Falcon Chambers

**The Crisis after the Crisis: Relevance of the BSA to RAAC**

- **Recent headlines have included extensive coverage of the problems caused by the historic use of RAAC**
- **As the BSA was enacted in response to the Grenfell tragedy, it is often thought of when considering residential premises and, in particular, the risk of fire. However the BSA also applies to other building safety risks, including the risk of collapse**
- **Further commercial tenants in mixed use premises who discover problems relating to RAAC should not overlook the BSA as some of the provisions may be useful to them both in relation to ensuring that works are undertaken and also in relation to resisting paying for such works**

Reinforced autoclave aerated concrete ("RAAC") has received considerable press attention recently. In short, this is a lightweight material which was used in the construction of floors and walls between the 1950s and 1990s. RAAC has a lifespan of about 30 years and has received national attention recently following the collapse of a panel in a school which was previously thought to be "non-critical". RAAC has been identified in schools, hospitals and even in the Houses of Parliament.

This article considers how the BSA might be relevant to problems resulting from the historic use of RAAC.

Part 5 of the BSA contains the provisions which provide protection for leaseholders in relation to liability for works concerning "building safety risks". S.120(5)(b) expressly provides that a "building safety risk" means a risk to safety of people in or about the building arising from the collapse of the building or any part of it (which is the precise problem caused by use of RAAC).

However, this part of the BSA applies to "relevant buildings" which are defined in s.117 as self-contained buildings that contain at least two dwellings and are at least 11 meters high or have at least 5 storeys. So far, most of the RAAC headlines have concerned building which are exclusively non-residential. These buildings will not fall within Part 5 of the BSA.

All is not lost however for commercial tenants in mixed use premises which fall within the definition of "relevant building". One of the important remedies provided for in s.123 of the BSA is a remediation order. This is an order requiring a relevant landlord to remedy a specified relevant defect in a "relevant building". An application for a remediation order can be made to the FtT by an "interested person" which includes a person with a legal or equitable interest in the relevant building. It is thus open for a commercial tenant in a qualifying mixed use building to seek a RO to compel the landlord to fix the problem.

In relation to paying for the works, Schedule 8 to the BSA contains provisions which limit the service charge which can be recovered in relation to the costs of remedying buildings safety risks. Some of the paragraphs of Schedule 8 only apply to service charges demanded under "qualifying leases" which are defined in s.119 and which only include leases of single dwellings in relevant buildings. However, paragraph 2 of Schedule 8 (which provides, in short, that no service charge is payable relation to a relevant defect that the landlord is responsible for) applies to "a lease of any premises in a relevant building". Thus paragraph 2 can be invoked by a commercial tenant in a mixed use premises.

Whilst the BSA is primarily thought of in a residential context, it is worth remembering that certain provisions may contain useful remedies for commercial tenants as well.


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