



Case No: HT-2019-000112

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**TECHNOLOGY AND CONSTRUCTION COURT (QBD)**  
**[2021] EWHC 567 (TCC)**

Royal Courts of Justice  
Rolls Building  
Fetter Lane, London, EC4Y 1NL

Date: 10/03/2021

**Before:**

**MRS JUSTICE O'FARRELL DBE**

**Between:**

**MISS ELAINE NAYLOR & Others**

**Claimants**

**- and -**

**(1) ROAMQUEST LIMITED**  
**(2) GALLIARD CONSTRUCTION LIMITED**

**Defendants**

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**Siân Mirchandani QC** (instructed by **Leigh Day**) for the **Claimants**  
**Simon Goldstone** (instructed by **Howard Kennedy & IBB Law LLP**) for the **Defendants**

Hearing date: 20<sup>th</sup> November 2020  
Further submissions in writing: 25<sup>th</sup> November 2020 & 2<sup>nd</sup> December 2020

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**“Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties’ representatives by email and release to Bailii. The date and time for hand-down is deemed to be Wednesday 10<sup>th</sup> March 2021 at 10:30am”**

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MRS JUSTICE O'FARRELL DBE

**Mrs Justice O'Farrell:**

1. The matter before the Court is the application by the Defendants to strike out parts of the claim, and/or for summary judgment in respect of those parts, on the basis that the Statement of Case discloses no reasonable grounds for bringing those claims, they have no real prospect of success and there is no other compelling reason for a trial.

*Background facts*

2. This claim arises out of a mixed residential and commercial development, comprising eleven tower blocks, known as New Capital Quay in Greenwich London. The Claimants are leasehold owners of one or more of the flats in six of the tower blocks. The First Defendant was the developer and freehold owner of the property. The Second Defendant carried out the design and construction of the development.
3. The development was carried out between 2009 and 2014. The external envelope of the tower blocks was constructed using aluminium composite (Alucobond) cladding and timber rainscreen cladding with Kingspan K15 insulation.
4. Following the Grenfell Tower fire in June 2017, the Building Research Establishment ("BRE") carried out testing on the external envelope of the development. That testing disclosed that it had no flame retardant properties and therefore failed to comply with applicable Building Regulations.
5. The Claimants have the benefit of an NHBC Buildmark Policy in respect of their flats. By letter dated 9 July 2018 the NHBC accepted the claim under the Policy for the remedial scheme required, including replacement of the Alucobond cladding, Kingspan insulation and cavity barriers, together with the 'waking watch' scheme put in place to ensure safety of the residents pending completion of the remedial works.
6. The Defendants commenced the remedial works in 2018 or 2019 (the parties are in dispute as to when the works were started). Completion of the same is anticipated by August 2021.

*Proceedings*

7. On 31 July 2019 the Claimants commenced these proceedings, seeking damages against the Defendants. There are 124 Claimants, the leasehold owners of 82 flats across six of the tower blocks. The Claimants allege against the Defendants breach of the applicable Building Regulations, breach of contract and breach of statutory duty (under the Defective Premises Act 1972).
8. The Claimants do not pursue any claim in respect of the cladding replacement works or the costs of the 'waking watch' scheme, to the extent that these have been accepted by the NHBC under the Buildmark Policy. However, they seek damages in respect of their uninsured losses, such as increased building insurance premiums, lost rental income, alternative accommodation costs and damages for distress and inconvenience.
9. The Claimants also make a claim in respect of additional defects, as set out in paragraph 69 of the Particulars of Claim:

“Subsequent to further (non-intrusive) inspections carried out in 2019, the following further defects were detected and/or are reasonably suspected as being included in the construction of the Buildings of the Development. These amounted to defects and/or further breaches of the said requirements of the Building Regulations 2000. The Schedule of Defects provides a full list of these defects, their location, the statutory requirements that apply and particulars of the alleged breaches thereof, as well as the proposed remediation works and estimated cost of remediation (including the rain screen cladding which is item 1) ...”

10. The Schedule of Defects includes alleged defects in the cladding, cavity barriers and fire stopping and states that the estimated cost of rectification works is £5,787,698.
11. The loss and damage claimed includes the following at paragraph 119:

- “(1) Additional remedial works costs outside NHBC cover: the Buildmark Policy only covers “necessary repairs”. Prior to further information and/or disclosure relating to the ‘as built’ remedial works and/or an opportunity for further expert inspection of the Buildings where remediation works are scheduled to be undertaken and/or are ongoing, the Claimants do not presently know whether the NHBC Works will include (or have included) full remediation of the defects noted in respect of the fire breaks or compartmentalisation measures, (which also amount to breaches of the Building Regulations), as more fully particularised above and in the Schedule of Defects, other than where those defects are immediately behind the ACM cladding or timber cladding.
- (2) Accordingly the Claimants claim the cost of works associated with the remediation of such other defects. The Schedule of Defects is the best estimate the Claimants can currently give in respect of those likely costs.
- (3) Diminution in value: Further to (1) or alternatively, (in which case the diminution in value must take account of the costs of remediating the matters complained of under (1) as well as the effect of the Cladding), prior to completion of all remedial works across the Development (and not merely the Buildings relevant to this claim) the value of the Claimants’ flats has been diminished. Immediately after the Grenfell fire reportedly lenders were refusing to lend on such buildings, and valuers were being instructed to value flats in such developments at £nil. Other lenders adopted an approach of trying to balance their clients’

risk of having to share in the cost of recladding via the Service Charge, with supporting their existing customers. As a result there was a loss of liquidity in the sales market, and the development of a period of Material Valuation Uncertainty as defined by RICS (in RICS Valuation - Global Standards, the Red Book under Valuation Practice Guidance – Applications, VPGA10).

- (4) This stagnation and uncertainty persisted until December 2019 when the RICS and the Council for Mortgage Lenders (CML) jointly produced a protocol for valuers and lenders considering flats in tall buildings and developments with Category 3 ACM cladding. The said protocol provides for lenders and valuers to agree that valuations of such properties should be at Market Value as defined by RICS with a retention to cover the potential cost (or share of the cost) of remediation.
  - (5) The overall effect of these matters is that the flats have lost the ability to be sold (or re-mortgaged) at a proper market value. This means the flats are valued at a discount from their “unaffected” Market Value ...
  - (6) Added to this discount there is the impact of the ongoing remedial works at the Development, on the ability for the flats to be sold at a proper market value ...
  - (7) A further source for uncertainty in the valuation of these flats is the question of how long any stigma will apply, (even after completion of the remedial works) and whether the damage to the standing of the Development (in comparison with other premium located riverfront developments) is permanent or transitory. An element of diminution in value now arises because of this.
  - (8) The resulting discount to reflect diminution in value is therefore dependent on all of the above matters. The Claimants’ individual claims for diminution in value are set out in the Schedules of Information. The range of diminution in value for the flats owned by the Claimants is between £15,160 and £99,673, although the majority lie between £20,000 and £40,000.”
12. The Defendants dispute the claims made by the Claimants, including the claims for additional defects, as summarised at paragraph 23 of the Defence of the First Defendant (also adopted by the Second Defendant):

“... the Claimants now... claim damages of approximately £5.8m to reflect the supposed costs of re-doing all of the Replacement Works to all of the blocks in which they have flats. This claim is brought on the basis of a concern that the new cladding might not comply with Building Regulations. The claim is not legitimate because:

- (1) They do not positively assert a single example whereby the Replacement Works do not or will not comply with Building Regulations.
- (2) In the event that the Replacement Works were to contravene Building Regulations the costs of re-doing the Replacement Works would be met by insurers. The NHBC confirmed to residents in January 2020 that they should be contacted in the event an issue arose with the completed works.
- (3) There is no legal basis on which any group of tenants, let alone the small minority of the tenants that form the Claimants in these proceedings, are entitled to such relief.”

13. The Defendants also dispute the diminution in value claim at paragraph 24 of the Defence:

“The second largest claim in terms of value is the claim for diminution in value. Notwithstanding that it is duplicative of these speculative defects claim (in that it would result in double recovery), it is in any event presented on an entirely illegitimate basis, namely the difference between the sale price paid and the (alleged) value as at 17 July 2017 (a month after Grenfell, and the day on which the presence of Class 3 cladding in the Buildings was first confirmed). That is the wrong approach. The appropriate assessment ought to be based on the value of the flats after the Replacement Works have been completed. Approached on the proper basis, it is denied there is or will be a diminution in value as a result of the ACM cladding all of which will have been replaced by November 2021. Further:

- (1) The Claimants raise the possibility (but do not positively assert) that the values of their flats may be diminished by reason of a possible ‘stigma’ notwithstanding that their flats are in blocks that have never been affected by fire, and that following the Replacement Works the Cladding System will have been removed.
- (2) The complaints include an allegation that lenders were refusing to lend on the properties. However between July 2017 and 26 March 2020 some 30 flats were re-

sold and/or re-mortgaged and that some 10 different lenders were content to lend on the properties in question ...

- (3) The detailed responses to these allegations are set out in paragraph 139 below.”

*The application*

14. On 30 July 2020 the Defendants issued this application, seeking an order that paragraphs 69-68 [*sic*]\* and 119(3)-(8) of the Particulars of Claim be struck out pursuant to CPR 3.4(2)(a) or (b) and/or summary judgment be given on those parts of the claim pursuant to CPR 24.1. (\*There is an error in the draft order appended to the application notice: it was apparent from the Defendants’ submissions that the application concerned paragraphs 69-82 of the Particulars of Claim).
15. Mr Goldstone, counsel for the Defendants, submits that the above paragraphs of the Particulars of Claim disclose no reasonable cause of action against the Defendants, the Claimants have no real prospect of success on those claims and there is no other reason for the claims to be disposed of at trial:
- i) The additional defects claim is speculative and an abuse of process; no positive case is asserted regarding many of the alleged breaches and inadequate particulars have been provided.
  - ii) The remedial works required to remedy the breaches of the Building Regulations that pose a risk to safety are being funded by the NHBC pursuant to the Buildmark Policy. The Claimants are not entitled to claim the full costs of re-doing those remedial works to all six tower blocks the subject of the claim. Such rectification costs would not be reasonable or proportionate. Each Claimant’s loss would be restricted to remedial works in respect of that individual’s flat or block. In any event, the leases impose on the First Defendant obligations to repair the exterior and structure of the blocks and to ensure that they comply with the Building Regulations.
  - iii) The claims for diminution in value are calculated wrongly as at the date of discovery of the defects. It is accepted that there may be residual diminution in value (‘blight’) following the completion of the remedial works but the correct date would be the date of trial.
16. Ms Mirchandani QC, leading counsel for the Claimants, submits that it would be inappropriate for the Court to strike out the claim or grant summary judgment:
- i) The Claimants do not accept that the buildings will be safe following the current remedial works. The Defendants’ remedial scheme allows for retention of some components of the original external envelope, which would not result in compliance with the applicable regulations. There is an issue as to the applicable version of the Building Regulations; this turns on the date on which the remedial works were commenced, a matter that will have to be resolved at trial. Deficiencies have been identified in reports to date by consultants for the

Defendants that give rise to a suspicion that such defects are replicated throughout the tower blocks.

- ii) The Claimants do not assert that all the replacement cladding must be removed. If any of the remedial works are covered by the NHBC policy, or if the Defendants were to give undertakings to be responsible for the costs of carrying out any other necessary remedial works, the claim would be adjusted.
- iii) The Defendants have accepted that the Claimants would be entitled to claim damages for residual diminution in value as a matter of principle. The calculation of such damages is a matter for trial.

*The applicable test*

17. CPR 3.4(2) provides that:

“The court may strike out a statement of case if it appears to the court:

...

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
- (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings ...”

18. CPR 24.2 provides that:

“The court may give summary judgment against a claimant ... on the whole of a claim or on a particular issue if –

- (a) it considers that –
  - (i) that claimant has no real prospect of succeeding on the claim or issue; ... and
  - (b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

19. The principles to be applied on such applications are not in dispute and are helpfully summarised in *Tesco Stores Ltd v Mastercard Incorporated* [2015] EWHC 1145 (Ch) per Asplin J (as she then was):

- i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91.
- ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8].

- iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*.
- iv) The court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550.
- v) The court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63.
- vi) If the court is satisfied that it has before it all the evidence necessary for the proper determination of a short point of law or construction and the parties have had an adequate opportunity to address the question in argument, it should grasp the nettle and decide it. It is not enough to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.
- vii) The burden of proof remains on the defendants to establish that the claimants have no real prospect of success and that there is no other reasons for a trial.

*Additional defects claim*

- 20. Mr Goldstone's complaint is that the claim was issued prematurely, to avoid limitation difficulties, and without the benefit of expert evidence. As a result, the additional defects claim is speculative and inadequately particularised.
- 21. That complaint is well made. The Particulars of Claim and the Schedule of Defects at Appendix B refer to assumed or potential defects in the tower blocks but do not assert with any particularity the nature, extent and location of the alleged defects so as to enable the Defendants to know the case they have to meet.
- 22. By way of example:
  - i) Item 1 of the Schedule includes as an alleged breach:

“Panels & Insulation ... The documents that have been disclosed do not demonstrate that, at the time of design or construction, the combustible ACM rain screen or Cedar rain screen cladding that were installed over combustible K15 insulation match the classification criteria or BR135 using test data from BS8414.”
  - ii) At paragraph 73 of the Particulars of Claim the alleged breach in respect of the Backing Wall & Window Support is pleaded as follows:



“Behind the ACM and Kingspan K15 insulation, the backing wall to the rain screen system is a sheathing board that contains a content of wood chip that is likely to render the sheathing board Class B at best when classified in accordance with BS EN 13501 and pressure treated timber supports to windows that are believed to be Class C when classified in accordance with BS EN 13501. On this basis, (and in the absence of a BR 135 classification using test data from BS8414 and intrusive inspection) the curtain walling and windows did not comply with requirement B4(1) and paragraph 12.7 of Approved Document B.”

iii) At paragraph 75 the pleaded allegation in respect of Cavity Barriers is:

“The documents disclosed for the proposed remedial Building Work do not demonstrate the test or certification evidence upon which the specification of the new open state cavity barriers has been based such that it would be ensured that the cavity barrier will close the cavity against articulated surfaces of the cladding system such as returns in the panel trays.”

23. Thus, the allegations are not based on identified defects in the construction but on the absence of documents from the Defendants to prove that there are no further defects in the construction.
24. The remedial works identified in the pleading are the removal and replacement of all combustible material, removal and replacement of all defective cavity barriers, and the installation of missing cavity barriers. However, the pleading does not distinguish between those defects that have been accepted by the NHBC and are the subject of ongoing remedial works, and any disputed/outstanding defects. It assumes that all cladding works will have to be replaced in full.
25. By letter dated 6 January 2020 the NHBC confirmed that remedial works carried out included replacement of ACM and timber cladding, replacement of insulation behind the ACM and timber cladding and replacement of cavity barriers behind the ACM and timber cladding. The Claimants rightly assert that this letter of comfort does not confirm that the works, when completed, will comply with the relevant Building Regulations; in any event, the letter would not be proof of compliance. That does not detract from the fact that the Claimants have the burden of establishing a positive case, not just as to any breach on the part of the Defendants, but also as to a claim for substantial damages.
26. The estimated cost of £1,379,820 set out in the Schedule of Defects is based on an assumption that all areas of the ACM and cedar cladding will be required to be removed and replaced but that assumption is made without any link to specific, identified defects.
27. These deficiencies are not confined to isolated allegations but extend to other defects pleaded:
  - i) Item 3 – original curtain walling and windows – is pleaded at paragraph 76 as:

“The opaque and spandrel panels within the curtain wall and windows are assumed to have contained combustible materials and insulation ...”

ii) Likewise, item 4 is pleaded at paragraph 77 as:

“It is assumed that fire stopping should have been installed between the curtain wall and the compartment floor slab. Fire stopping on compartment floor lines between slab edges and internal faces of curtain walling is likely to be defective or missing in places ...”

28. The difficulty faced by the Claimants is that, contrary to good practice, the allegations of defects are not based on inspections or opening up works carried out by appropriately qualified experts and the subject of an expert report. The pleading is based on a suspicion that the remedial works will prove to be inadequate; it does not provide particulars of specific, identified defects, or their location and extent.
29. In short, the pleading imposes on the Defendants the burden of identifying for themselves whether the defects in fact exist and proving their absence. That is not a proper basis on which to bring a claim for damages.
30. The Claimants complain that the Defendants have failed to disclose documents that would enable them to ascertain whether or not there are additional defects that would not be addressed adequately by the remedial works. It is clear that the Claimants have been chasing for the reports from the Defendants' fire consultants, Fire & Risk Solutions (“FRS”), for some time. However, that does not absolve the Claimants from the need to investigate, using appropriate experts to identify any defects in the construction and/or the remedial works, and to plead a coherent and adequately particularised case.
31. In *Nomura International plc v Granada Group Ltd* [2008] Bus LR 1 (Comm) Cooke J considered the approach to an application to strike out where the complaint was that there was no known valid basis for the claim at the time it was issued:

“[37] In my judgment ... the key question must always be whether or not, at the time of issuing a Writ, the claimant was in a position properly to identify the essence of the tort or breach of contract complained of and if given appropriate time to marshal what it knew, to formulate Particulars of Claim. If the claimant was not in a position to do so, then the claimant could have no present intention of prosecuting proceedings, since it had no known basis for doing so. Whilst therefore the absence of present intention to prosecute proceedings is not enough to constitute an abuse of process, without the additional absence of known valid grounds for a claim, the latter carries with it, as a matter of necessity, the former. If a claimant cannot do that which is necessary to prosecute the claim by setting out the basis of it, even in a rudimentary way, a claimant has no business to issue a Claim Form at all "in the hope that something may turn up". The effect of issuing a Writ or Claim

Form in such circumstances is, so the plaintiff/claimant hopes, to stop the limitation period running and thus deprive the defendant of a potential limitation defence. The plaintiff/claimant thus, unilaterally, by its own action, seeks to achieve for itself an extension of the time allowed by statute for the commencement of an action, even though it is in no position properly to formulate a claim against the relevant defendant. That must, in my judgment, be an abuse of process and one for which there can be no remedy save that of striking out the proceedings so as to deprive the claimant of its putative advantage. The illegitimate benefit hopefully achieved can only be nullified by this means. Whatever powers may be available to the court for other abuses, if this is an abuse, there is only one suitable sanction.

...

[40] Although defectively endorsed Writs could be cured by subsequent statements of claim in the ordinary way, such cure depended upon the plaintiff having a known genuine cause of action at the time of the issue of the Writ and the irregularity merely being the failure properly to set it out. As appears from the decisions discussed earlier, that principle is of no application where the plaintiff had no known basis for making the claim at the time when the Writ was issued.”

32. Mr Goldstone’s position is that it is not legitimate for the Claimants to bring a speculative claim when they have had plenty of opportunity to investigate in order to make a positive case. He submits that the Court should strike out this part of the claim or grant summary judgment in respect of the same.
33. Ms Mirchandani submits that the facts of *Nomura* were very different in that the claim was issued by the plaintiff on the basis of a contingent claim that it anticipated might be brought against it. In contrast, this claim has been brought following the BRE tests, identifying cladding that failed to comply with the Building Regulations, and the FRS reports indicate that assessment of the efficacy of the remedial works is ongoing.
34. I am satisfied that the claim should not be allowed to proceed on the current defective pleading. The onus is on the Claimants to plead a positive case; the Defendants are entitled to know the case that they have to meet. However, it would be wrong in principle to strike out the defects claim without giving the Claimants an opportunity to correct the deficiencies by amendment. Therefore, the Court will allow the Claimants time to draft amendments to the defects claim set out in the body of the Particulars of Claim and the schedule at Appendix B to plead a proper case.

*Standing to bring claim*

35. Mr Goldstone submits that there is no sustainable claim against the Defendants for the full cost of any remedial works because the Claimants do not own the whole of the tower blocks in question (individually, or collectively). Where a Claimant has only a limited interest in the land, his damages are confined to the extent of his interest. No

single Claimant can have sustained any loss attributable to any potential deficiency in the replacement works, save in respect of the individual's flat or block. Despite that, each Claimant claims as damages all costs of all works to all blocks.

36. Further, he submits that the property leased to each Claimant specifically excludes the walls of the blocks and all parts of the main structure of the buildings. Therefore, the Claimants would not be entitled to carry out the remedial works. The relevant obligations to repair the exterior and structure of the tower blocks and to ensure that the buildings comply with the building regulations fall on the First Defendant.
37. In any event, the Claimants own just 82 out of the 1,002 flats in the blocks. Their liability for the costs of any remedial works would arise, if at all, by increased service charge, limited to each Claimant's share, and therefore only a fraction of the costs could be passed on to them.
38. Ms Mirchandani submits that the Defendants' assertions raise disputed factual issues that are not appropriate for determination on a summary basis or by way of strike out. Whether the costs of remedial works would be incurred directly by the Claimants or passed on to them by way of service charge would not affect their ability to claim damages based on sustained loss.
39. In *Rendlesham Estates plc v Barr Ltd* [2014] EWHC 3968 (TCC) Edwards-Stuart J considered the ability of individual owners of flats to claim damages based on defects in the common parts of an apartment block in the context of a claim under the Defective Premises Act 1972:

“[232] ... if there is a defect in the roof above a penthouse apartment caused by [the contractor's] poor workmanship so that the apartment is unfit for habitation, the loss sustained by the owner of the apartment is, in my opinion, the lack of, and need for, a sound roof. Ordinarily, the compensation for that loss would be the sum of money representing the cost of the necessary repairs. If it is the case that the carrying out of those repairs will necessarily benefit other leaseholders who are not claimants, I do not see how that can affect the particular claimant's right to compensation.

[233] ... In my judgment the owner of an apartment which has been rendered unfit for habitation because of a defect in the common parts is entitled to the cost of repairing that defect, or at least to the cost of carrying out those repairs necessary to make his flat fit for habitation.

[234] So, staying with my example, the owner of a penthouse apartment on the top floor which was rendered unfit for habitation because of the state of the roof is in my view entitled to recover the cost of the work to the roof that is necessary to render his apartment fit for habitation. Nothing less will restore him to the position that he would have been in if the breach had not occurred. If that owner is awarded only his share of the service charge, he will then be dependent on all the remaining

leaseholders agreeing to fund the balance of the cost of repairing the roof. But if they or some of them refuse, then the work may never be done.”

40. If the Claimants established the existence of defects in the tower blocks, amounting to a breach of contract and/or statutory duty on the part of the Defendants, as a matter of principle, it would be open to them to claim substantial damages based on the diminution in value of their property assessed as the reasonable cost of reinstatement. The ability of each of the Claimants to recover as damages the cost of carrying out any part of the remedial works would depend on whether they could show that the specific works were reasonable and proportionate to remedy the breach in question.
41. I accept Ms Mirchandani's submission that this is a matter for full investigation at trial. As set out above, the Claimants must plead a coherent case alleging defects and the damages claimed as a result of the same. Pending a trial on the evidence, the Court is not in a position to determine whether each Claimant has sufficient standing to recover part, or all, of the damages claimed.
42. At the hearing, Mr Goldstone stated, on behalf of his clients, that in respect of the cladding and envelope, no costs of any works to any of the blocks to remedy alleged breaches of applicable Building Regulations, including works to address defects in the original building or works funded by the NHBC, would be charged to the Claimants by service charge or at all. In his further written submissions to the Court following the hearing, Mr Goldstone clarified that covenants in the leases conferred a discretion on the landlord to repair the exterior and structure of the blocks to comply with statutory regulations. The Defendants could not give a blanket undertaking under the leases to address technical breaches which did not give rise to safety concerns.
43. This leaves open the possibility that the Claimants might have a claim for defects that would not be covered by the NHBC policy works or the landlord's repairing covenants under their leases.
44. The Defendants' clarification serves to reinforce the need for properly pleaded allegations of breach and damage, to which the Defendants can plead a defence, which will form the agenda for the trial.

*Residual diminution in value*

45. It is common ground that, as a matter of principle, the Claimants have an arguable claim for residual diminution in value. The issue is whether the Claimants have calculated this claim by reference to the appropriate date and value and/or pleaded a positive case of permanent stigma.
46. The general rule is that a court may award damages representing residual diminution in value following completion of remedial works to reflect any ongoing difficulty in selling a property or realising the market value it would have commanded if the defects had never existed: *Strange v Westbury Homes (Holdings) Ltd* [2009] EWCA Civ 1247 per Dyson LJ at [15] – [17]; *Rendlesham* (above) per Edwards-Stuart J at [290] – [297].

47. The ability of any Claimant to recover such head of loss, and the amount of the same, will always depend on the facts of the case. Blight may be minimal having regard to the nature and extent of the defects; it may be transitory or permanent; it may reduce over time or disappear following completion of remedial works. The sensitivity of the assessment of such a claim to the factual evidence means that the Court is not in a position to determine the validity of the pleaded case on a summary basis or strike-out application.

*Conclusion*

48. For the reasons set out above, the Claimants' pleading of its additional defects claim is deficient. The Court will allow the Claimants an opportunity to remedy this deficiency by amendment and will fix a timetable for further consideration of this issue, if not agreed by the parties. On the current pleadings, the Claimants have an arguable case that they have sufficient standing to bring their claims, including a claim for residual diminution in value.
49. In those circumstances, the Court will make the following orders:
- i) The Defendants' application is adjourned, pending consideration of the Claimants' proposed amendments.
  - ii) All consequential or other matters, if not agreed, will be dealt with by the Court at a further hearing to be fixed by the parties.