Don't stand still during your standstill

Sheena Sood, Antony Smith and **Kayleigh Rhodes** of **Beale and Co** explore the practical issues and strategic steps to consider during periods of apparent inactivity, and why defendants should not stand still during a standstill.

KEY POINTS

- Complex and building safety claims continue to present significant challenges for the construction and insurance sectors.
- A standstill period or stay may pause proceedings, but it does not remove the underlying claim risk.
- Delay rarely benefits defendants in construction disputes: evidence, witnesses and recovery opportunities may deteriorate.
- Defendants and insurers who use standstill periods to investigate liability, preserve evidence, and develop technical and commercial strategies are likely to be better placed when those claims begin moving again.
- Early investigation, case assessment and technical analysis can improve settlement options and outcomes.
- Use a standstill period for investigation or preparation, not downtime.

The construction sector continues to deal with complex, multi-party disputes, particularly in the building safety sphere. Against a backdrop of extended limitation periods (and changes to certain risks and defences) under the *Building Safety Act 2022*, together with a growing volume of defects and remediation-related claims, an increasing number of disputes are effectively on hold, particularly during the pre-action phase.

Many claims are subject to standstill agreements between parties, while others have been issued but stayed by the court. Although the reasons vary, the reality is that parties are frequently not yet in a position to fully progress their claims or defences. Claimants may still be securing funding, developing remediation schemes, procuring contractors or working through lengthy lead-in periods before remedial works can begin.

From a defendant's perspective, a standstill or stay may appear attractive. It may defer internal resource commitments and legal spend, reduce the immediate burden of evidence gathering, and postpone investigation of claims that may not progress for several years, if at all. However, that apparent breathing space carries significant risks.

The backlog is building

Nearly a decade on from the tragic Grenfell Tower fire, a substantial volume of remediation work and associated litigation remains unresolved. While court resources are under pressure, delays in many building safety disputes are often driven by practical realities rather than court congestion alone. Funding arrangements, remediation strategies, procurement processes, and the planning and regulatory approvals needed to deliver them can all take years. The result is a growing pipeline of claims waiting to move forward.

At some stage, those claims will re-enter the dispute resolution process. Whether that occurs gradually or through a more concentrated wave of activity remains to be seen, but significant numbers of currently dormant disputes are likely to become active as remediation programmes progress and the courts continue to interpret the evolving legislative and regulatory frameworks. Some parties are already facing litigation timetables extending several years into the future.

This has implications not only for courts and tribunals, but also for insurers, experts, and

in-house and external legal teams managing these claims. Increased volumes could place significant pressure on resources, particularly where large numbers of related claims may become concentrated within a relatively small pool of advisers and experts.

The risks of standing still...

A standstill agreement may pause active litigation, but it does not remove the underlying risks.

Parties should therefore avoid treating a standstill as a holding strategy. Whilst further judicial guidance will continue to emerge, it is no substitute for preserving evidence, assessing liability and quantum, and developing a commercial strategy.

For insurers, early investigation remains critical. Estimation and reserving decisions depend on understanding the facts, alleged defects, remediation costs, alternative solutions and potential coverage issues. Those questions do not become easier simply because a claim is on hold.

For uninsured businesses, similar considerations arise. Potential liabilities may need to be reflected in financial reporting, provisioning and wider risk management processes.

Delay also creates practical evidential challenges. Witness memories fade, key personnel move on, retire or become unavailable, and individuals involved in historic projects can become increasingly difficult to trace. Document gathering and preservation presents similar risks. Project records are often dispersed across multiple systems, archived platforms and former employees' files. The longer a dispute remains dormant, the more difficult and costly critical evidence may become to locate and preserve.

There may also be wider market pressures to consider in the future. If significant volumes of currently dormant claims become active, demand for mediators and other dispute resolution professionals could increase sharply, potentially affecting availability when parties are ready to engage in alternative dispute resolution (ADR) processes.

Experts, evidence and recovery

Delay can create practical and strategic difficulties in relation to expert evidence too. Many building safety disputes have been under investigation for several years, meaning experts instructed at an early stage may no longer be available when proceedings ultimately progress to trial. Replacement experts may need to be appointed, increasing costs and creating strategic complications, including potential allegations of 'expert shopping'.

Delay can also affect contribution claims and third-party recoveries. Consultants and contractors may have potential claims against project team members, specialist subcontractors or suppliers. The longer parties wait to investigate and advance such claims, the greater the risk that potential defendants fail to notify insurers, cease trading, become insolvent or are otherwise difficult to pursue. Early identification and investigation of recovery opportunities may therefore provide greater protection in the long term, including rights against insurers direct where they are involved.

Even where a Building Liability Order provides a potential route to recovery against an associated company, delay can make the evidential and practical exercise more difficult and may ultimately prejudice recovery if relevant entities also cease to exist or have no meaningful assets.

The value of alternative remediation strategies

Those hoping that a future legal judgment will fundamentally alter the building safety landscape should proceed with caution. Recent decisions have largely focused on addressing building safety defects and clarifying routes to recovery, rather than narrowing the range of claims or dealing with apportionment of liability. Against that backdrop, one of the most effective tools available to defendants may be the development of an appropriate alternative remedial scheme.

A carefully considered alternative solution, supported by expert evidence and robust costings, may influence both the scope and value of a claim. It may also help narrow issues in dispute and provide a framework for early commercial discussions.

This work is often most valuable when undertaken early. Waiting until a standstill or stay expires may result in missed opportunities, particularly where claimants have already completed substantial remedial works and incurred significant costs in the process. Developing alternative solutions early and during the standstill period may improve settlement prospects and place defendants in a stronger position if and when claims progress.

The value of alternative remediation strategies

Each case inevitably turns on its particular facts. However, rather than viewing a standstill as an opportunity to disengage, defendants should consider using the time strategically.

Key actions may include:

Factual investigation

- Identifying, preserving and organising project documents and correspondence so they can be accessed promptly if proceedings resume.
- Locating key witnesses and recording their accounts while memories remain fresh. Where appropriate, retain details of their role, contact information and future availability in compliance with data protection requirements.
- Reviewing the scope and operation of any standstill agreement, including the parties, definition of "dispute", duration and key terms and obligations with appropriate legal advice.

Liability, insurance and risk

- Assessing potential liability exposure and informing reserve or provisioning decisions.
- Securing appropriate expert support early and confirming future availability.
- Reviewing insurance coverage and indemnity positions.
- Obtaining preliminary expert advice on liability, causation and remediation issues.
- Developing and costing alternative remedial schemes.

Other strategic issues

- Identifying potential co-defendants and recovery targets, including relevant project team members, subcontractors, associated companies and other parties who may ultimately bear responsibility.
- Considering settlement strategies, including whether a coordinated approach with other defendants or an early Part 36 offer may be appropriate to provide early costs protection.
- Reviewing suitable dispute resolution options, including whether the standstill agreement should provide a framework for mediation or other ADR once the claim is ready to progress.
- Agreeing practical steps or a timetable with claimants during the standstill period to help advance investigations, narrow issues and support future resolution. Any processes or consequences of non-compliance should be considered and documented carefully.

A standstill is not a strategy

While a stay or standstill agreement may provide a temporary pause in proceedings, it should not be mistaken for the end of the dispute.

Given the extended limitation periods introduced by the *Building Safety Act 2022*, building safety claims are likely to remain a feature of the construction industry for years to come. Parties that use standstill periods proactively to investigate liability, develop technical strategies and evaluate commercial options are likely to be in a stronger position if and when proceedings resume.

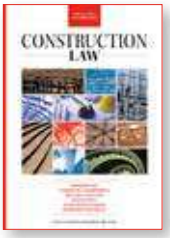
Doing nothing may appear attractive in the short term, but it risks becoming one of the most expensive decisions a defendant can make. A standstill should be viewed as an opportunity to prepare, not a reason to pause. The most successful outcomes are often built through early investigation, evidence preservation, technical analysis and strategic planning. In our experience, modest early investment can therefore deliver significant long-term benefits by improving recovery prospects, strengthening settlement discussions and helping parties to engage with claims from a position of strength.

If your organisation is managing building safety claims subject to a standstill agreement or stay, please contact the authors or your usual Beale & Co contact to discuss the issues raised in this article and the practical steps that can be taken now to protect your position. **CL**

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