URS V. BDW [2025]: SUPREME COURT CONFIRMS CONSULTANTS' DUTY TO DEVELOPERS FOR HISTORIC DEFECTS

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SUMMARY

The UK Supreme Court's (Court) decision in *URS Corporation Ltd v. BDW Trading Ltd* [2025] UKSC 21 resolves key questions around the recoverability of remediation costs where the developer no longer owns the property and has no enforceable legal liability to leaseholders at the time of the works.

The Court affirmed that, under English law, a professional consultant may owe a duty of care in tort to a developer client, even where that client has divested its interest in the property and is not subject to a third-party claim. It rejected arguments that BDW's remediation works were voluntarily incurred and therefore not recoverable.

The ruling will be of significant interest to consultants, developers, insurers, lenders and those operating in the construction sector more broadly. For developers, the case highlights that reputational risk, potential personal injury liability and wider safety obligations may justify remediation, even without third-party claims or ownership. For purchasers and real estate investors, it underscores the importance of factoring latent defect risks into due diligence, as sale or transfer does not necessarily shield against tortious liability.

BACKGROUND

BDW Trading Ltd (BDW), a major UK developer, engaged URS Corporation Ltd (URS) to provide structural engineering designs for two high-rise residential developments. Following safety reviews in 2019, serious structural defects were discovered. Although BDW no longer owned the properties, it carried out extensive remedial works and brought a negligence claim against URS to recover the costs.

At the time of the works, potential claims by leaseholders under the Defective Premises Act 1972 (DPA) appeared time-barred under the standard six-year limitation period. The Building Safety Act 2022 (BSA), which came into force later, retrospectively extended this period to 30 years, reviving interest in previously time-barred potential claims.

GROUND 1: WAS BDW'S REMEDIATION “VOLUNTARY” AND IRRECOVERABLE?

As BDW had no enforceable liability to leaseholders under the DPA at the time of the works, URS argued that BDW's losses were voluntarily incurred and therefore outside the scope of URS' duty of care.

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The Court disagreed. It held that while BDW's DPA liability was time-barred, it remained a continuing legal obligation. BDW still faced potential personal injury claims, which were not time-barred, as well as significant reputational and moral pressure to act. The Court found that BDW had no realistic alternative but to undertake the remediation.

The costs were foreseeable, reasonable and within the scope of URS' duty of care. This finding is especially relevant for consultants (and their insurers); even where contractual limitation periods have passed, tortious duties may survive, particularly where public safety is at issue.

GROUND 2: RELEVANCE OF SECTION 135 OF THE BSA

The Court confirmed that section 135 of the BSA, which retrospectively extends the limitation period under the DPA to 30 years, was relevant even though BDW's claim was brought in tort and for contribution, rather than directly under the DPA.

Section 135 applies where the potential for the enforcement of DPA liability forms part of the legal reasoning for another claim, for example, to rebut an argument that remediation was voluntary or that there was no liability for the same damage in a contribution claim context. As a result, BDW's DPA liability was revived, and there was no limitation bar in place when the costs were incurred.

The Court clarified that section 135 does not preclude a trial judge from considering whether the remedial works were reasonable as a matter of causation or mitigation.

For professionals, the retrospective effect of the BSA significantly increases the exposure window, particularly in tort and contribution claims revived by the (now) longer limitation period under the DPA.

GROUND 3: ARE DEVELOPERS OWED DUTIES UNDER THE DPA?

The Court confirmed that a developer like BDW can be owed a duty under section 1 of the DPA by professionals such as URS. The duty is owed to any person, including a developer, to whose “order” the dwelling is being built.

URS argued that the DPA intended to protect consumers, like individual purchasers, not commercial developers. They also argued that it was anomalous for a developer to owe and be owed the same duty. The Court rejected both arguments.

The Court held that consumer protection would be better served by a broad interpretation of the duty. If a purchaser were to bring a DPA claim against a developer for defective work, and the developer had commissioned that work from a third party, it would be entirely appropriate for the developer to be owed a corresponding duty by that third party. This would ensure the developer could seek redress from the party which had caused the defect and that purchasers would not be left without recourse, particularly in the event of a developer's insolvency.

The Court dismissed the suggestion that a party cannot owe and be owed the same duty. There is no logical inconsistency as duties under the DPA can run through the chain of responsibility without being circular.

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GROUND 4: CAN A CONTRIBUTION CLAIM ARISE WITHOUT A THIRD-PARTY CLAIM?

The Court held that BDW did not need to be sued by leaseholders in order to claim contribution from URS under the Civil Liability (Contribution) Act 1978.

It was sufficient that BDW:

- Faced potential liability for the same damage; and
- Had made a payment in kind by undertaking the remedial works as compensation.

Thus, a contribution claim may arise from proactive remediation, taken to mitigate foreseeable liability, without waiting for third-party proceedings. For developers, this decision supports early resolution of defects and may open recovery routes even before formal claims materialise.

CONCLUSION

With the BSA marking a decisive policy shift towards stronger accountability, this decision confirms that developers who act responsibly to address serious defects can expect greater support from the courts. Significantly, liability for unsafe work can survive divestment and time-bars and cannot easily be avoided by pointing to the absence of formal claims. Construction professionals should expect increased scrutiny of historic projects and prepare for a risk environment where legal responsibility can persist long after practical completion, especially where safety is concerned.

The firm regularly assists clients with construction liability and professional liability matters. If you would like to discuss any of the issues addressed in this article with us, please do get in touch. Our construction and insurance teams are well placed to support clients navigating the impact of this decision. Please contact the authors listed above to discuss this further.

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