



VISTA TOWER: REMEDIATION CONTRIBUTION ORDER AWARDED AGAINST 76 COMPANIES FOR OVER £13 MILLION

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The First Tier Tribunal has held that it is just and equitable to make a Remediation Contribution Order against 76 companies in joint and several terms for the remediation works at Vista Tower.

Background

Vista Tower has received significant attention since the former Department for Levelling Up, Housing and Communities (DLUHC) obtained a Remediation Order (RO) against the freeholder, Grey GR, in May 2024.

We reported on the importance of this RO decision in our article [here](#). In summary, the First Tier Tribunal (FTT) granted an RO to help assure the leaseholders that Grey GR, as freeholder, would be legally required to fix the building safety defects by 9 September 2025. The building safety defects include combustible PIR insulation, combustible Expanded Polystyrene (EPS) core panels and cavity barrier / fire stopping defects.

Prior to the RO, Grey GR applied to the FTT under Section 124 of the Building Safety Act 2022 (BSA 2022) for Remediation Contribution Orders (RCO) against the original developer for Vista Tower, Edgewater (Stevenage) Limited, and various associated bodies.

Grey's application was heard in a substantive hearing from 4 to 15 November 2024 and the FTT have now published their decision.

What is required for a Remediation Contribution Order?

The FTT can make an RCO if it considers it "just and equitable" to do so. If granted, these orders require a specified body to make payments in connection with the remediation of "relevant defects".

A relevant defect is defined as a building defect that arises "*as a result of anything done (or not done), or anything used (or not used), in connection with relevant works*" and that causes a building safety risk (s.120 of the BSA). A "building safety risk" is widely defined as a risk to the safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part thereof.

The Decision

The FTT held that it was just and equitable to make an RCO in the sum of £13,262,119 against the original developer and 75 associated bodies (out of the 96 listed Respondents) for the remediation works at Vista Tower.

The RCO provides that all the relevant Respondents are jointly and severally liable for the entire sum, with the onus being on the Respondents themselves to determine what contributions should be made by each company.

This decision is significant not only because of the substantial sum awarded of over £13m, and the number of associated companies captured by the RCO, but also because of the key issues that were addressed by the FTT when making this order:

- *What is a “relevant defect” for the purpose of Section 120(2) of the BSA 2022?*

The fire safety experts agreed that for the purpose of section 120(2) it was reasonable to interpret “defect” as building work that did not comply with the contemporaneous Building Regulations. The FTT disagreed: it interpreted “defect” more widely and held that non-compliance with the Building Regulations is “*merely one way, not the only way*” in which something can be a defect.

Also, when determining whether a defect causes a “building safety risk” for the purpose of section 120 of the BSA, the fire safety experts opined that a “medium” fire risk considered to be “tolerable” would not be a building safety risk. However, the FTT decided to set the bar lower, and stated that a building safety risk may be any risk above “low risk” (which the FTT said was the “*ordinary unavoidable fire risks in residential buildings and/or in relation to PAS9980 as an assessment that fire spread would be within normal expectations*”).

- *What remedial costs are just and equitable to include in an RCO?*

The Respondents referred to the agreement reached between the experts that, from a purely technical perspective, the remedial works went beyond what was proportionate to make the building safe.

Notwithstanding this, the FTT reiterated that the costs to be included in an RCO is a matter for its discretion and decided to adopt a wide approach here. The FTT noted that a factor to consider is whether the costs/works are “*within a reasonable range of responses/costs*” (which the FTT said was a wide range in this case). The FTT also acknowledged the freeholder’s, Grey GR, careful approach to the remedial work scope / costings and its attempts to mitigate these costs despite the time pressure it was under following the RO proceedings.

The FTT went on to assess the costs widely as part of the overall package of remedial works – noting that, whilst certain costs may not themselves have remedied “relevant defects”, they should be included as part of the costs incurred in connection with the relevant defects.

- *Is it just and equitable to order an RCO against the Respondent?*

The FTT noted that the “just and equitable” test is fact sensitive, and relied in this case on the following key factors:

1. Whether the associated body was involved in property / the building sector;
2. Whether the associated body was presented to potential investors as being part of

- the relevant group: the “Edgewater group” (i.e. companies with the shared name “Edgewater” indicating some sort of group link to the developer company: Edgewater (Stevenage) Limited);
3. Whether the associated body had family links / shared owners to the Frankel and/or Dreyfuss family (who owned the developer company);
 4. Whether the associated body was likely to be linked by financial or other dealings as part “*of a fluid, disorganised and blurred network or structure, controlled by Jack Frankel and/or Jacob Dreyfuss*”; and
 5. The impact the RCO would have on any external investors with no involvement in Vista Towers.

Weighing these up, the FTT determined it was just and equitable to make RCOs against the vast majority of, but not all, Respondents. For those few where no RCO was made, it appears this was principally because independent third parties (with no involvement in Vista Tower) had a significant financial or other stake in those companies.

Comment

This decision emphasises the important themes that have been emerging from the recent FTT decisions on ROs and RCOs. Crucially, although the FTT are treating RO and RCOs as ‘non-fault’ based orders, the FTT is making it clear that it views developers (and associated bodies, where appropriate) as the key targets for remedial costs and at the top of the hierarchy of liability.

Whilst each case will be fact sensitive (and the FTT decisions are not binding precedent on other matters), the FTT also appear to be adopting a broad approach when it comes to determining a “relevant defect” and applying the “just and equitable” test for the purpose of Section 120 of the BSA. This approach appears to be driven by the FTT’s aim to ensure that “*the pot is filled promptly*” so that remedial works are expedited and the burden on leaseholders / taxpayers is reduced.

Should you have any questions on the content of this case summary or require support on building safety matters, please contact the authors or your usual Beale & Co contact.

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