



Building safety starts with risk: what counts as risk in considering remediation?

The decision of the Upper Tribunal in the *Vista Tower* appeal - *Edgewater (Stevenage) Limited and Others v Grey GR Limited Partnership* [2026] UKUT 18 (LC), published on 28 January 2026 - addressed four grounds of appeal from the decision of the First-tier Tribunal, given almost exactly 12 months earlier, to grant a remediation contribution order under s.124 of the Building Safety Act 2022. (For a summary of these, see the Case Note by Paul Letman, [here](#).)

Of these four grounds, the third was acknowledged by the Upper Tribunal to be academic in the particular circumstances of the appeal, but the UT was persuaded nevertheless to give some guidance on the issue of construction which arose: namely, the question of what constitutes a risk for the purpose of the definition of 'building safety risk' in s.120(5) of the BSA.

The answer, the UT concluded, was that s.120(5) means what it says: 'a risk' is just that. There is no level of threshold which must be met: any risk will be sufficient to satisfy the definition.

The starting point for the UT's consideration was the words of the provision itself. A building safety risk is defined in s.120(5) to mean, in relation to a building and for the purposes of s.120:

"a risk to the safety of people in or about the building arising from-
(a) the spread of fire, or
(b) the collapse of the building or part of it".

The UT noted, first, that there is no threshold test in the terms of this section: no qualifying wording such as 'significant' or 'intolerable' to limit the type of risk that is capable of constituting a building safety risk. *"The reference is simply to 'a risk', which is naturally read as meaning any risk"* (decision at [241]). Moreover, the risk referred to in the provision does not sit on its own. It is closely defined both in s.120(5) – it must be 'to the safety of people' and arising from 'the spread of fire' or 'the collapse of a building or part of it' – and by the other terms of s.120: a building safety risk will only arise if it is caused by a relevant defect within the terms of s.120(2). So far as the jurisdiction in s.124 is concerned, it must also exist in relation to a relevant building. The UT observed that these conditions imposed considerable restraints upon what can qualify as a building safety risk.

The UT then referred to the wider position under the BSA more generally. There are other parts of the Act and of the scheme imposed by the Act in which a risk is defined as a particular level of risk: such as a 'critical risk' in Part 4, ss.87 and 101 (in relation to an offence arising from the contravention of reporting or other requirements); and a risk of a significant number of deaths or serious injury to a significant number of people, in the Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023/907. This, together with the fact that 'building safety risk' itself is defined differently in this part of the Act (Part 4: see



s.62) was considered strongly to suggest that Parliament did not intend that the reference to ‘a risk’ in s.120(5) should refer to a particular level of risk.

As the UT also observed, there is an obvious practical difficulty in the argument that only a particular level of risk can properly be considered a building safety risk. Any qualification or threshold would inevitably give rise to dispute over what would or would not constitute the relevant level of risk. The UT referred to s.83(1) of the BSA, which requires an accountable person for an occupied higher-risk building to assess the building safety risks as regards the part of the building for which they are responsible; and to the restrictions on service charge recovery in Schedule 8, which apply to relevant measures relating to relevant defects, and so turn on whether or not a building safety risk exists. In either context, it was easy to see what problems would be caused if it was open to a landlord to treat risks below a certain level as not constituting a building safety risk.

The UT set out that it also had in mind, in reaching its conclusion that there was no qualification of risk for this purpose, that this did not mean that level of risk was excluded from consideration of the FtT:

“If the FTT decides that a remediation order or a remediation contribution order should be made, the question of what work is required to remedy the relevant defect will then arise. I can see that the level of risk posed by the relevant building safety risk will, or at least may be a relevant factor in the decision of the FTT as to what works are required. In this sense therefore the level of the building safety risk is not excluded from consideration” at [247].

The UT accordingly concluded that the FtT had been wrong to impose a threshold condition on the meaning of risk in assessing the existence of a building safety risk. Even a low risk was capable of qualifying as a risk for the purposes of s.120(5); although if the relevant risk was a low risk, it was to be expected that that factor would play some part in the question of what remedial action was required.

This conclusion was generally consistent with that reached by the FtT just 3 weeks earlier, in relation to the Canary Riverside Estate (*Secretary of State for Housing and Communities and Local Government v. Canary Riverside Estate Management Ltd and others*, LON/00BG/BSA/2024/0005 and LON/00BG/BSB/2024/009). The FtT in that case had refused to impose any threshold test on identifying a risk for the purpose of s.120(5) (distinguishing the *Vista Tower* first instance decision), on broadly similar grounds.

Like the UT, the FtT in *Canary Riverside* had observed that the effect of giving a wide interpretation to the definition of building safety risk did not mean that the question of the level or severity of the risk was wholly excluded from consideration under the remediation order/remediation contribution order jurisdiction. Indeed the FtT appeared to accept a wider relevance to the question of the level of risk than did the UT in *Vista Tower*. Whereas in *Vista Tower* the UT referred to the level of risk as being relevant to the extent of any remedial works required by way of RO/RCO, the FtT in *Canary Riverside* suggested that this would be a



relevant criterion in considering whether a RO/RCO should be made at all. Even where the statutory conditions for making a RO/RCO are met (including the existence of a building safety risk) the tribunal still has a discretion as to whether or not to make an order. At that stage, a tribunal may decide that it is inappropriate to order remediation if it concludes that the level of risk posed by a relevant defect is so low that does not, in all the circumstances, justify any such order (see *Canary Riverside* at [42-45]).

It may be thought that for practical purposes, there may be little difference between these two positions; but while this may be true in terms of works to be done, the making or not of an order may have other implications – the possibility of cost liability being one – that render the distinction important.

Realistically, the impact of the UT decision in *Vista Tower* - and a wide interpretation of building safety risk - is the prospect that there is likely to be few (if any) relevant buildings where relevant works have been carried out, in which it is not possible to identify some feature – something done (or not done) or used (or not used) in connection with those works – that has caused a risk (however small) of the spread of fire. Few if any applications are likely to fail on the ground that there is no building safety risk; and focus will turn instead to the tribunal's discretion to make an order, and the extent of any remedial works which should be required.

This is not necessarily a bad thing. A wide definition of risk in this context appears to be consistent with what is generally acknowledged as the legislative purpose of Part 5 of the BSA 2022 and the scheme of leaseholder protection it imposes: to identify and address fire safety risks and to ensure that the cost of remedying those risks can be recovered or reallocated rather than borne by leaseholders. A low threshold for establishing a triggering building safety risk may help to direct attention to the critical issue of how risks should be addressed, rather than preventing cases being considered because of a failure at the first hurdle.

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