



Legal developments in construction law: September 2022- Court tackles key issues in £8million cladding claim

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The owner of five tower blocks claimed approximately £8 million from the design and build contractor for the cost of investigating and replacing combustible external wall insulation rendered cladding, fitted by the contractor between 2005 and 2008, and providing a waking watch until the cladding had been removed.

The contractor admitted there were some defects in installation of the cladding but denied that they caused, or justified, the complete replacement works undertaken or the need for the waking watch. It said that the real cause and justification for the replacement and the waking watch was the claimant's realisation, triggered by the 2017 Grenfell Tower fire, of the risk that the combustible cladding did not meet the raised fire safety standards that came into force after completion of the works, and which were further raised following the Grenfell fire. Only limited repair works, it said, were required to remedy the installation breaches. The claimant's fall back case, as an alternative to its primary installation breach case, was that the cladding, as specified, did not meet the fire safety standards that applied at the date of the contract and that it was entitled to recover the replacement and waking watch costs as caused by the specification breach.

The case was primarily about causation of loss in relation to the defective installation, the alternative specification case and the recoverable loss. The specification claim raised the question of whether the cladding specification breached fire safety standards current in the early to mid 2000's, but the judge warned that, like most other similar cases, this case turned very much on the specific contractual provisions and the specific fire safety standards applicable to the particular product chosen, as well as on the cases pleaded and argued and the evidence called. The lengthy and detailed judgment does, however, consider a wide range of issues, including the legal principles applicable to causation, mitigation of loss, reliance on expert advice and remoteness.

[Martlet Homes Ltd v Mulalley & Co Ltd \[2022\] EWHC 1813](#)

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