Pump Court

Crest Nicholson Regeneration Ltd & Ors v Ardmore Construction Ltd (In Administration) & Ors [2026] EWHC 789 (TCC)

Significance

1. This is the most substantial judicial consideration of the building liability order ("BLO") regime under sections 130–131 of the Building Safety Act 2022 ("BSA") to date. The judgment establishes, for the first time at High Court level, that: (a) an anticipatory BLO — i.e. a BLO ordered before any finding of relevant liability — may properly be granted; (b) an adjudicator's decision can give rise to a "relevant liability" for the purposes of section 130; (c) a BLO can attach to the binding but interim liability created by adjudication, such that the adjudication enforcement regime and the BSA operate in tandem rather than being mutually exclusive; and (d) the court may, under the "specified description" wording in section 130(2), order a BLO in respect of a ***proportion*** of a relevant liability, if justice and equity so require.

Facts

3. The Claimants, Crest Nicholson group companies ("**Crest**"), are bringing proceedings against Ardmore Construction Ltd ("**ACL**") in relation to alleged fire safety and other defects at the Admiralty Quarter development in Portsmouth: 19 residential apartment buildings including a 21-storey tower, constructed between 2007 and 2009 under a JCT D&B Contract dated 13 December 2005.
4. Following the Grenfell Tower fire, investigations revealed that the external wall systems at the Development were defective: combustible materials (Stotherm Classic render, polyethylene-cored panels) had been used and fire barriers were missing or inadequate. ACL's own expert, Dr Crowder, concluded that the external walls posed an intolerable safety risk. Crest also identified internal fire safety defects including inadequate compartmentation, fire-stopping failures, and defective fire doors.
5. In May 2025, Crest commenced an adjudication against ACL, which resulted in an award of approximately £14.9m on 29 August 2025. The Adjudicator found that ACL was in breach of both the D&B Contract and section 1(1)(a) of the Defective Premises Act 1972 ("DPA"). The day before the Adjudicator's Decision was issued, ACL went into administration.
6. The Ardmore corporate group had been restructured on several occasions. ACGL (Fourth Defendant) was incorporated in March 2019 and became a parent of ACL, as part of a restructure designed to isolate historic liabilities. Ultimate control at all material times rested with Cormac Byrne, whose shares were subsequently vested in a family trust via a newly incorporated holding company (AGHL, Sixth Defendant, incorporated June 2024).
7. Crest sought two forms of BLO against the Fourth to Tenth Defendants (collectively the "BLO Defendants"): (a) an "anticipatory" BLO in respect of any relevant liability that ACL might ultimately be found to owe under the DPA or arising from a building safety risk; and (b) an "adjudication BLO" making the BLO Defendants jointly and severally liable for the £14.9m awarded by the Adjudicator.

Key Findings.

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8. **Anticipatory BLO: granted.** Constable J was satisfied to a high degree of confidence that the Development contained building safety risks and that ACL would be found liable. The BLO Defendants had conceded that they were "associates" of ACL for the purposes of section 131. ACL had been placed into administration for the benefit of the wider group, with the specific purpose of avoiding (among other things) the very liabilities targeted by section 130 of the BSA. In those circumstances, Constable J said that it was just and equitable to make an anticipatory BLO now, rather than awaiting the outcome of a liability trial.
9. **Adjudication BLO: granted.** The court held that the Adjudicator's Decision created a binding determination of a "relevant liability" within section 130(3). The liability determined was both a liability under the DPA (section 130(3)(a)) and one arising from a building safety risk (section 130(3)(b)). The fact that adjudication is an interim remedy did not preclude the making of a BLO, and the BSA's adjudication and BLO regimes were not mutually exclusive. There was no principled justification for excluding adjudication from the most significant area of construction disputes in modern history.

Key Reasoning

10. The judgment draws together and extends the existing (limited) case law on BLOs. The principal propositions established may be summarised as follows:

(a) **Anticipatory BLOs are available.** The court endorsed the obiter observations of HHJ Keyser KC in **BDW Trading Ltd v Ardmore Construction Ltd** [2025] EWHC 434 (TCC) at [47]–[48]. A BLO may properly be made before any finding of relevant liability. It functions **as an indemnity:** if the original body's liability is subsequently established, the associate is also liable. The word "any" in section 130(2), rather than merely "a", indicates that such anticipatory orders are permissible.

(b) **No prematurity bar.** There is no threshold test analogous to summary judgment that an applicant for an anticipatory BLO must satisfy. The question is whether it is just and equitable to make the order at the time the application is determined, taking into account each factor relied upon by each party, and considering the extent to which the picture may be materially different at the end of a liability trial. The greater the court's confidence that the same order would be made following trial, the more inclined it will be to grant an anticipatory BLO (at [64]).

(c) **The "just and equitable" test is broad and fact-sensitive.** The court should not seek to limit or circumscribe the statutory test by setting out an exhaustive list of factors: **Grey GR Ltd Partnership v Edgewater (Stevenage) Ltd** [2026] UKUT 18 (LC) applied. However, the following non-exhaustive propositions emerged from the analysis at [61]:

(i) a BLO can be made against any associate, not just against parent companies or SPVs;

(ii) BLOs are not limited to cases where a dissolved SPV or shell company is involved — the purpose of section 130 is broader: to allow those directly responsible for defective work to be pursued through their associates;

(iii) it will generally be sensible for a BLO application to be case-managed within the same proceedings as the main claim, but whether it is determined before, during, or after the liability hearing is a matter for the judge;

(iv) there are no exhaustive criteria;

(v) the court should consider whether, at trial, it would make a different order.

(d) **Adjudication decisions create a "relevant liability".** The Adjudicator's Decision was a binding determination of ACL's liability under the DPA and arising from a building safety risk. The interim status of an

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adjudicator's decision does not mean it fails to create a "liability". If the decision is not challenged, it binds for all time. The fact that the standard enforcement route is by way of summary judgment does not mean the liability is merely an obligation to comply; it is a substantive determination of the underlying claim (at [135]–[138]).

(e) **The adjudication regime and the BSA are not mutually exclusive.** Constable J rejected the argument that adjudication, being "rough justice" and "interim", was fundamentally incompatible with the "extraordinary" remedy of a BLO. Building safety matters have given rise to probably the single largest area of construction disputes in history. There was no principled justification for excluding from the BLO regime the industry's primary dispute resolution tool. The High Court remains the guardian to ensure any BLO is just and equitable (at [191]–[193]).

(f) **DPA claims fall within "under the contract" for adjudication purposes.** Following **BDW Trading Ltd v Ardmore Construction Ltd** [2024] EWHC 3235 (TCC) (Joanna Smith J), Constable J held that a DPA claim was within the scope of "a dispute arising under the contract" in section 108 of the HGCRA, applying the *Fiona Trust* broad construction. The statutory origin of the right to adjudicate was not a valid distinguishing feature (at [160]–[162]).

(g) **Proportional BLOs may be available.** The court held (obiter but with full analysis) that the words "any relevant liability of a specified description" in section 130(2) are broad enough to permit the court to order a BLO in respect of a proportion of a relevant liability, if justice and equity require it. This would enable the court to reflect relative factual blameworthiness. However, on the facts, a full BLO was appropriate (at [107]–[112]).

What goes into the Just and equitable test?

12. The judgment contains a comprehensive review of the factors argued to militate against the making of a BLO. The following is a summary of the principal arguments raised by the BLO Defendants and the court's conclusions:

(a) **Crest is a commercial developer, not a leaseholder. Rejected.** The BSA's twin regimes (RO/RCO and BLO) contemplate that commercial landlords and developers will frequently be the applicants. There is nothing in the legislation limiting BLOs to impecunious leaseholders or social housing providers (at [86]–[89]).

(b) **Profitability comparison between Crest and Ardmore. Little weight.** The legislative purpose is that those who caused defects should pay, not those with the deepest pockets. Were it otherwise, commercially unsuccessful builders could avoid the BSA (at [91]–[92]).

(c) **Quantum uncertainty. No bar.** A BLO was made in **Click St Andrews** pending quantification. The fact that ACL's ultimate liability may be less than claimed is another facet of quantum uncertainty and weighs in favour of assuming the worst case for the BLO Defendants (at [95]–[98]).

(d) **Relative factual blameworthiness.** Even assuming that Crest's consultants bore some responsibility (through approval of design), this did not preclude a BLO. If the court determines that it is just and equitable to make a BLO on the worst-case assumption, the possibility of a reduction after trial does not weigh against that determination (at [99]–[112]).

(e) **Financial position of the BLO Defendants.** The evidence that an order to pay £15m would present "profound problems" was treated with scepticism. The BLO Defendants had provided no transparency about the ultimate holding company (AGHL) or intercompany loans. The going-concern statement in the 2024 accounts confirmed sufficient financial resources for the next 12 months. The court was not satisfied the BLO Defendants could not meet the liability (at [199]–[203]).

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(f) **Building Safety Fund.** That Crest might benefit from public funding was not a reason to refuse a BLO. The purpose of the BSA is that those responsible should pay, not the public purse (at [113]–[115]).

(g) **Inequality of arms in the adjudication.** Rejected. ACL had been aware of the claims for years and had engaged experts. It chose to dis-instruct them and prioritise the administration. The BLO Defendants had long been aware of the issues. Senior Ardmore staff gave instructions in respect of ACL's conduct and the BLO Defendants had themselves resisted being involved in the adjudication (at [206]–[208]).

Conclusion

13. This is a landmark decision. The previous BLO authorities were limited: **381 Southwark Park Road RTM Co Ltd v Click St Andrews Ltd** [2024] EWHC 3569 (TCC) (Jefford J) was the first and only BLO; the commentary in **BDW v Ardmore** [2025] EWHC 434 (TCC) (HHJ Keyser KC) was obiter; **Triathlon Homes** and **Grey GR (Edgewater)** concerned the analogous but distinct RCO regime under section 124. **Crest Nicholson** is the first case to grapple with all of the major issues in a contested hearing over three days, and the reasoning of Constable J is thorough and persuasive.
14. The most significant holdings, from a practitioner's perspective, are threefold.
15. **First**, the confirmation that anticipatory BLOs are available removes a major tactical objection. Respondents to BLO applications can no longer argue that the application should be parked until after a liability trial. The court's approach — assessing the just and equitable test at the time of the application, assuming the worst case for the BLO Defendants — provides a clear framework for early determination.
16. **Second**, the ruling that adjudication decisions constitute "relevant liabilities" for BLO purposes is of enormous practical importance. The construction industry relies on adjudication as its primary dispute resolution mechanism. Had the court accepted that adjudication and BLOs were incompatible, a party seeking to enforce against associates would have been compelled to await the outcome of full High Court proceedings — a result that would have been wholly at odds with the BSA's purpose. The judgment provides a clear route: adjudicate against the original body, obtain a BLO against the associates, and enforce the adjudicator's award against the group.
17. **Third**, the obiter analysis of proportional BLOs opens the door to a more nuanced approach to the just and equitable test. The court accepted that the words "any relevant liability of a specified description" in section 130(2) are broad enough to permit the court to order a BLO in respect of a proportion of a relevant liability. This could prove significant in cases where the associate's relationship to the original body is more remote, or where relative blameworthiness is a live issue.
18. The decision also confirms that the BSA's reach extends well beyond the paradigm case of a dissolved SPV. The Ardmore group was not structured with thinly-capitalised SPVs from the outset; rather, ACL was a substantial trading company that was restructured and placed into administration when fire safety liabilities arose. The court held that the effect of the restructuring — isolating historic liabilities — was precisely the mischief targeted by section 130, whether or not it was the original purpose of the corporate structure.
19. For practitioners representing claimants in building safety disputes, the decision provides a powerful tactical tool. The combination of adjudication and BLOs means that a claimant can, in appropriate cases: (a) obtain a binding determination of liability by adjudication; (b) apply for an anticipatory BLO against the associates; and (c) seek enforcement of the adjudicator's award against the wider group — all in advance of any trial. The effect is to make corporate restructuring and administration an ineffective shield against BSA liabilities.
20. For practitioners representing defendants and their corporate groups, the message is equally clear: the BLO regime has real teeth, and the court will not be easily persuaded that determination should be deferred to trial. Early engagement with the merits of the just and equitable test is essential.

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