the Supreme Court reaffirmed the constitutional right of access to the courts, Hogan J saying that treating funding arrangements as unlawful which allow persons of modest means such access should not be undertaken lightly. This was in the context of funding arrangements between the Revenue and a panel of solicitors, a ‘conditional fee’ and ‘no foal, no fee’ basis both being upheld as lawful. (especially for the main text to n 451) As the Irish government said in its September 2025 Action Plan on Competitiveness and Productivity at p 16: While our ‘common law’ system is highly regarded for its fairness and impartiality, Ireland has been criticised over the years for being a high-cost jurisdiction in which to conduct litigation. Ireland can also be slow in delivering judgments and resolving disputes compared to other similar jurisdictions internationally. While other legal systems internationally have modernised their procedures many years ago, some processes and procedures in the Irish courts system have remained largely unchanged since independence more than a century ago. In January 2026, the government published the general scheme of a wide-ranging Civil Reform Bill, intended in part to implement the outstanding recommendations of Peter Kelly J’s reform proposals, including the possibility of pre-action protocols for categories of civil cases and semi-automatic discontinuation of cases not progressed by a statutory deadline. The proposed abolition of the current discovery regime and its replacement with a wide-ranging production obligation will be particularly significant in construction cases: a claimant will be required to provide all documents on which it intends to rely at trial, and likely to be required by the other party to the proceedings, within 28 days of service of the claim form. This would greatly assist in preparing construction defects cases for pre-trial mediation; at present, the effectiveness of mediation can be hampered by inadequate information (eg about remedial proposals and quantum) if undertaken before completion of discovery. The Bill also raises the financial maxima for claims in the District and Circuit Courts. After pre-legislative scrutiny, the Government plans to table the Bill in the third quarter of 2026.	
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	(especially for the main text to n 452) The EU has no plans to regulate third-party funding for civil litigation, as confirmed by Michael McGrath, the Irish Commissioner responsible for democracy, justice, the rule of law and consumer protection: <i>Irish Legal News</i> (20 November 2025). By July 2026, the <u>Court Proceedings (Delays) Act 2024</u> (Ire) had not yet been brought into force, nor had the powers to increase the numbers of judges (at all levels below the Supreme Court) in pt 2 of the <u>Courts and Civil Law (Miscellaneous Provisions) Act 2025</u> (Ire) yet been activated.	
9.14	The Court of Appeal (Civil Division) (E&W) may recommend parties to mediate. It also has an Automatic Referral Scheme, like the first-instance Compulsory Automatic Referral to Mediation (CARM) scheme. This runs via CEDR (including online) and applies to defined classes of case, eg all involving a litigant in person (other than family and immigration cases) and contractual disputes with a judgment or claim value of up to £500,000. Each party taking part must pay an additional fee: <i>Court of Appeal (Civil Division) Guide 2025</i> [9.7]ff. The <i>Guide</i> makes clear that the Master of the Rolls and the Court of Appeal regard as significant the court recommending parties to mediate, or the court identifying the case as suitable for mediation under the Automatic Referral Scheme. If a party chooses to ignore such recommendation or automatic referral, or rejects another party's invitation to mediate, and if such rejection is found to be unreasonable, the court can take this into account under CPR 44.5 when deciding what costs order should be made; it can even result in a costs sanction against parties who otherwise succeed in their appeal. Moves to create a Digital Justice System – under way in England & Wales – raise concerns about creating new barriers for consumers (potential claimants or defendants) who cannot afford legal advice and who do not have reliable access to services offered only (or primarily) online, or who are not skilled in managing digital interfaces with outside organisations. In May 2025, the Futures Group of the Civil Justice Council (E&W) published a report on <i>Digital Disadvantage</i>, exploring the meaning of this recently coined phrase and its links with broader 'access to justice' themes. In parallel, the CJC has a Working Group examining the use of AI in preparing court documents, as many litigants in person are already doing (with mixed results). Similar worries are linked to new pressures to mediate, where attendance is compulsory but meaningful engagement is not. In June 2026, <i>Blind Justice</i> published <i>Settle or be Struck Out</i>, arguing that a represented company or repeat-player defendant can attend, concede nothing, gather intelligence, delay proceedings and leave without adverse consequence, because mediation is confidential and what happens there cannot	1/2/3

	ordinarily be shown to the court. Meanwhile, the costs consequences for ‘unreasonable’ conduct fall primarily on the litigant in person who refuses mediation or insists on the hearing they are legally entitled to. They do not fall in the same way on the represented party who attends simply to stonewall. For other aspects of the same point, see the quotation from the House of Lords Select Committee on the Constitution in the update above to section [9.7.1]. (especially for n 454) On group litigation in Scotland, and the appointment of a representative party, <i>Mackay v Nissan Motor Co</i> was heard before the Inner House at [2025] CSIH 14 (Lord Pentland giving the Opinion of the Court, rebuffing the challenge to the Outer House decision). The issues were further discussed in <i>Bell v Volvo Car Corporation</i> [2025] CSOH 64 (Lord Sandison) and <i>Donnelly v Johnson & Johnson Medical Ltd</i> [2025] CSOH 77 (Lord Young). (especially for the main text to n 461) Correction: what the book calls Civil Automatic Referral to Mediation (CARM) is actually Compulsory Automatic Referral to Mediation; the Pilot has been extended to April 2027. Early figures show the expected increase in numbers of cases referred to mediation, but a settlement rate lower than would have been expected and no impact on the backlog of small claims (Tony Guise on <i>LinkedIn</i>, August 2026). (especially for the main text to n 465) Encouraging non-court-dispute-resolution in civil cases in E&W and protecting unrepresented parties who may be digitally disadvantaged are key features of the Online Procedure Rules, coming into force for possession proceedings (only) – with a draft Practice Direction – on 7 September 2026. The Rules’ Overriding Objective is ‘to promote access to justice by enabling disputes to be resolved by digital means (before or after the start of legal proceedings) quickly, efficiently, fairly and at proportionate cost’. Under r 6, the court or tribunal must seek to: (a) manage online proceedings actively so that they are dealt with quickly and fairly; (b) make sure that all parties and witnesses, whether vulnerable or not, can fully participate in online proceedings and give their best evidence; (c) make sure that all parties are on an equal footing and are treated fairly; (d) promote all forms of dispute resolution in and out of court or tribunal; (e) find ways to make sure that online proceedings are dealt with proportionately to the value, importance and complexity of the case, the court’s resources and the financial position of each party; (f) make sure everyone obeys rules, practice directions and court orders; (g) allow reasonable public access to court and tribunal decision-making.	
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	Comparable duties rest on the parties under r 8.	
10.1.2	On the impact of a contractual ‘defects correction period’ (or equivalent), see also the update above to section [4.12.2].	1
10.1.3	The Treasury review of FOS (July 2025) – see the update above to section [9.6.1] – proposes to add a simple cut-off rule, stopping a complaint being started more than 10 years from the date of the conduct complained of.	1
10.2.2	A claim against an insurance policy for defects in a multi-unit strata development in NSW (not protected under its mandatory Home Warranty Insurance scheme) was central in The Owners – Strata Plan No 81376 v Dyldam Developments Pty Ltd [2025] NSWSC 438 (Stevenson J). Under a ‘last resort’ DDI policy, the insolvency of ‘the builder’ in 2021 was the relevant trigger for the insurer’s liability for the developer’s breaches of the NSW’s ‘statutory transmissible warranties’. Purported claims made before that event did not count under the policy, but the Home Building Act 1989 (NSW) s 103BB preserved their effect, provided the eventual valid claim was made within the ‘long stop’ limitation period under the Act’s s 103BC: ‘within ten years after the work insured was completed’. The original completion certificate for the development dated from 2008, Stevenson J holding that this took effect even though aspects of the work failed to comply with the Building Code of Australia at the time. The Owners Corporation’s claims from 2022 – after the insolvency – were too late and were not saved by the HBA s 92(5), as the policy ceased to be ‘in force’ when the 10 year long-stop was reached.	1
10.3.1	The time limits for complaining to the FOS, as well the scope for doing so, may be subject to change via Part 2 of the Financial Services and Markets Bill 2026 (UK) , discussed in the updates above to sections [9.6.1] and [10.1.3].	3
10.4	A court or tribunal will not raise a limitation (or prescription) issue if no party does, and in a formal way; in civil litigation, to mention ‘laches, delay and acquiescence’ in the pleadings is not enough: Kearney v Kearney [2026] NSWCA 43 (Adamson JA, with whom Ward P concurred, and McHugh JA). In Kuvera Properties Pte Ltd v Far East Opus Pte Ltd [2026] SGCA 34, the Court suggested at [25] a framework for dealing with a limitation issue raised by a defendant: [W]hen a court is faced with a claim that the claimant’s action has been commenced out of time due to the operation of a limitation period, the court should adopt a systematic approach that considers the following issues in order: (a) First, the court should identify the cause(s) of action which the claimant has advanced.	1/3

	(b) Second, the court should identify the applicable limitation period(s) (if any) for the cause(s) of action that the claimant has advanced. (c) Third, the court should consider when the limitation period(s) started to run against the claimant for the cause(s) of action advanced. (d) Fourth, the court should determine whether the claimant had commenced its action for its cause(s) of action within the limitation period(s). If limitation rules are treated as ‘only procedural’ (unlike Scotland’s prescription rules, which can extinguish an obligation), the retrospective extensions of the limitation rules in the Building Safety Act 2022 – see the update below to section [10.5.2] – pose fewer problems about ‘the rule of law’ (hence also their compatibility with the European Human Rights Convention and its First Protocol) than creating new rights of action, many available against past actions and omissions: see section [5.10.4] in the book and the update above to that section.	
10.5.1	(especially for the main text to n 56) How do limitation provisions deal with requests for a declaration, rather than ‘some form of substantive relief’? Discussed in a B2B construction context in relation to adjudication and to the English law of limitation, Lord Mance (giving the judgment of the court) in <i>Aspect Contracts (Asbestos) Ltd v Higgins Construction Plc</i> [2015] UKSC 38 laid down the principle that declaratory relief might still be available after a substantive claim was time-barred; but to ask for a declaration that a contractual right has accrued or that a breach of contract has occurred would be barred if an action for damages arising out of the same facts was already barred. These issues, and relevant later English case law, are discussed in a Singapore context (with identical relevant statutory provisions), by AR Elton Tan Xue Yang in <i>Nasrat Lucas Muzayyin v The Tyrell Solution Pte Ltd</i> [2025] SGHCR 38. The Supreme Court in <i>URS v BDW</i> [2025] UKSC 21 acknowledged at [70]ff that the House of Lords in <i>Pirelli</i> (n 60) wrongly assumed that building defects counted as ‘physical damage’, rather than ‘pure economic loss’ (the need to spend money on rectification, or a drop in the value of the building); and may have been wrong in asserting, in relation to what would now be termed pure economic loss, that time starts running before the defect was discovered or even reasonably discoverable. But at Supreme Court level the point was not fully argued, so the possibility of overruling <i>Pirelli</i> did not arise. Consistent with <i>Pirelli</i>, Coulson LJ in the Court of Appeal at [2023] EWCA Civ 772, 209 Con LR 24, [2023] BLR 437, [2024] KB 827 (summarised at n 60 in the book) provides the most recent authority on accrual of the cause of action in a construction defect context. The Supreme Court also pronounced on the start of the	1/2/3

	specially short period for a claim against a third party by way of contribution: see the update above to section [9.7.3]. In Singapore, buyers of shop units argued that the usable size (and other aspects) of their units had been misrepresented by the developers. Their ‘cause of action accrued’ not when they committed to buy but when they took possession, at that point for the first time seeing what they had bought: Cheung Teck Cheong Richard v LVND Investments Pte Ltd [2025] SGHC 161 (Wong Li Kok Alex J). For discussion of limitation rules and ‘accrual’ of a cause of action in tort for defective construction work – with comparisons from a range of common law jurisdictions – see Kevin Touhey, ‘It’s always the First Place You Look: Finding Harm and Completing the Cause of Action in Negligence for a Defective Building’ (2026) 43 <i>International Construction Law Review</i> 306.	
10.5.2	In URS v BDW [2025] UKSC 21 at [78]ff the Supreme Court confirmed the effect of the Building Safety Act 2022 s 135, as understood by the Court of Appeal: it extends (where necessary, as in this case, revives) the limitation period retrospectively to 30 years for claims under the Defective Premises Act 1972 (E&W) s 1 which had ‘accrued’ even before the commencement date of that BSA provision. This covers proceedings already ongoing at that date, like BDW’s action against URS. Without a solvent developer (or other) defendant now, legally responsible for work done long ago, this extra time will not help claimants; and a claim on insurance may not be assisted by the BSA 2022 s 135. (especially for n 72) A useful summary of the doctrine of <i>laches</i> comes from Audrey Lim J in Lin Tze Kin v Lim Sze Ong [2026] SGHC 129 at [156], quoting earlier case law [emphasis in the original]: Laches is a doctrine of equity. It is properly invoked where essentially there has been a <i>substantial lapse of time</i> coupled with <i>circumstances where it would be practically unjust to give a remedy</i> either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted ... This is a broad-based inquiry and it would be relevant to consider <i>the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability</i> in allowing the claim to be enforced ... (especially for the main text to n 80) On the history and meaning of ‘specialty’ in the Limitation Act 1980 (E&W) s 8(1) and on the possibility that certain types of claim or action may have no statutory limitation period at all in English law, see THG Plc v Zedra Trust Company (Jersey) Ltd [2026] UKSC 6. The same idea also appears in Singapore law in Kuvera Properties Pte Ltd v	1/2/3

	Far East Opus Pte Ltd [2026] SGCA 34. The case also analyses the limitation periods applicable to claims relying on the Misrepresentation Act 1967 (shared between English and Singapore law); rights and remedies under the Act are discussed in the book at section [4.4.4]. The limitation position of claims by consumers relying on rights or remedies in the Consumer Rights Act 2015 (UK) or its Irish equivalent seems not yet to have reached the courts. (especially for n 84) In addition to special rules limiting the possibility of modifying or adding a claim or defence once the limitation period has run out, general procedural rules may require such changes to satisfy a series of discretionary tests, even if made at an earlier stage: in English law, see IDDQD v Codeberry [2025] EWHC 712 (Ch) (Judge Bacon). A Court of Appeal case about the breadth of the court’s discretion in English law to substitute a party after expiry of the limitation period is now (August 2026) listed for hearing in the Supreme Court: Adcamp LLP v Office Properties PL Ltd [2026] EWCA Civ 50.	
10.5.3	On the Limitation Act 1980 (E&W) s 32 (the impact of fraud, concealment or mistake on the starting of the limitation period in tort, including for claims of deceit), see Transworld Payment Solutions UK Ltd v First Curaçao International Bank NV [2025] EWHC 2480 (Ch) [614]ff (Leech J). Arif v Sanger [2025] EWHC 1540 (KB), applying Seedo v El Gamal [2023] EWCA Civ 330 at [70]ff (Nugee LJ, Birss and Bean LJJ concurring) considers when separate allegedly fraudulent representations together constitute a single cause of action with its own starting point for limitation purposes, or separate causes of action. On the test of ‘reasonable diligence’ – to discover a fraud – and on proof of loss caused by the deceit, see Mather v Rattan [2025] EWCA Civ 1596 (Snowden LJ, with whom Males and Lewison LJJ concurred). The New Zealand Supreme Court in Whangarei DC v Daisley [2026] NZSC 72 considered in depth the pre-2011 NZ legislation on fraudulent concealment, considering the UKSC’s views on the equivalent English rules in <i>Canada Square</i> (n 85 in the book). The majority judgment concluded at [124]: [T]here must be actual knowledge (or, in cases of wilful blindness, imputed awareness) both of the essential facts constituting the cause of action, and that those facts together involve a wrongful act against the plaintiff. (especially for n 89) Ben Parker (BBC News, Suffolk) reported on 10 June 2025: [St Francis] ‘Tower Block Residents Unable to Return for a Year’.	2/3
10.5.4	On the Limitation Act 1980 s 14A, recent Court of Appeal authority – in the context of a professional negligence claim against a firm of solicitors and illustrating divergences of judicial approach – comes from Kay v Martineau Johnson [2026] EWCA Civ 224.	2/3

	For a Singapore court engaging with its equivalent provisions to English law on latent defects, knowledge and the start of the limitation period, see <i>Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd</i> [2024] SGHC(A) 32 .	
10.7	(especially for n 107) The 2026 edition of the <i>TCC Guide</i> maintains the same text at section 2.3.2.	3
10.8.1	For the operation of the pre-2011 ‘accrual of the cause of action’ rules, defining the normal start date for time running, see <i>Whangarei DC v Daisley</i> [2026] NZSC 72, also discussed in the update above to section [10.5.3]. For a ‘leaky building’ case and the ‘late knowledge date’ provisions of the <i>Limitation Act 2010</i> (NZ) s 14, see <i>To’o v Wellington City Council</i> [2025] NZHC 216, discussed in the update above to section [4.14.1]. For the English equivalent (<i>Limitation Act 1980</i> (E&W) s 10) of NZ’s special limitation rule for contribution proceedings, see the update above to section [9.7.3].	1/3
10.8.2	In <i>The Owners – Strata Plan 87003 v Raysons Constructions Pty Ltd</i> [2025] NSWSC 66, Leeming JA considered the limitation rules applying to actions for breaches of the NSWHBA statutory warranties, in the Act’s s 18E(1)(e), especially the triggers for the relevant times starting to run. He set out his overall interpretation of the provision at [84]: If there is an actual defect or deficiency which not only becomes apparent in the first 18 months or 5½ years following completion but which also is rectified, such that no one is aware of any other breach of statutory warranty resulting in a further defect or deficiency and there is no longer any proper basis to consider that there has been a breach of statutory warranty resulting in a further defect or deficiency, then a plaintiff will not for that reason be disentitled from commencing proceedings in the additional six months provided for by s 18E(1)(e) if some claim for breach of warranty first becomes apparent in the last six months of the warranty period. Rees J gave detailed consideration to NSW’s 10-year longstop (currently under s 6.20 of the Environmental Planning and Assessment Act 1979 (NSW) – see the update to section [3.6.1] for its proposed new home in the <i>Building (Approvals and Practitioners) Act 2026</i> (NSW)) in <i>Fortius Broadway No 1 Pty Ltd v ACN 103 211 141 Pty Ltd (formerly known as Watpac Construction (NSW) Pty Ltd)</i> [2026] NSWSC 710, a case involving defects claims (including planter pots falling to the ground) arising from the architecturally-striking One Central Park development in Sydney. This included analysis of NZ’s <i>Beca Carter Hollings & Ferner</i> (n 110), which she observed (at [72]) to ‘illustrate competing considerations in the interpretation of s 6.20... with alacrity’.	2/3

10.9	Illustrating the continuing relevance to modern Irish law of the English law of limitation before the Statute of Limitations 1957 (Ire), see Mars Capital Finance Ireland DAC v McDaid [2026] IECA 134 (Costello and McDonald JJ) at [14]ff. (especially for the main text to n 146) Smith v Cunningham (IESC) and linked earlier cases, considering when ‘damage’ occurs in pure economic loss cases, starting time running, were relied on in Casey v Governor & Company of Bank of Ireland [2025] IECA 66 (Costello J), overturning the High Court below: [59] It is clear from the authorities that one approach is to ask when could the deceased have sued the appellants? The answer is when ‘<i>provable injury capable of attracting compensation occurred</i>’ and that is when it is ‘<i>available to be proved</i>’. At [60] in <i>Smith</i>, the question is when was an ‘<i>immediate, measurable economic disadvantage</i>’ or a loss which is ‘<i>sufficiently measurable</i>’ sustained? Once that has been sustained, then the time starts to run for the purposes of the statute.	1/3
10.10	For the impact of the statutory Scots law prescription rules – with special provisions for continuing breaches and fraud or error, now modified by the 2018 Act – see Multiplex Construction Europe Ltd v Nightingale Architects Ltd [2025] CSOH 58 (Lord Braid). This is satellite litigation (a Preliminary Proof) to cladding-related claims by employer against main contractor in Glasgow’s Queen Elizabeth University Hospital project, with the project architects and others ‘convened’ – brought in as third-party defenders. Neither of the statutory ‘escape routes’ was engaged: under s 6(4) of the 1973 Act, the employer’s unawareness of the defects was not induced by the main contractor’s error, but in any event the five-year prescription period restarted (enough to have ‘run out’ before litigation was started, seven years after practical completion) when the employer failed to undertake those checks on build quality and compliance which it should reasonably have done. Further litigation from the same project, similarly on prescription issues and the 1973 Act (before the 2018 Act), is reported as Greater Glasgow Health Board v Multiplex Construction Europe Ltd [2026] CSIH 16. Here, too, the commercial judge held that GGHB did not know about the non-compliant ACM cladding, but failed to prove as a matter of fact that it had been induced into error by Multiplex. In any event GGHB could with reasonable diligence have discovered the alleged error in time. Lord Pentland in the Inner House was unconvinced that the commercial judge reached conclusions which were ‘plainly wrong’ on the evidence before him. For further discussion, in a B2B construction context, of how the 1973 Act applies to a range of possible claims in contract – some related to allegedly non-compliant cladding – see Ogilvie Construction Ltd v M1 RE Glasgow Ltd [2026] CSOH 44 (Lord Lake).	1/2/3

	The Court of Session has also confirmed, reviewing extensive case law, that a civil claim for breach of contract started in court within the standard five-year statutory period normally stops time running in relation to that claim, provided that it gives ‘sufficiently fair notice of the nature of the claims being advanced at the outset and that nature has undergone no fundamental change [in later procedural stages]’: Lord Sandison in Pipeline Cleaning Solutions Ltd v Coretrax Technology Ltd [2025] CSOH 122 at [61]. In the case itself, the defender was still free to argue that the prescription period had already elapsed before the first claim was made. Scots law, like English law – see the main text to n 84 in section [10.5.2] – has doctrines seeking to protect a defender against changes being made in the basis of the claim or the remedies sought once the prescription (or limitation) period has expired, though the original claim was clearly ‘in time’. Like English (and Irish) law, Scots law includes special time limit rules in relation to claims for personal injury, under the current text of the 1973 Act ss 17-18, with special rules for claims under the Consumer Protection Act 1987 (UK): the 1973 Act’s Part IIA; neither are discussed in the book. For the English equivalents, for personal injury actions in general, see the main text to nn 90-91 in section [10.5.3]; under the 1987 Act, see section [5.10.5]. Time limits have become problematic, as in English law, about mesothelioma, an incurable fatal lung condition with a long latency period, often linked to occupational asbestos exposure. Statutory reform was announced by the Scottish Government in June 2026: ‘Fairer Time Limits for Mesothelioma Patients’.	
10.12	(especially for n 169) For an example from Scotland of a potential claim for personal injuries lost by failing to advise in time on considering starting proceedings in England, combined with the ‘loss of a chance’ cases like Perry v Raleighs Solicitors [2019] UKSC 5, [2020] AC 352, defining how negligent legal advice might result in liability, and for what, see Gough v Cannons Law Practice [2025] CSOH 28 (Lord Richardson). If litigation reaches court but is then ‘prescribed’, the pursuers’ solicitors being negligently responsible, the recoverable damages will certainly include the court’s allocation to that party of the expenses of the failed case (‘costs’, in English terminology): see Drouet v BTO Solicitors LLP [2026] CSOH 66 (Lord Cubie) From England, see Siem v Womble Bond Dickinson [2026] EWHC 1168 (Ch): a spectacular professional negligence action, with £50m claimed and one of the claimants allegedly having spent over £3m in costs before the three-week trial. At [190]ff Richards J explained how judges deal with a ‘counterfactual’ – the scenario a claimant asserts would have had at least a measurable chance of resulting, had the defendants’ alleged negligence not taken place. In the case itself, the judge rejected the proposed counterfactual as unrealistically unlikely, as well as the claims of breaches of duty by the defendant solicitors. An equally	1/2/3

	instructive professional negligence example is Gordeno v Irwin Mitchell LLP [2026] EWHC 136 (Ch), where counterfactuals, the types of recoverable loss and their quantification were centre stage. From Australia, on the pleading requirements for counterfactuals, see Singh v Singh Homes Pty Ltd [2026] VSCA 191 at [68]ff (McLeish, Walker and Donaghue JJA) and <i>R Lawyers</i> in the HCA, quoted below. For an example of a counterfactual in action about a home purchase, see section [5.9.5] in the book and its update above. On the liability of a firm of solicitors for failure to serve a claim form during the limitation period, see Mitchell v Leigh Day [2025] EWHC 1081 (KB) (Master Stevens). For a reminder that the terms of a solicitor’s retainer usually limit the scope of the solicitor’s potential liability, see Michael James Cochrane v Harper Macleod LLP [2025] SC GLA 75 (Sheriff DN Taylor). For a similar approach to loss of a chance from the High Court of Australia (Gageler CJ, Jagot and Beech-Jones JJ), see R Lawyers v Mr Daily [2025] HCA 41 at [42]: To establish his case against R Lawyers in negligence [in both contract and tort], it was necessary for Mr Daily [the client] to prove on the balance of probabilities that the breaches of the duty of care owed to him by R Lawyers were a cause of loss or damage ‘(in the sense of detrimental difference)’. While that standard of proof is not exacting and ‘does not require certainty or precision’, that standard is not discharged by merely proving the loss of a possible chance of a better outcome. In some contexts, a lost opportunity may constitute loss or damage in tort; even in those cases, the opportunity must itself be of some value: it must be shown that there was a ‘substantial prospect of a beneficial outcome’ but for breach of the duty of care. On other aspects of ‘counterfactuals’, see the updates above to section [5.9.5]. The Building (Developer Bond) Regulations 2026 (Vic) support the regime foreshadowed in n 176, with the regime essentially to apply to residential apartment buildings for which the building permit is issued after 1 July 2027 (reg 8). Further exemptions to the scheme (by way of amendments to the Building Act 1993 (Vic)) are set out in pt 12A div 3 of the Consumer Legislation Amendment Act 2026 (Vic).	
11.1	Service charges and managing agents (E&W): see the update above to section [6.5.2]. (especially for the main text to n 10) In July 2025 the MHCLG announced the Fire Safety (Residential Evacuation Plans) (England) Regulations 2025 (SI 2025/797), to come into force on 6 April 2026, for a version of the Personal Emergency Evacuation Plans (PEEPs) recommended by the Phase 1 report of the Grenfell Tower Inquiry. Peter Apps summarises the new regime in a July 2025 edition of his Peter’s Substack blog: The government will require building owners to identify all people in buildings above 18m (and those in buildings between 11m and 18m	1/2

	where there are known issues) who would struggle to evacuate without help. They must then offer a ‘person-centred fire risk assessment’, if requested by the resident, to discuss how to mitigate particular risks and improve their chances of evacuation. If the resident consents, they will then produce an ‘emergency evacuation statement’ and share the information with the local fire service ... In some respects, this is good policy. It puts a lot of the power in residents’ hands, effectively by giving them the right to be offered bespoke fire safety arrangements. It might not be full-fat evacuation plans, but it takes away the situation at Grenfell (and most other blocks) where individual vulnerabilities were completely ignored and any questions swept under the comfort blanket of ‘stay put’. But a very serious downside is the absence of any funding. (especially for n 13) On possible insurance reforms in leasehold developments (E&W), see the update above to section [7.7]. (especially for the main text to n 16) The primacy of the text of the lease could mean that a ‘full repairing’ obligation on a long-term commercial tenant requires the tenant to remediate original construction defects compromising safety (and pay for this) - if clearly expressed and if a well-advised tenant is willing to take on this responsibility. For an example where a tenant in effect did – attempting unsuccessfully to get out of this responsibility – see Into Nominee One Ltd v Study Group UK Ltd [2026] EWHC 1201 (TCC), discussed in the update below to section [11.4.2]. Conversely, a landlord retaining responsibility for keeping the building ‘in good and substantial repair and condition’ and for complying with all ‘legal obligations’ could be obliged to replace combustible cladding. This was the case – the meaning of these phrases requiring litigation – for a purpose-built 16-storey hotel in NW London in Essendi UK Hotels 2 Ltd v London Property Company Ltd [2026] EWHC 1354 (TCC) (Judge Stephen Davies). Unlike the closely comparable residential example of <i>Citiscap</i> in section [11.4.2], the lease appears to have contained no provisions allowing the landlord to pass the cost of such work to the leaseholder via service charges; if it had, the commercial tenant of such a block would enjoy none of the protections most residential long leaseholders in E&W enjoy under the BSA 2022, as summarised in Table 11.1. (especially for the main text to n 16) In E&W, the FTT has statutory powers to vary long leases of flats, under the current text of the Landlord & Tenant Act 1987, pt IV. For recent examples of this power being exercised, see 56 Westbourne Terrace RTM Co Ltd v Polturak, Davies [2025] UKUT 88 (LC); Weycroft Weybridge Ltd v Ian Wilson, Jill Wilson [2025] UKUT 64 (LC); and Eastern Pyramid Group Corporation SA v Spire House RTM Co Ltd [2025] UKUT 292 (LC).	
11.2.1	Inadequate cavity barriers in multi-unit developments in England & Wales: commentator Peter Apps noted in Peter’s Substack (August 2025) that in the first half of 2025 house builder Taylor	1/2/3

	Wimpey booked a loss of £92m, because of £222m worth of fire safety repairs – predominantly £145m for fixing defective cavity barriers behind brickwork and render: We have been here before. In 2019, an independent report into the country’s second largest housebuilder, Persimmon, found a ‘systemic nationwide problem’ with missing and/or incorrectly installed cavity barriers in its homes, prompting a recommendation that its board reconsider the company’s entire ‘purpose and ambition’. So why does a modern country in the 21st century, with ambitions to build 300,000 homes every year through its apparently vibrant private sector, have such trouble correctly fitting the rolled-up bits of mineral wool insulation that stop fire spreading through unseen gaps? [The recommendation Apps mentions comes from the independent report by Stephanie Barwise QC, mentioned in the book at n 18 to section [11.2.1]; it is no longer accessible on Persimmon’s website.] Fire-stopping of services within multi-unit residential blocks: a reporter to <u>CROSS-UK</u> (Report 1201, August 2023) recorded numerous compartmentation surveys in residential flats showing inadequate and incomplete fire stopping of cables and services, as they passed through compartment walls - either as part of the initial build or following subsequent installations after occupation. They included fire alarm systems, communications wiring and general electrical works. As well as creating new penetrations, later work may damage existing fire stopping systems, rendering them ineffective. These compartmentation defects are very often in unseen locations, for example above false ceilings, and therefore not obvious to building owners and managers. The reporter estimated that 70% of residential flats seen in the last 12 months had some compartmentation issues. A later report came to similar findings: ‘<u>Widespread Compartmentation Issues Found in Flats</u>’ (Report 1512, June 2026). On CROSS, see the update above to section [5.7.2]. Defective or inefficient district heating systems or networks (a single boiler or heat pump unit supplying heating and hot water to many residential units, in some cases cooling too): there are issues about the cost of the energy supplied, the need for repair/upgrading and who funds any work needed. This is seldom a life-threatening issue in multi-unit developments, but can lead to increasing ongoing costs for long leaseholders or tenants and intolerable heat in hot weather. Repair or replacement – or bringing a system up to new energy efficiency standards being planned by <u>DESNZ</u> for the UK – may cost as much as remediation of combustible cladding. Under the terms of long leases, such work will often fall on long leaseholders via the variable service charge (no statutory protection against this, save general controls on the reasonableness of service charges), and no BSA 2022-type	
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	mechanism to shift responsibility to the original developer or its parent company. Further complicating the situation, the central unit may be in a part of the development owned by a different freeholder/landlord from some of the residential units connected to the network. Consumer Scotland analysed the situation north of the Border in a January 2026 report: Challenges Facing Heat Network Customers in Scotland; in E&W, see the DESNZ/DBEIS Heat Network Efficiency Scheme (June 2026). The DESNZ has given the regulator Ofgem new powers across the UK (except NI): ‘Heat Network Customers to be Shielded from Unfair Price Hikes’. See also, Zoe Wood, “Plainly wrong”: London Flat Dwellers Fight Shock £200,000 Heating Bill’ <i>The Guardian</i> (7 February 2026).	
11.2.2	For anonymised analysis of 12 RAAC panels failing simultaneously on a UK building, already inspected and classified as ‘high critical’ under the IStructE guidance, see CROSS-UK, Sudden Failure of Several RAAC Roof Panels (Report 1377, April 2025). And for a plan to demolish 350+ council-built homes near Aberdeen, the City Council rehousing tenants, buying privately-owned homes back and selling owners a new home elsewhere, see Kirstie Topp, ‘Council to Demolish Torry RAAC Homes “As Soon As Possible” Amid Aims to “Rebuild Balnagask”’ <i>The Press & Journal</i> (26 August 2025). On water penetration of CLT structures, see CROSS-UK, Water Ingress to Cross-Laminated Timber Structural Frame (Report 1124, June 2022). On CROSS, see also the update above to section [5.7.2].	1
11.3.1	(especially for the main text to n 34) A summary of the applicable Rent Standard, in line with a direction from the previous Government, and guidance from the Regulator of Social Housing, was published in February 2026. For an overview of the Regulator’s activities, see its Regulatory Casework Review 2026 (July 2026). (especially for n 38) The changes to security of tenure included in the Renters’ Rights Bill became law in the Renters’ Rights Act 2025 (E only). (especially for the main text to n 42) A landlord similarly has a right to an injunction against a tenant in order to ensure its ability to inspect the premises, as provided for in the tenancy terms, with contempt of court (a potential prison sentence) as the sanction for failure to comply: see Connexus Homes Ltd v Weaver [2025] EWCA Civ 655 (a rare example of an appeal case where the lay respondents appeared in person); on access, see also Stonewater Ltd v Harris [2026] EWCC 42, discussed in the update above to section [9.1.2].	1/2/3

11.3.2	(especially for n 47) For new statutory requirements on residential landlords in England to provide information to tenants, see the update above to section [4.5.1].	2
11.4.1	(especially for n 59) Correction: the Leasehold (Ground Rent) Act 2022 (E&W) should be the Leasehold Reform (Ground Rent) Act 2022 (E&W); the mistake is carried through to the Table of Statutes on p lxxxiii. Reservation fees and their terms: in a UK context covered by the New Homes Quality Code, a reservation agreement must include the amount of reservation fee, the property purchase price, the customer's right to cancel within the reservation period and that there is a 14-day cooling-off period, during which the customer can cancel the agreement and receive a refund of the full reservation fee. On the <i>Code</i>, see section [6.7] and its updates above. (especially for n 69) <i>Avon Freeholds</i> went on two further appeals. The Court of Appeal at [2025] EWCA Civ 1016 (Sir Launcelot Henderson, Jeremy Baker and Newey LJJ concurring) held that the statute clearly spelt out the negative impact of failure to serve a notice of participation on a qualifying tenant (towards possible appointment of an RTM company), thus reversing part of the Upper Tribunal decision and confirming the procedural obstacles ahead of those who want to manage their own development. The Supreme Court took the opposite view (unanimously, Lord Briggs giving the sole judgment): Avon Freeholds Ltd v Cresta Court E RTM Company Ltd [2026] UKSC 31. It was only the third RTM case to reach this Court. (especially for the main text to n 72) For an example of all of these issues – about allegedly defective window frames in student accommodation in Liverpool, legal action being taken by long leaseholders against their immediate landlord and the blocks' management company – see Better Intelligent Management Ltd v Zaid Alothman Holding Ltd [2025] EWHC 392 (Ch) (Richard Smith J). (especially for n 73) For another example of a court or tribunal preventing a landlord's legal costs from being recovered from leaseholders via service charges, see Triplark Ltd v Howard [2025] UKUT 232 (LC) (Judge Elizabeth Cooke). On earlier legal issues in the same London N6 development, see n 117 in section [3.4.5] in the book. For Court of Appeal discussion of long leaseholders' statutory rights (E&W) to challenge the reasonableness of service charges for long-term agreements (eg for the installation and maintenance of communal heat and power plants) under the Landlord and Tenant Act 1985 s 19, see Spender v FIT Nominee Ltd [2025] EWCA Civ 1578; on the limited scope for challenging the reasonableness of a landlord's service charge decision-making in contract alone, see Bradley v Abacus Land 4	1/2/3

	Ltd [2025] EWCA Civ 1308. On the meaning of ‘service charge’, see Barton v Platform Housing Ltd [2025] UKUT 369 (LC). On the right approach to interpreting a lease, see Weinberger v BHRM Ltd [2025] UKUT 160 (LC), also Males LJ (Snowden and Dove LJJ concurring) in relation to leases granted under ‘right to buy’ legislation in The Mayor and Burgesses of the London Borough of Tower Hamlets v Leaseholders of Brewster House and Malting House [2025] EWCA Civ 1591 at [38]ff. The Court held that the cost of remedying structural defects deriving from the form of construction originally used (Large Panel System) could not be imposed on the leaseholders via the service charge.	
11.4.2	Illustrating the impact of the slow speed of remediation of high-rise residential developments, as well as much greater awareness of the downsides of the current legal regime for long leaseholds in England & Wales, figures published on LinkedIn (January 2026) by Rod Turner on the percentage of London homes sold at a loss (against their purchase price) show a steady rise in such losses for flats from fewer than 10% of 2016 sales up to more than 20% of 2025 sales; the comparable figures for London houses remain less than 5% through the whole period. The BSA 2022 – under complex conditions – protects many long leaseholders against the cost of remediation (see Table 11.1); but the impact of leasehold tenure on multi-unit developments also makes it much harder to ensure that remediation work, even when required under a court or tribunal order, actually takes place as required and by a prescribed deadline. Meanwhile, leaseholders are living in homes which are dangerous, potentially uninsurable (or only insurable with high premiums and heavy excesses) and perhaps unsellable to anyone needing mortgage finance. This picture is confirmed by figures from estate agents Hamptons, reported by Leasehold Knowledge Partnership: [Flat sellers] represented 90.0% of [London] homes sold at a loss, up from 78.4% in 2019. Last year, 28.2% of sellers in Tower Hamlets [with the highest density of flats second to Westminster] sold for less than they paid, the highest figure in both the capital and the country, with flats making up 90%+ of all sales in the area. Current mortgage lending rules, cladding uncertainties, anxieties about service charges etc and the halting pace of reform are also slowing the pace of sales. Based on property website data, Rupert Jones in The Guardian (8 August 2026) reported that most leasehold flats in England on sale in 2025 failed to find a buyer within six months, London having the highest figure at 87%. A legal argument rarely attempted in a lease context surfaced in relation to a Grenfell Tower type claim: significant non-compliant features compromising the fire safety of a residential building in Brighton (UK). It had been occupied from new in 2007 by a college as tenant on a 25-year full repairing lease. Could the	2/3

	tenant now argue that discovery of the defects – if shown to be in the building as constructed and predicted to take about two years to remedy, the building meanwhile being uninhabitable – frustrated the lease, bringing it to an end? In <i>Into Nominee One Ltd v Study Group UK Ltd</i> [2026] EWHC 1201 (TCC), Roger ter Haar KC reviewed the English case law on the frustration of contracts, and its specific application to leases (and agreements for leases), in the context of a strike-out and linked summary judgment application for rent from the landlord. Finding against the tenant, the judge said: [110] ... the Parties did not assume that the Premises would be defect-free. On the contrary, the Agreement provided for a defects liability period during which manifest defects would be remedied. Nor did the Parties assume that after the defects liability period had expired there would be no latent defects: to the contrary, Clause 9.3 of the Agreement excuses the Landlord from further liability after the expiration of the defects liability period, which must be a reflection of an acceptance that there was a possibility of defects emerging. Similarly ... the expectation that deeds of warranty will be in place is consistent with the usual understanding in arrangements of this type that there may be latent defects in the built structure(s) which had not become manifest and/or had not been identified by the end of the defects liability period. [111] Thus, it is impossible to conclude that the Parties had a joint expectation that the Premises once let would be defect-free, or contain defects to a certain extent but no further, or contain defects of a certain type but no others ... [130] ... this appears to me to be a case where the Parties have allocated the relevant risk and either took into account or should have taken into account that there could be fire safety defects in the Premises of sufficient seriousness that the Premises might need to be rebuilt or remedied so as to prevent their use for [the tenant's] educational purposes.	
11.5	For a summary for England of implementation of both Grenfell Tower Inquiry reports, see Grenfell Tower Inquiry Government Progress Report (June 2026), linking to individual sectoral reports on different aspects of the reports' conclusions and recommendations, in February 2026 the MHCLG published its Annual Report on implementation of the GTI Phase 2 Report. For an up to date (on publication) summary of litigation relating to the BSA 2022, with incisive analysis of its provisions, see Dovar & Sawtell on The Building Safety Act (Sweet & Maxwell, October 2025). Readers should bear in mind that in English law an individual tribunal decision – like a single judgment of the TCC or any other version of the High Court – does not 'make law': our version of the common law doctrine of precedent does not require later tribunals or judges at the same level to follow earlier views of the law, nor are all tribunal decisions routinely published or easy to find. For a possible new common law basis of claim by long	1/2/3

	leaseholders against their landlord for remediation of safety-critical defects, see the update above to section [5.2]. Table 11.1: PAS9980:2022 has become contentious, in the light of consultation on a redraft and a MHCLG plan to make its use mandatory by law. Fire specialists have sharply differing views about its value – notably the concept of a ‘tolerable’ risk – and the best way(s) to ensure reliability in fire safety assessments of existing buildings. The debate is summarised by Peter Apps in Peter’s Substack (January 2026). Table 11.1: in July 2026, the MHCLG announced a short window for applications for funding for remediation of unsafe cladding for multi-occupied residential buildings in England <i>under 11m in height</i> – where an external wall system presents a risk to life via fire spread, identified through a PAS 9980:2022 compliant assessment and where the risk is assessed as not tolerable without mitigation or remediation. The machinery and basic rules follow the existing CSS scheme, operating via Homes England; applications opened in August 2026 for an eight-week period, with the building’s ‘responsible entity’ (only) able to apply: the person or entity ‘with the legal responsibility or right for a building’s external wall repair and maintenance’. Before funding is confirmed, responsible entities will be asked if they have explored redress measures or alternative funding routes, such as insurance claims, developer contributions, or warranty schemes. In July 2025 proceedings, as a sequel to the <i>Centrillion Point</i> case (n 99 to Table 11.2), the freeholder asked the FTT (Property Chamber) to extend the 18-month deadline for remediation work in its earlier Remediation Order by 68 weeks. The freeholder blamed delays in negotiating with the original developer which had converted the 13-storey block from offices (now appointed to remediate), requesting the extra time not to start until at least application had been made for Gateway 2 approval to the Building Safety Regulator (not yet done). The FTT held that its powers did not permit an open-ended date for completion of works; nor was it appropriate to allow such an extension, strongly opposed by the leaseholders: [18] [T]he purpose of a remediation order is to remedy specified relevant defects. The Tribunal’s jurisdiction under section of the BSA is not concerned with who pays for those works. While the advantages to the Respondent to Durkan [original developer] undertaking the work can be understood from its own financial perspective, it was always the Respondent’s obligation to ensure that the specified relevant defects were remedied in accordance with the time stipulated in the Order. The Respondent could at any time have sought a remediation contribution order from the developer but has never done so. As such, the lack of cooperation from the developer can only be of limited relevance to the application before us. Illustrating a local authority successfully agreeing a Remediation Order with a building freeholder or landlord, adopted by the FTT instead of a planned hearing, see Bournemouth, Christchurch and	
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	<i>Poole Council v Sovereign Network Group (1-31 Oyster Bay Apartments, Sterte, Poole BH15 2FN)</i> (HAV/00HQ/BSA/2025/0002, 10 April 2026). What is a ‘building safety risk’ in the BSA 2022 s 120, for the purpose of granting a Remediation Order (RO), where all the other conditions for such an order are present? The FTT discussed the case law so far in <i>Kieft v Hyde Housing Association Ltd (2 Hillside, London NW10)</i> LON/00AE/BSA/2024/0503 (September 2025). The tribunal held that it could specify the defects needing remediation; it could not impose a detailed specification of the works to be undertaken, nor could it require a signed EWS1 form when remediation was complete. The FTT has no powers to sanction a freeholder for failure to complete remediation by the date in a Remediation Order, but leaseholders can apply to the County Court for damages and/or an injunction – which may not guarantee a swifter completion of the project. To give the FTT additional powers would put it in a role of surrogate project manager – not necessarily well informed enough to carry out the task. On potential criminal sanctions for failure to remediate, see the update below to section [11.5.5]. Illustrating how remediation cases under the BSA 2022, starting before tribunals, can easily also involve traditional litigation, the <i>Centrillion Point</i> case above led to a Remediation Agreement. The original developer of the development into dwellings, Durkan, agreed to pay for remediation of ‘relevant defects’ for Wallace, the development’s overall freeholder and landlord, Durkan otherwise being at risk of a Remediation Contribution Order at Wallace’s initiative. Could Wallace validly terminate the Remediation Agreement (now seeking an RCO against Durkan and its parent), and what was the impact of the BSA statutory framework on the ordinary right to terminate a contract for the other party’s breach? In the TCC, Constable J held that Durkan should be permitted to argue that Wallace’s termination of the agreement was unlawful, so refused Durkan’s application for reverse summary judgment and judgment on its own counterclaim: <i>Durkan Estates Ltd v Wallace Estates Ltd [2026] EWHC 2003 (TCC)</i>. This led to the first joint hearing by a TCC judge and the President of the FTT, and the first order for the joint case management of TCC and FTT proceedings under the BSA 2022: <i>Wallace Estates Ltd v Durkan Estates Ltd [2026] EWHC 2133 (TCC)</i>. On such collaboration, see also the <i>TCC Guide 2026</i> section 9. [The TCC hearing on the merits is expected – unless the case settles – in early 2028, but in August 2026, Durkan abandoned construction work after 50 years, blaming in part the impact of ‘the increasing legislative and regulatory burden’, having set aside £18.6m in 2025 against legacy fire remediation costs.]	
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	(also on n 99 to Table 11.2) The President of the Upper Tribunal (Edwin Johnson J) determined the respondents' appeal in the <i>Vista Tower</i> Stevenage case, confirming the FTT's joint and several Remediation Contribution Order for £75m and giving valuable guidance on the statutory tests for making orders under the BSA 2022: Edgewater (Stevenage) Ltd v Grey GR [2026] UKUT 18 (LC). Where a development has a third-party warranty still running when safety defects potentially within its scope are discovered, the existence of an insurer can complicate, rather than simplify, the position under the BSA 2022 in relation to a possible remediation order against the freeholder, as in Tobias v Grosvenor Freeholds Ltd (The Central, 163-165 Iverson Road, London NW6) (LON/00AG/BSA/2024/0008) (FTT (RP)) January 2025: see the update below to section [11.7.1]. (especially for n 100 to Table 11.2) In July 2025 the Court of Appeal gave judgment in Triathlon Homes LLP v Stratford Village Development Partnership: [2025] EWCA Civ 846. The case concerns Remediation Contribution Orders (RCOs) under part 5 of the BSA 2022: allocating liability for the cost of remediating building safety risks in external walls in five residential blocks on the former Olympic Games site in Stratford, East London, towards which the Building Safety Fund had already contributed. At [23] Nugee LJ gave a superbly clear summary of the schemes contained in, or created under, the BSA 2022 which deal with remediation costs and their interrelationship. The key issues on appeal were: • Was it 'just and equitable' for the FTT to make an RCO, at the request of a social housing provider as long leaseholder of units in the development, against the present owner as 'associated' with the original 'developer' (as defined)? (Yes) • Could the RCO apply to costs incurred before the relevant provisions of the BSA came into force? (Yes, encouraged by the Supreme Court in <i>URS v BDW</i>). On the main part of the first issue, Nugee LJ concluded (Holgate and Newey LJJ concurring) at [97]: I think the FTT were entitled to conclude that the policy of the Act was that the costs of remediation should primarily fall on developers; that this was not intended to await the outcome of other claims but to be available from the outset; and that there was no good reason why interim funding should be at public expense if there were a developer against whom it would otherwise be just and equitable to make an RCO. Permission has been granted for an appeal to the UKSC in <i>Triathlon</i>, but only on the retrospectivity issue; it is linked to a final appeal in <i>Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point</i> (below).	
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	An RCO can also be used by long leaseholders of individual units in a development to be refunded service charges levied to pay for remedial work, eliminating ‘building safety risks’ against whose cost the BSA 2022 protects them: see the very first RCO: Batish v Inspired London Ltd (9 Sutton Court Road, Sutton, Surrey) (LON/00BF/HYI/2002/0002) (FTT (RP)), June 2025. In July 2025, in Zampetti v Fairhold Athena Ltd (Empire Square) (LON/00BE/HYI/2023/013 and LON/00BE/BSB/2024/0602) (FTT (RP)), a group of leaseholders in a 500-unit development sought a Remediation Order against the development’s freeholders, in turn seeking an RCO against the original developer, Berkeley Group. In 2022 the developer had signed the Government’s Deed of Bilateral Contract, incorporating the Self-Remediation Terms; but the FTT held that this was no bar to making its own orders to advance remediation. It also held that an RCO can cover an applicant’s litigation costs; but suspended both RO and RCO to allow the developer one last chance to remediate (allegedly costing less than if the freeholder organized the works). An appeal seems likely; on RCOs in general, see also Alec Chen, ‘A Private Law Theory of the ‘Just and Equitable’ Requirement in Remediation Contribution Orders’ <i>SCL (UK) Paper 273</i> (May 2026). Further illustrating the Secretary of State’s standing under the BSA 2022 s 124(5)(a) to request an RCO against a company associated with the (insolvent) developer, seeking reimbursement of Building Safety Fund finance (in this case, to the development’s RTM company) which had paid for safety-critical repairs (‘relevant defects’), see Secretary of State for Housing, Communities and Local Government v EDR Builders Ltd (Hallings Wharf Studios, London E15) (LON/00BB/BSB/2024/0011) (FTT/RP). Here the Tribunal rejected an argument that the planned works should have been based on a PAS:9980 assessment, when this methodology became standard; it was not certain this would have led to any different remediation plans, and would have delayed the start of work. In dealing with a challenge to the scope of work, the Decision at [55] takes the view that, ‘provided the remediation carried out was within the band of reasonable responses, the fact that it could have been done more cheaply [about £1.4m more cheaply, under the alternative scheme put forward by the second defendant, against an actual cost of almost £3.7m] is not of itself a basis for reducing the amount of an RCO’. Although the FTT made the RCO requested, relying on the <i>Vista Tower</i> decision in the UT – see the update above – on the breadth of its discretion, it held that litigation costs cannot be included in the Order, at least those incurred after remediation work has been completed. (especially for n 101 to Table 1.2) On the statutory conditions for requesting an Information Order under the BSA 2022 s 132, relating to a possible Building Liability Order, see BDW Trading	
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	<i>Ltd v Ardmore Construction Ltd</i> [2025] EWHC 434 (TCC), [2025] 1 WLR 3010 (Judge Keyser KC). On Ardmore, see also the update above to section [5.10.2]. (especially for n 103 to Table 11.2) in July 2025 the Court of Appeal gave judgment in <i>Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point</i> [2025] EWCA Civ 856. A majority (Nugee and Holgate LJ) dismissed the main issue in the appeal, holding that the protections in Sch 8 of the BSA 2022 against defined remediation costs being charged to holders of ‘qualifying leases’ via service charges apply retrospectively to costs incurred before those BSA provisions came into force. Newey LJ dissented on this issue; but all three judges agreed that retrospectivity of the relevant BSA provisions was not ‘manifestly without reasonable foundation’, so not incompatible with Article 1 of Protocol 1 (A1P1) of the European Convention on Human Rights, protecting property rights. In both this case and <i>Triathlon Homes</i> (above) the Secretary of State was represented, arguing for outcomes furthering the aims of the legislation. Permission has been granted for an appeal to the UKSC – linked with the appeal in <i>Triathlon Homes</i> – but not all the losing applicants in the CA have chosen to take part. (especially for n 103 to Table 11.2) On what is a ‘qualifying lease’, the FTT view in <i>Triathlon</i> (January 2024) contrasts with a different FTT in <i>Nuernberg v Adderstone (216 Res) Ltd (91 St Ann’s Quay)</i> (MAN/00CJ/BSC/2024/0001) (July 2024). (especially for n 103 to Table 11.2) There is a more recent Upper Tribunal judgment on BSA 2022 issues relating to Centre Point House: <i>Almacantar Centre Point Nominee No 1 Ltd v Penelope De Valk</i> [2025] UT 298 (LC) on some points contrasting with <i>Lant Street</i> [2024] UKUT 135 (LC); <i>Almacantar</i> is under appeal to the Court of Appeal, a hearing was due sometime in 2026. (especially for n 103 to Table 11.2) Where an RMC or RTM company, or another landlord, manages the building, but cannot recover any or all of the costs of remedial works or interim measures as a service charge, due to the leaseholder protections in Sch 8 of the BSA 2022, the landlord (or other landlords, as the case may be) can be asked to pay or contribute towards the shortfall under Regulations 3, 4 and 5 of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 (SI 2022/859). Reg 3 is for cases where a landlord under a lease on 14th February 2022 was the developer or associated with the developer; for a claim under Reg 3 overcoming procedural obstacles from the landlord, see the FTT decision (April 2026) in <i>Shenstone Properties Ltd v Marconi House RTM Co Ltd (Marconi House, NE1 2JS)</i> (MAN/00CJ/BSD/2026/001). Reg 4 is for cases where a landlord under a qualifying lease met the ‘contribution condition’ on that date (a net worth of £2m per relevant building owned by the landlord, or within the landlord’s group of companies); and Reg 5	
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	is for cases involving the other leaseholder protections in Sch 8. A notice is served on the landlord, who may appeal to the FTT within 30 days (or apply for an extension). The grounds for appeal are limited, but in a July 2026 example from the FTT, the landlord-freeholder resisted an application for over £50,000 under Reg 5 made by an RTM company, see <i>Premier Ground Rents No 1 Ltd v 36 Hornsey Road (London) RTM Co Ltd</i> (LON/00AU/BSF/2025/001: Block A, 36 Hornsey Road, London N7): in April 2026, the FTT held that the state of the building was ‘a building safety risk’, but this was not shown to have been created at the time of ‘the relevant works’ (conversion of the building into flats), so there was no ‘relevant defect’ within the BSA 2022. (especially for n 111 to Table 11.2) Under powers in the BSA 2022 s 58 (inserting s 105C into the Building Act 1984), the Building Safety Levy (England) Regulations 2025 (SI 2025/1236) set out how the new Levy will operate from 1 October 2026, with linked guidance from the MHCLG. Draft amendments to these Regulations provide that work started before the 1 October 2026 may be pulled into the levy net by later additional work triggering an amended building control notice. The levy is a charge that developers must pay on certain building control applications/notices before completion of the building work/occupation of the building (whichever is earlier), where works result in new dwellings and/or new bedspaces in purpose-built student accommodation or represent a change of use to residential purposes. The levy rate is set for each local authority area, weighted using average house prices: areas with the highest average house prices have the highest rate, and those with the lowest average house prices have the lowest. The amount payable (per square metre) depends on the building’s size, use and location, calculated on the floorspace of the development. Local authorities will collect the levy, transferring levy revenues (net of administration costs) to central government. Levy revenue must be spent on building safety. The National Audit Office, in a November 2025 report on the MHCLG, noted that the Ministry intends the levy to contribute £3.4bn towards its forecast of the overall cost of remediation to the taxpayer of £5.1bn, £700m coming from developers returning contributions for remediation work already received for which they now accept responsibility. The developers’ organisation the HBF asserts (LinkedIn, August 2026) that more than a third of SME builders have delayed, redesigned or cancelled schemes in anticipation of the levy; and that it will add on average £2,320 to the price of each new home.	
11.5.1	Litigation may become necessary to clarify the scope, in relation to specific past projects, of the liability of developers who have	3

	committed to the MHCLG's <i>Developer Remediation Contract</i> for England (also known as the <i>Deed of Bilateral Contract</i>). See Christina Lago, 'Housing Association Asks High Court to Clarify Vistry's Responsibility for Fire Safety Defects' <i>Building</i> (29 August 2025). On the interaction between the 'voluntary' Responsible Actors Scheme (now regulated under the BSA 2022 ss 126-129 and implementing Regulations: SI 2023/753 and SI 2026/509), funding for remediation from the Building Safety Fund and the position of a developer one of whose subsidiaries was the main contractor for the refurbishment of Grenfell Tower (its safety approach criticised by the GTI), see R (on the application of Rydon Group Holdings Ltd) v Secretary of State for Levelling Up, Housing and Communities [2025] EWHC 2182 (Admin) (Choudhury J).	
11.5.2	The Building (Amendment) Wales) Regulations 2025 (WSI 2025/704), coming into force on 20 December 2025, banned the use of 'relevant metal composite material' (as defined) becoming part of an external wall, or specified attachment, of any building; and make changes to the Building Regulations 2010 for Wales. For further changes in Wales, see the updates above to sections [3.4.1] and [3.4.10]. The Welsh Leaseholder Support Scheme came to an end in June 2025. In July 2025, the Welsh Government reported on work already undertaken or still to come (much of it collaboratively with the Westminster Government) to implement the Grenfell Tower Inquiry Phase 2 recommendations: Grenfell Tower Inquiry Phase 2 Report: Welsh Government Response. It also reported on progress under the <i>Welsh Building Safety Programme</i>. Of the 461 buildings in the <i>Programme</i>, 275 were private buildings and 186 social buildings. 43% had either works completed or underway (more progress in relation to social housing than private leasehold, and less progress for 'orphan' buildings with no developer in the frame), 47% of buildings were in the planning stages, with the remaining 10% either not requiring works or with remediation needs not yet. Figures updated monthly are available from Building Remediation Progress Statistics. By August 2025, 10 developers had signed the <i>Developer Remediation Contract</i> (as in England, also known as the <i>Deed of Bilateral Contract</i>), covering in total 150 buildings, but only three developers had completed remediation work on any of their buildings. The Senedd Local Government and Housing Committee commented in November 2025: Our understanding of the approach to remediation adopted by the Welsh Government, as described by the Cabinet Secretary, is that it is dependent upon the goodwill of developers to begin works by the end of 2026, with no legal requirement to abide by this date. There is	1/3

	also no deadline, legislatively backed or otherwise, for completing works. Whilst we acknowledge that some progress has been made we are of the view that a different approach must now be taken to ensure that life-threatening historic deficiencies within buildings are addressed urgently. More positively, the Welsh Government’s Guide to the Developer Remediation Contract (December 2025) notes: [D]evelopers [now 11] that signed up to the Developer Remediation Contract have separately committed to accelerate remediation, including targets to have all their buildings assessed by 31 August 2025 and have fire safety works underway or completed at 100% of developments by 31 December 2026. Following the Welsh Government’s Consultation on the New Building Control Regime for Higher-Risk Buildings and Wider Changes to the Building Regulations in Wales (March 2025), the 150-page Building Safety (Wales) Act 2026 introduces a distinctive version of the English HRB regime, applicable to the occupation phase of multi-unit residential buildings (more widely defined), including some below the English HRB threshold, as well as those above. [For the Welsh definition of an HRB for construction purposes, see the Building Safety (Description of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023 (SI 2023/1210)]. The 2026 Act leaves virtually untouched those aspects of the BSA 2022 (including changes to the Building Act 1984) already applying to Wales, but does not itself extend to Wales any 2022 Act provisions originally applying only to England. Of what became the 2026 Act, Cabinet Secretary for Housing and Local Government Jayne Bryant said: Its key principles are safety, accountability and residents’ voices, and it goes wider and further than existing legislation in other parts of the UK. It creates clear legal responsibilities for owners and others, gives residents new rights and pathways to raise complaints, enables standards for professional assessments, and provides robust enforcement powers when safety requirements aren’t met. The Act creates three different categories of ‘regulated buildings’ (all containing two or more residential units) by height and number of stories; its Part 2 also addresses fire safety issues in houses in multiple occupation (HMOs). Every regulated building will have one or more ‘accountable persons’ and/or one ‘principal accountable person’; their duties (in many cases requiring residents’ engagement) in relation to assessing and reporting on fire safety, structural safety and building safety risks (and occurrences) depend on the building’s category. The most demanding version of the regime is closely similar to that summarised for HRBs in England in section [3.4.12] in the book (‘the Golden Thread’). Registering buildings in Categories 1 and 2 will be the responsibility of local authorities, newly baptised	
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	<i>Building Safety Authorities</i>; they share enforcement with fire and rescue authorities. Added to the Bill midway were provisions about remediation, with new powers given to the Residential Property Tribunal for Wales, with appeals to the Upper Tribunal – along lines familiar from the BSA 2022 in England, in relation to ‘relevant defects’ in a ‘relevant building’ in Wales from construction work between 28 June 1992 and 20 February 2026. The Act’s Part 4 adopts wider definitions of who may apply, and against whom (‘associated entities’), than the BSA 2022; like the 2022 Act, it protects long leaseholders against remediation costs being imposed on them by service charges. For the new Act’s remediation aspects to become operational, further Regulations are necessary (due within 9 months of Royal Assent), for which consultation was launched in June 2026; the Act gives Welsh Ministers wide powers to modify its provisions and definitions. The 2026 Act is expected to come into force in 2027; ahead, a new building control regime arrived in Wales in the Building (Higher-Risk Buildings Procedures) (Wales) Regulations 2025 (SI 2025/1321), in force on 1 July 2026 but with their own transitional provisions. These impose a version of the English Gateways regime for all work on HRBs (new and existing) in Wales, with local authorities (not the BSR, and not private sector RBCAs) as the only building control authorities. From 1 January 2025, a near-identical Welsh version of the English RBCA regime arrived with the Building (Registered Building Control Approvers etc.) (Wales) Regulations 2024 (SI 2024/1268), already modified by the Building etc (Amendment) (No 2) (Wales) Regulations 2025 (SI 2025/1320) and the Building etc. (Amendment) (No. 2) (Wales) Regulations 2026 (SI 2026/112). The 2024 Regulations bring to Wales a version of the dutyholder regime already in place in England. Further regulation on building control and its professionals is expected. Regular e-mail newsletters arrive to anyone signed up to the Welsh Building Safety Programme site; there is guidance on all aspects of the regulation of HRBs and work on them in Wales on the Welsh Government website. For litigation by long leaseholders against a developer (Redrow) which had already signed the Welsh <i>Deed of Bilateral Contract</i>, see the update above to section [5.5.2].	
11.5.3	(especially for n 137) Dr Paul Stollard is also author of Fire from First Principles: A Design Guide to International Building Fire Safety (4th ed, Routledge, 2014). For a summary of implementation in Scotland, completed and planned, of the Grenfell Tower Inquiry Phase 2 Report, see Grenfell Tower Inquiry Phase 2 Report: Scottish Government Response (March 2025). In January 2026, the Scottish Government launched the first part of a consultation on fire safety under the Scottish Building Regulations, to inform a fundamental	1/2/3

	review of the Regulations and guidance, as well as of procedures for recording and evidencing compliance, as part of its response to the GTI Phase 2 Report. By 30 April 2025, two <i>Single Building Assessments</i> had been completed, with 13 under way; and the <i>Cladding Remediation Programme</i> had received 32 expressions of interest, initially for <i>Single Building Assessments</i> (by 31 March 2026, Government-funded assessments were underway in relation to 149 buildings). The Scottish Government website for its <i>Cladding Remediation Programme</i> offers monthly updates online. In June 2025, the BBC estimated that 1450 residential buildings in Scotland may need remedial work, of which 250 are high-rise, suggesting an overall cost to public finances of more than £3bn over 15 years: far more than the text in the book suggests. Plans for future funding for the <i>Cladding Remediation Programme</i> (in situations where no developer can be targeted for remediation costs) advanced when the UK Government consented in the <i>Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 (SI 2024/1362)</i> to Scottish proposals to legislate the Scottish Building Safety Levy. Under the <i>Building Safety Levy (Scotland) Act 2026</i>, the levy will apply to ‘taxable building control events’: works of construction or conversion creating a new residential unit (NRU), as defined; will be charged based on the floor area of the unit, with levy rates not yet announced; payable at ‘the date of acceptance of a completion certificate’ by a local authority verifier; and payable by the unit’s owner at that moment (often the developer) – to Revenue Scotland. Penalties will apply for non-payment and for other defaults, including failure to register for the levy. The levy is now expected to come fully into effect in April 2028 and to raise £30m a year, which must be used towards ‘improving the safety of persons in or about buildings in Scotland by reimbursing, defraying or otherwise paying the costs of remediation, mitigation, or prevention works (and any work associated with or ancillary to those works) in buildings with an external wall cladding system, including work to produce surveys, assessments or reports’ (s 10). The Act’s s 46 requires the Scottish Ministers to report on the operation of the Act as least as often as every three years. It will add – according to Homes for Scotland – an average £3,500 to the cost of building a new home. The Scottish Parliament’s Finance and Public Administration Committee published a <i>Stage 1 Report on the Bill</i> (December 2025), noting aspects of the Scottish proposals which differ from the English equivalents. Progress has been slow in encouraging developers to commit contractually with the Scottish Government to remediate. In October 2025, Housing Secretary Màiri McAllan invited nine developers with an average operating profit of more than £10m to	
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	sign the Scottish Government's Developer Remediation Contract. This commits developers to: • Arranging safety assessments for all buildings in scope that need to be checked as quickly as possible and providing this list to Scottish Ministers within 30 days of signing the contract • Fixing all life critical safety problems in buildings 11 metres or taller they built or renovated in Scotland over the 30 years to 1 June 2022 • Keeping residents informed throughout the process. Persimmon was the first developer to sign up, in December 2025; by 31 March 2026, six had done so.	
11.5.4	Northern Ireland after Grenfell: in January 2025 the Department for Communities' Residential Building Safety team announced that it was developing new policy and legislation to improve safety in High-Rise Residential Buildings: NI buildings with more than four floors and at least 11 metres high, with at least two residential dwellings. The team's work follows the findings of the Hackitt reports and Grenfell Tower Inquiry and the recommendations made by the Expert Panel on the safety system in Northern Ireland (2023). Notes of the consultation sessions were published by the DfC in March 2025.	1
11.5.5	Progress in identifying residential buildings across England & Wales posing an unacceptable fire risk from combustible cladding and remediating them: the May 2026 figures from the MHCLG suggest that 4,411 residential buildings 11m+ in height have been identified with unsafe cladding. Since October 2023, 2,331 buildings (53% of buildings known to the MHCLG) have either started or completed remediation works. Of these, 1,672 buildings (38% of monitored buildings) have had remediation work completed. As Peter Apps points out in his Substack (July 2026): [T]he rate of progress means it will currently be 2041 before the last of the identified buildings <i>starts</i> work to fix them – somewhat shy of the promise to complete everything by 2029. The scale of the problem (however uncertain its outer edges) perhaps makes unfair a direct comparison with Victoria's dynamic and efficient State-based response to a much more contained and manageable problem – see section [11.5.7]; but critics like Peter Apps continue to argue that it would have been better for Government to take the initiative at the start: do the surveying, commission the work and then look to the industry to recoup public money expended. Scotland is much closer to this model: see section [11.5.3] and its updates above. (especially for the main text to n 154) The UK's Spectrum House fire – occurring during remediation work on the façade – is listed by Peter Apps as one scenario he considers most likely now to bring about a serious post-Grenfell blaze. It seems that the loss of 168 lives in Hong Kong at Wang Fuk Court (November 2025) was	1/2/3

	enabled (perhaps started) by ongoing work on the towers' exterior: on the fire and linked prosecutions, see the updates above to section [5.7.2]. Here are Apps' other suggested high-risk scenarios (Peter's Substack, December 2025): • A big fire at a poorly maintained office-to-residential conversion, housing a vulnerable population of homeless families • A timber-framed fire that quickly compromises escape routes and burns inside the cavities, making it impossible to extinguish • A fire starting in an underground car park, spreading to the structure of the building • A major fire (such as lithium-ion battery) at a building which has high risk of disproportionate collapse, such as an LPS [Large Panel System] block • A lithium-ion battery fire in a building with very poor standards of internal compartmentation, overcrowding and a vulnerable population • A badly built modular tower block, where internal cavities present an opportunity for quick, undetected fire spread [on the additional fire risks which MMC may pose, see also the CROSS-UK Safety Report 1482 (November 2025)]. (especially for n 155) Updated reports from the private-sector <i>Building Safety Register</i> (Matt Hodges-Long on <i>LinkedIn</i>, August 2026) list 67 incidents in E, W and NI since Grenfell Tower causing more than 15,000 residents to be evacuated from their homes, because of prohibitions on fire (50) or structural safety (17) grounds. (especially for the main text to n 158) See now the new British Standard BS 8674:2025 Framework for competence of individual fire risk assessors (August 2025), also MHCLG, Fire Engineering Profession Reform (December 2025). Additions to the UK Government's <i>Remediation Acceleration Plan</i> (for England) were announced in July 2025. These include further legislation – not to be laid before Parliament by August 2026 – holding responsible parties to account for fixing unsafe cladding and accelerating the pace of remediation. Measures would include imposing a legal duty on landlords to remediate unsafe cladding on buildings over 11 metres in height by a deadline: buildings 18m and taller by the end of 2029; and buildings between 11m and 18m by the end of 2031. A failure to comply, without reasonable excuse, could result in unlimited fines or imprisonment. To address delays caused by limited regulatory capacity, developer disputes and workforce shortages, the Bill would also empower public bodies (such as Homes England and local authorities) to step in and carry out remediation works	
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	where landlords fail to act. The Bill would also make obstructing remediation or access to buildings over 11m in height a criminal offence, targeting parties unreasonably delaying progress by access disputes, contract issues or scope disagreements. These additional initiatives respond in part to the critical views of the House of Commons Committee of Public Accounts in their March 2025 report on the initial <i>Remediation Acceleration Plan</i>: The Remediation of Dangerous Cladding (17th Report of Session 2024-25, HC 362). In June 2026 a wide-ranging Leaseholder Remediation (Building Safety) Bill was tabled in the Lords by Baroness Pinnock (Liberal Democrat). This would extend the leaseholder protections in the BSA 2022 to <i>all</i> multi-unit residential buildings; define ‘defect’ more widely than fire risks from cladding; put the burden of proof on the building owner to show that a defect is outside the rules; and widen the pool of eligible long leaseholders. The Bill would also impose joint and several liability on project parties and suppliers of defective components or materials; and give the BSR enforcement powers, including imposing dates for completion of remediation work. The Bill may not progress without Government support; it could encourage Government to bring forward its own legislative reform heading in this direction, further implementing 2024’s <i>Remediation Acceleration Plan</i>. ‘The approaches so far appear to guarantee public funding for residential buildings in the public sector’ (p 620 of the book); but do not guarantee any defined speed of progress or reliable deadline by which remediation will be completed. Quarterly figures from the Regulator of Social Housing give a snapshot of the situation in England: those for Q3 2025-26 (March 2026) show that of the 17,081 relevant buildings reported (of which 70% are 11-18m in height), 99.9% had had fire risk assessments undertaken and 1,977 (11.6%) were reported as currently having a life critical fire safety defect relating to the external wall system. Landlords reported that work had already started or was complete on only 20.3% (403) of affected buildings. Of these, 76% were expected to be remediated within five years, but 15.3% had a completion date beyond ten years or unclear from the survey response. The July 2025 update to the MHCLG’s Remediation Acceleration Plan included: Give social landlords equal access to government remediation funding as private landlords, supported by a new joint plan between government, social landlords and regulators to speed up remediation, cutting years off the time to make social tenants safe and improving resident experience before, during and after remedial works. (especially for the main text to n 158) Nigel Sellars FRICS in the <i>RICS Journal</i> (8 August 2025) clarifies the status of the EWS1 form:
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	The RICS originally anticipated that five years was long enough for all combustible external wall systems to be remediated. The period was also originally intended to cover any renovation or adaptation of the building as well as maintenance. An EWS1 assessment review was stated to be required every five years for each building or block. This may not entail a wholly fresh assessment ... subject to individual lender policy and risk appetite, where they do require an EWS1 form, the form can continue to be used in mortgage applications beyond their five-year life. Lenders may also consider alternative evidence about a building's remediation status and leases qualifying for statutory protection from cladding remediation costs. Multiple leaseholders in one block can use the same assessment and review to support the sale or refinancing of their property. However, a new EWS1 assessment may be required within the five-year period if substantial works have been carried out on a building that affect the original conclusions.	
11.5.7	(especially for n 177) The Victorian Court of Appeal took an expansive view of the subrogation scheme under the Building Act 1993 (Vic) s 137F in a 'special case' referred to it by the County Court: State of Victoria (Department of Transport and Planning) v LU Simon Builders Pty Ltd [2025] VSCA 52. Cladding Safety Victoria (CSV) was subsumed into the Building and Planning Commission (its work effectively at an end) on 1 July 2026 (Cladding Safety Victoria Repeal Act 2026 (Vic); commencement proclaimed by Victoria Government Gazette no S326 (16 June 2026)).	1/3
11.5.8	In 2025, BRANZ opened a new purpose-built fire testing laboratory at Porirua, funded by the statutory Building Research Levy; on the end of the Levy, see the update above to section [2.3.2].	1/3
11.6.2	(especially for the main text to n 215) The six claimants unsuccessfully challenging three aspects of the LFRA 2024 on European human rights grounds in ARC Time Freehold Income Authorised Fund, R (on the application of) v The Secretary of State for Housing, Communities and Local Government [2025] EWHC 2751 (Admin) are Cadogan Estates Ltd, Grosvenor Estate, John Lyon's Charity, The Portal Trust, Wallace Partnership Group, and ARC Time Freehold Income Fund. They are reported to collectively own the freehold to approximately 390,000 leasehold properties, comprising both flats and houses. Figures from the English Housing Survey 2021–22 show that, at that time, unit owners (long leaseholders) who had collectively enfranchised held the freehold interest in 21% of all leasehold flats – equivalent to approximately 735,000 flats, out of a total leasehold stock of around 3.5m flats (E&W). It is reasonable to assume that this percentage has since increased. Leaseholders who have collectively enfranchised thus represent a larger stakeholder class than all the lessees who inhabit the estates of the	1/2

	six claimants combined. [Not all the six claimants are participating in the final appeal to the UKSC.] (especially for n 202) Changes in or under the LFRA 2024 have been implemented separately for Wales: s 27 on 31 January 2025, ss 49–52 on 3 March 2025 (with consequential changes to the RTM Companies (Model Articles) Regulations for Wales), with further reforms to come. (especially for n 208) For another example of the technicality of the law on leasehold enfranchisement, see SGL 1 Ltd v FSV Freeholders Ltd [2025] EWHC 3 (Ch) (Judge Hodge KC).	
11.7.1	(especially for the main text to n 222) A multi-unit residential building’s freeholder-landlord may also have its own defects warranty insurance, running for a period after completion of construction, covering the cost of remedying defined categories of original construction defects. That the policy’s conditions and exceptions, together defining the scope of the insurer’s liability, may exclude a claim, even for defects increasing the risk of damage or injury if a fire broke out, is illustrated by Vivid Housing Ltd v Allianz Global Corporate & Specialty SE [2025] EWHC 3315 (TCC) (Jefford J). For obstacles in the way of a claim under the NHBC <i>Buildmark</i> policy for non-compliant construction in the ‘shared parts’ of a residential development in the UK, see the update above to section [7.2.6]. The insurer’s liability under the policy may also depend – as it does under <i>Buildmark</i> – on the policyholder’s liability to pay for – or to contribute to the cost of – relevant remediation work via service charges. If so, the statutory protections for leaseholders under the BSA 2022 in relation to remedying safety-related defects may discharge the insurer from liability, as suggested in Tobias v Grosvenor Freeholds Ltd (The Central, 163-165 Iverson Road, London NW6) (LON/ooAG/BSA/2024/0008) (FTT (RP)) January 2025.	1
11.8	For a dispute between unit owners and their insurer similar to Case Study 10: did a financial cap on the insurer’s liability in the policy apply per unit, or was it an aggregate sum capping all claims related to the building? – see also the update above to section [9.4.4]. It seems that in no English reported court case (yet) have new home warranty policyholders argued that an otherwise valid and unambiguous contractual monetary limit on claims is unfair in law, nor have they attempted to rely on a breach of financial services regulation – notably the Consumer Duty, discussed in section [6.8] of the book – to get equivalent redress.	2
11.8.4	(especially for the main text to n 273) In Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025] UKPC 53 the Privy Council confirmed the ingredients for the tort of deceit in English law,	1/2/3

	declining to confirm a line of case law suggesting that the representee must be aware of the representation: [128] ... (1) making a representation of fact (or law) which (2) is false, (3) the maker does not believe to be true, (4) is intended to be believed by the representee, and (5) causes the representee to believe that the representation is true. [129] The scope of what counts as a representation for this purpose is very broad. The concept is not limited to statements which expressly assert the truth of a proposition. Indeed, it is not limited to statements: it includes actions as well as words. For the purpose of the law of deceit, the term “representation” encompasses any words or act calculated to cause another person to believe a proposition. [161] There is no doubt that reliance or inducement is an essential element of a claim for deceit (or other claim for damages for misrepresentation). There are two aspects to the requirement. The first is that the representation must have deceived the claimant (C) by causing C to hold a false belief (“reliance in belief”). The second is that C must because of holding that false belief have acted so as to suffer loss (“reliance in action”). Both aspects of reliance require the representation to operate on the mind of C. But neither logically requires C to be consciously aware of the representation at the time when C acts on it. Nor is there any good reason to insist on such an additional requirement. For an alternative restatement of the ingredients, with Singapore authorities, see BP Projects Pte Ltd v One Wind Pte Ltd [2026] SGHC 105 at [15]ff (Wong Li Kok, Alex J). Note that Singapore is very closely aligned with English law in this area, the substantive ss 1-3 of the Misrepresentation Act 1967 (S/pore) being identical with the equivalents in the E&W Act, just as the original text of UCTA 1977 is also in force (minus s 8 and the Scottish provisions) in Singapore. For a high-profile example of a successful claim in deceit (with parallel claims under the Misrepresentation Act 1967 (E&W) and under financial legislation) see ACL Netherlands BV v Lynch [2022] EWHC 1178 (Ch), relating to HP’s acquisition in 2011 of the entire share capital of Autonomy Corporation. Judgment on quantum, far less than the US\$4.5bn claimed, but enough to bankrupt the estate of Autonomy co-founder Mike Lynch OBE, who died in his superyacht <i>Bayesian</i> off Sicily in 2024, is at [2025] EWHC 1877 (Ch) (both Hildyard J). On the requirement that, for a representation to be actionable, it must be one of law, or of [present] fact, see V da Silveira v Hashstacs Pte Ltd [2025] SGCA(I) 3 at [109]–[110] (Belinda Ang Saw Ean JCA, giving the judgment of the Court). Vinodh Coomaraswamy J in Chong Jorina v Ritz Property Investimentos Imobiliarios Ltda [2026] SGHC 120 helpfully explains the boundaries of these ideas: [89] A statement about the future may take one of two forms... The statement may be a promise, by which the maker undertakes to bring about a future state of affairs. Or it may be a prediction or expression	
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	of opinion, by which the maker forecasts that a future state of affairs will come about. Neither, in its pure form, is actionable in deceit. A broken promise gives rise, at most, to a claim in contract. A falsified prediction gives rise, by itself, to no claim at all: Uday Mehra v L Capital Asia Advisors [2022] SGHC 23, [2022] 5 SLR 113 at [125] [also Vinodh Coomaraswamy J]. [90] There is, however, a well-known qualification. Although a pure statement about the future is not actionable in deceit, such a statement may carry with it an implied representation of present fact, namely a representation about the maker's present state of mind. The classic source is the dictum of Bowen LJ in <i>Edgington v Fitzmaurice</i> (1885) 29 Ch D 459 at 483, ie, that the state of a man's mind is as much a fact as the state of his digestion. [91] A statement that a state of affairs will come about in the future is either a promise or a prediction. It is a promise where the state of affairs is within the maker's control. It is a prediction where it is not. That is the distinction drawn in <i>Uday Mehra</i> at [125]. Neither a broken promise nor a failed prediction is, in itself, an actionable misrepresentation. But each may carry an implied representation of present fact, and it is that implied representation, if false, which is actionable: <i>Uday Mehra</i> at [128]. On the liability of a person passing on documents (including false representations) made by another, if they 'effectively adopt and endorse' the representations, see Astrawati Aluwi v Lo Yew Seng [2025] SGHC 188 at [44]ff (Tan Siong Thye SJ) - partly overturned on appeal in Low Yew Seng v Astrawati Aluwi [2026] SGHC(A) 18; see also GC Lease Singapore Pte Ltd v Fonbell Solution Pte Ltd [2026] SGHC 14 at [29]ff (Wong Li Kok, Alex J). Because the actions for deceit against ZBC in Case Study 10 failed for lack of proof of reliance, the judgment did not have to engage with the often difficult questions of how to quantify the loss which the fraudulent misrepresentation caused – similar to the issues where a property has been acquired in reliance on a negligent valuation, in English law associated with the <i>SAAMCO</i> case in the House of Lords: see the updates above to sections [5.9.5]-[5.9.6]. A Singapore case explores this in depth: POP Holdings Pte Ltd v Teo Bang Lim [2025] SGCA 51 (Steven Chong JCA giving the Court's grounds of decision). Actions in tort for fraudulent misrepresentation may become more frequent in the UK, following what may have been the mis-selling of combustible insulation materials by cladding manufacturers for high rise residential blocks. Architects and other construction professionals sued by developers may seek to divert part or all of their own potential liability to product manufacturers. Peter Apps' Substack blog (July 2025) records a case against architects BDP brought by Laing O'Rourke, in which BDP may attempt to bring in cladding manufacturer Kingspan as a third-party defendant (these proceedings have not yet reached the Law Reports).	
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11.8.6	For Judge Keyser KC in action in relation to defects claims in another Welsh residential development, see the update above to section [5.5.2].	1
11.10	The ‘Gore Street’ defects litigation in NZ: on procedural questions affecting the framing of issues for the pending appeal and cross-appeal, see Auckland Council v Body Corporate 366567 [2025] NZCA 78 .	1
11.13	A ‘mixed development’ issue not discussed in the book relates to statutory protections for long residential leaseholders in E&W against service charges: are they also available to leaseholders of ‘live/work units’? The Court of Appeal has agreed that they may be: Cloisters Business Centre Management Company Ltd v Anvari [2026] EWCA Civ 17 (Lewison LJ, Baker and Elisabeth Laing LJJ concurring).	2
11.15	In January 2026, the UK Government published a consultation draft of its Commonhold and Leasehold Reform Bill (E&W). This introduces a revised version of the existing (but barely used) commonhold form of tenure; enables imposing it as the future default legal framework on almost all new flats; makes conversion of existing developments from leasehold to commonhold easier, though with fewer improvements to enfranchisement (notably the cost) than campaigners hoped; caps existing long leasehold round rents at £250 a year, reducing to a peppercorn after 40 years; and replaces forfeiture with a new enforcement system as the sanction for breach of covenant. Not all the potential ongoing management issues on the table earlier (managing agents, insurance fees etc) have been included. A linked high-level Guide summarises the Bill’s proposals and the underlying policies; with a public consultation alongside on possible exemptions to the principle that all new residential units not sold freehold should use commonhold. In February 2026, the House of Commons Library published Hannah Cromarty’s note: Leasehold Reform in England and Wales: What’s Happening and When?. In May 2026, the Commons cross-party Housing, Communities and Local Government Committee published its report on Pre-legislative Scrutiny of the Draft Commonhold and Leasehold Reform Bill: [T]he draft bill would make a significant step towards giving leasehold homeowners greater control of their buildings, but... the final bill requires several changes and additions to meet leaseholders’ expectations and previous government pledges. The MHCLG has not yet responded to the Committee report (August 2026), nor has the Bill yet been introduced into Parliament. To campaigners’ disappointment, the Government appears to accept that the planned scope of reform before the next General Election does not include banning leasehold for the sale of most new flats, let alone converting all existing long residential	2/3

	leaseholds to commonhold. However, the currently proposed changes are intended to make establishing an RTM company, enfranchisement and voluntary transformation from leasehold to commonhold more straightforward, faster and cheaper; consultation is underway (Summer 2026) on aspects of the leasehold enfranchisement valuation rates to be used when those provisions in LFRA 2024 (E&W) come into force, as well as on the allocation of costs .	
12.2	On structural changes to the Building Safety Regulator, see the update above to section [3.4.9].	1
12.6	(especially for the main text to n 38) Implementing the recommendations of the Grenfell Tower Inquiry: for England, see the update to section [11.5] above; for Wales, see the update above to section [11.5.2]; for Scotland, see the update above to section [11.5.3]; and for NI, see the update above to section [11.5.4]. On monitoring official responses to reports of official enquiries, see also the main text to n 83 in section [3.4.3] of the book. Responding to negative aspects of the public sector input into the Grenfell Tower Inquiry and the investigations into the 1989 Hillsborough football disaster, the Government tabled the Public Office (Accountability) Bill 2026 (in August 2026 awaiting Second Reading in the Lords). This places a duty on public authorities and public officials (most provisions apply UK-wide) to act with candour, transparency and frankness; makes provision for the enforcement of that duty in their dealings with inquiries and investigations; requires public authorities to promote and take steps to maintain ethical conduct within all parts of the authority; creates an offence in relation to public authorities and public officials who mislead the public; creates further offences in relation to the misconduct of persons holding public office, abolishing the common law offence of misconduct in public office; and assists lay persons participating at inquiries and investigations where the conduct of public authorities may be in issue. This is already dubbed ‘The Hillsborough Law’. Retrofitting homes: see the National Audit Office, Decarbonising Home Heating (Session 2023-24, March 2024, HC 581) and Energy Efficiency Installations under the Energy Company Obligation (Session 2024–2026, October 2025, HC 1334); in January 2025, DESNZ barred 39 businesses from installing new insulation in people’s homes; routine checks carried out by TrustMark, overseeing tradespeople working in homes, uncovered examples of substandard solid wall insulation. In April 2026, the Serious Fraud Office arrested four people on suspicion of a scam invoicing energy companies for home insulation work under the Energy Company Obligation not in fact carried out: Jasper Jolly, ‘Four People Arrested Over Suspected £44m UK Home Insulation Scam’ The Guardian (22 April 2026).	1/2/3

	On retrofitting, see also the House of Commons Energy Security and Net Zero Committee, <i>Retrofitting Homes for Net Zero</i> (First Report of Session 2024-25, May 2025, HC 453). In Scotland, see Alistair Hill and Jane Williams, Heat in Buildings - Supporting the Rollout of Heat Pumps and Solar PV in Scotland (Consumer Scotland, May 2025); also Converting Scotland's Home Heating (Consumer Scotland, June 2025). The UK also has a non-profit National Retrofit Hub, which in July 2025 reported on the multiple barriers to wider uptake of retrofit possibilities by householders. Two rounds of planned subsidies from DESNZ and the NI Executive for projects to manufacture heat pumps in the UK – the Heat Pump Investment Accelerator Competition – have generated reports from the Subsidy Advice Unit of the CMA under the Subsidy Control Act 2022: the first in June 2023 and the second in November 2025. For the new UK subsidy regime, see section [6.2.3] in the book and its updates above. In July 2025 the UK's Department for Energy Security and Net Zero (DESNZ) announced that it was bringing forward reforms to what it calls a 'fragmented' existing regulatory system, as part of its <i>Warm Homes Plan</i>, launched with more details in January 2026 and a commitment to £15bn expenditure. The aim is to help millions of families benefit from solar panels, batteries, heat pumps and insulation that can cut energy bills, with targeted interventions for those on low incomes; upgrades for social housing; new protections for renters; and a universal offer for all households to upgrade homes. A Research Briefing from the House of Commons Library (February 2026) summarises the current support and funding systems for energy efficiency in homes across the UK; and a new PAS 2025:2023 applies to all Government-backed retrofit schemes in the UK, encouraging independent oversight and improving accountability. The DESNZ has established a Retrofit System Reform Panel, chaired by a junior minister, to gather insight from industry, regulatory and consumer protection experts which will help develop options for reform. As well as creating proposals for a more unified system of standards, oversight and protections, the group will also look at creating accessible and robust consumer redress mechanisms. On DESNZ in general, see the National Audit Office, <i>Department for Energy Security & Net Zero 2024-25</i> (November 2025). For structural problems in the UK home improvement sector, see also the updates above to sections [6.5.3] and [7.3.2]. In August 2026, the US/UK think tank <i>Common Wealth</i> published a report by Madeleine Pauker and Donal Brown: A Plan for Places: Transforming Housing and Lowering the Cost of Living Through Home Improvement Corporations. This proposes a new public sector model for retrofitting in the UK: the establishment of around thirty Home Improvement Corporations operating at county or combined authority level. These public
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	bodies would coordinate area-based retrofit, employ permanent Direct Labour Organisations to build the workforce, and integrate repairs and wider improvements so homes in poor condition can benefit. Home Improvement Corporations would also hold powers to prevent tenant displacement and bring empty homes into use. On misleading heat pump advertisements, see the update above to section [6.2.2]. In August 2025 the RICS revealed plans to develop new pathways to RICS membership: these include Residential Retrofit Surveying (AssocRICS) and Sustainability Advisory (MRICS). (especially for the main text to n 39) There is since September 2025 the Independent Public Advocate (E&W), whose statutory role under Part 2 of the Victims and Prisoners Act 2024 is to provide support and guidance to victims of major incidents (like Grenfell Tower). Its first holder, Cindy Butts, said in The Guardian (19 December 2025) that her role includes ensuring that truth is exposed in the immediate aftermath of disaster so there would be no need for the substantial inquiries and reports the country had seen in recent years. We are there in the early hours, weeks, months and years so that we don't have to get to the stage where we have to have a public inquiry that lasts decades, where the truth has to be prized from institutions.	
12.7	Demolishing Grenfell Tower began in the first week of September 2025, expected to take two years: ‘Work to Dismantle Grenfell Tower Set to Begin’ BBC News (2 September 2025).	1/2
Glossary	(p 674) ‘Claimant’: some courts and tribunals (like the Federal Court of Australia) term the person ‘making an application’ for a decision or determination by the court or tribunal an <i>applicant</i>, against a <i>respondent</i>. (p 675) ‘Common law’: the Lady Chief Justice (E&W) announced in June 2026 that the Chancery Division of the High Court is to be integrated into a new Business and Property Division, with a President expected to be Sir Colin Birss, Chancellor of the High Court. From 1 October 2026, the new Division will include in one institution (sitting in London and seven regional centres) the Commercial Court, the TCC and the Admiralty Court, as well as a number of existing special Lists within existing High Court Divisions, otherwise remaining unchanged: see the Senior Courts (Transfer, Amendment and Consequential Provision) Order 2026 (SI 2026/723). (p 684) ‘Respondent’: some courts and tribunals (eg the Federal Court of Australia) term the person defending an application to the court or tribunal made by another party the <i>respondent</i>.	3