

Key Northern Ireland guidance on the meaning of “finally determined” for the purpose of the Building Safety Act 2022

The residents in one of the most high profile cases in recent history in Northern Ireland – **Ulster Garden Villages and others -v- Farrans (Construction) Limited and others**, otherwise known as “the Victoria Square case” – have prevailed in the Court of Appeal in Northern Ireland. In doing so, the Order arrived at by the Court gives useful guidance on the meaning of Section 135(6) of the Building Safety Act 2022.

The “David -v- Goliath” facts of the case are these:

In March 2024 Mr. Justice Huddleston of the High Court in Northern Ireland struck out on Limitation grounds a claim by residents of a large apartment complex in Belfast who claimed that the complex had been constructed so poorly that they had had to evacuate their homes. Key to the Court’s decision was the fact that at that point Northern Ireland did not have in place legislation similar to the Building Safety Act 2022 in England which retrospectively extended the Limitation period for Defective Premises Act claims to 30 years.

Instructed at the point the claims were struck out, [Sean Brannigan KC](#) of 4 Pump Court (leading Anna Rowan BL and instructed by O’Reilly Stewart solicitors of Belfast) obtained leave to appeal on other non-connected grounds and then led an effort to lobby the Northern Ireland assembly to pass, on an expedited basis to match the pace of the Appeal, legislation similar to the English Building Safety Act. After very extensive TV, radio and press publicity within Northern Ireland the Assembly did so, passing the Defective Premises (Northern Ireland) Act 2024 and creating an identical retrospective limitation period of 30 years.

Faced with that unusual situation the Defendants sought to rely upon Section 8(5) of the Defective Premises (Northern Ireland) Act 2024:

That provision is in identical form to Section 135(6) of the Building Safety Act 2022 in that it states:

“Nothing in this section applies in relation to a claim which, before this section came into operation, was.... finally determined by a court or (whether on the basis of limitation or otherwise”; and

The Defendants sought to argue that the fact that the Defective Premises Act claims had already been struck out meant that they had been finally determined.

In reply Sean Brannigan KC, acting on behalf of the majority of the residents, relied both on the fact that the decision as a whole of Mr. Justice Huddleston was under Appeal (albeit on different grounds) and, unusually, on comments from the relevant minister in the Assembly when the Defective Premises (Northern Ireland) Act 2024 was being debated to argue that, whatever other cases Section 8(5) might apply to, it was not intended to apply to the Victoria Square case.

That argument was considered by the Northern Ireland Court of Appeal, headed by the Lady Chief Justice of Northern Ireland in a hearing in November 2024. After making observations on those arguments the Court set them down for hearing on 11th December 2024. The result was that, on reflection, the Defendants conceded that the Defective Premises

Act claims had indeed not been so finally determined for the purposes of the Act, agreeing a consent order to vacate the judgment of Mr. Justice Huddleston (including his cost orders) and to remit the matter back to him for full hearing of the Defective Premises Act claim.

The case is therefore both (1) an interesting example of the importance in the right case of the Pepper -v- Hart line of authorities saying that Hansard can be used for the purposes of Statutory Interpretation and (2) helpful in terms of the meaning and effect of Section 8(5) of the Defective Premises (Northern Ireland) Act 2024/ Section 135(6) of the Building Safety Act 2022. In particular the order of the Court of Appeal is likely to be used going forward to argue that Section 135(6) is not engaged even where a claim has previously been struck out so long as the underlying decision was the subject of Appeal (on any ground) whenever the Building Safety Act 2022 was passed.

[Sean Brannigan KC](#) of 4 Pump Court acted for the majority of the successful residents leading Anna Rowan BL of the Belfast Bar and instructed by James Turner of [O'Reilly Stewart Solicitors](#), Belfast.