

**Possible Contract issues resulting from the Building Safety Act  
2022**

**FIS Annual General Meeting  
7 November 2023**

## Topics covered

- Increased Limitation Periods
- What work is/is not covered under Building Safety Act and Defective Premises Act?
- Possible scope of claims
- Possible contract issues arising, including:
  - PI Insurance and copyright clauses
  - Standards of Care
  - Gateway Obligations
  - Golden Thread of Information

## Applicability of BSA and DPA

- BSA 2022 extends limitation periods under DPA 1972, 15 or 30 years from PC
- DPA 1972 applies to “dwellings”, which may include commercial projects affecting ‘hybrid’ developments e.g. consider works to communal spaces
- What claims can be brought under DPA s 1(1) and Building Act 1984 s38?
- DPA 1972 s6(3): liability cannot be excluded or restricted by contract term
- BSA s148 introduces a new statutory basis of claim especially important for manufacturers and is also subject to 15-year limitation period
- Contracts likely to refer to generic requirement to comply with “statutory requirements”

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## Properties excluded from the ambit of the BSA

- Care homes
- Hospitals
- Secure residential institutions e.g. prisons
- Hotels
- Military premises

## What claims can be brought?

- DPA 1972 s 1(1)
  - Where the duty-holder has not carried out its work in a workmanlike or professional manner.
  - Where it has not used proper materials.
  - When the dwelling is not fit for habitation when completed.
- BA 1984 s 38
  - Statutory right to claim compensation for physical damage (e.g. injury or damage to property) from those responsible for the damage caused, where such damage is caused by a breach of the Building Regulations.

## Professional Indemnity Insurance & Copyright Licence

- PII
  - Contracts likely to require to be maintained for 15 years
  - Response of insurance brokers?
  - Extent of policy coverage – to include S2A standard of care?
- Copyright
  - Possible need for extension to the licence and document retention periods

## Standard of Care

- DPA imposes higher standard than exercise of ‘reasonable skill and care’
- BSA 2022 s134 introduces a new S.2A DPA duty to include “interiors” work to dwellings
- End users/clients may wish to extend ambit of Clause 2.17.2 in the D&B/2.19.2 in the SBC, e.g:
- *”Where and to the extent that this Contract involves the Contractor in taking on work for or in connection with ~~the provision of a dwelling or dwellings~~, the clause 2.17.1 reference to the Contractor’s liability includes liability under the Defective Premises Act 1972”*
- Likely additional obligations to co-operate with Building Control Approvers

## Gateway Obligations

- All Gateways now in force as of 1 October 2023
- Gateway 1: Planning permission
- Gateway 2: Pre-construction phase
- Gateway 3: Completion phase
- Key contractual drafting considerations:
  - What documents are required and who produces them? Draft in express responsibilities?
  - Who applies for Gateway sign off? – can be principal contractor
  - What if there is a delay to approval?
    - Time and cost considerations
    - Factor in a certain level of delay into contract programme



## Golden Thread of Information

- A 'single source of truth' about the building's original design and any subsequent changes
- Ensures the safer management of HRBs during their life cycle.
- Will make the management and record keeping of HRBs easier, more efficient and consistent.
- Who is to create the electronic facility?
  - Principal Designer – similar duties to that under CDM, but additional responsibilities
  - BSR has indicated that it expects the Principal Designer under the Building Safety Act to have a 'lead' role in the design
- Contracts will need to address this production and disclosure of information

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