

Building Safety Briefing: the Defective Premises Act



Mishcon de Reya

It's business. But it's personal.

What is the Defective Premises Act?

The Defective Premises Act 1972 (DPA) came into force on 1 January 1974. Its purpose was to tackle the perceived injustice that it was difficult for subsequent owners of a "dwelling" to bring claims against the original contractor and developer for defects in the property.

As originally enacted, the limitation period for claims under the DPA was 6 years from completion. As a result, the DPA had limited impact on claims between developers and contractors because, as between those parties, contractual remedies were usually available within this timeframe. Homeowners would also usually also have the protection of a homeowner warranty (such as NHBC) during this period.

What changes have been made by the Building Safety Act (BSA)?

The BSA amends the DPA in two key respects:

- It significantly extends the limitation period for bringing claims:
 - For works completed before 28 June 2022, the limitation period is 30 years;
 - For works completed on or after 28 June 2022, the limitation period is 15 years.
- For works completed after 28 June 2022, the scope of the DPA is extended to cover not just the provision of new dwellings, but also to any work in relation to a dwelling.

The extended limitation periods do not apply to claims that have settled or been finally determined.

The BSA also introduces Building Liability Orders which are discussed further below.

Which buildings are caught by the DPA?

The DPA applies to "dwellings". This is not defined in the DPA, but the courts have defined "dwelling" as a place where a person lives or resides "and makes one's home".

Who owes duties under the DPA? (the "duty holders")

The primary duties under the DPA are owed by:

- Any person taking on work for or in connection with the provision of a dwelling; or
- A person who, in the course of a business, takes on work in relation to any part of a building containing one or more dwellings.

This includes anyone who arranges for another to take on such work in the course of a business for that purpose.

Therefore, contractors, architects and developers of residential properties owe duties under the DPA.

Who is owed a duty under the DPA?

The duties under the DPA are owed to:

- The person who orders the work (such as the developer); and
- Every person who acquires a legal or equitable interest in the dwelling (i.e. any purchaser, tenant or intermediate landlord).

Therefore, developers have dual standing under the DPA: they can be both claimant and defendant.

What are the duties under the DPA?

The duty holders under the DPA must ensure that the work is done in a workmanlike or, as the case may be, professional manner, with proper materials so that the dwelling is fit for habitation as at completion.

What is "fit for habitation"?

The DPA does not cover all defects, just those serious enough to make the dwelling unfit for habitation. The courts have held that if a dwelling did not comply with building regulations at the time of completion, then it is probably unfit for habitation.

What if standards have changed between completion and when the claim is brought?

The court will assess whether a dwelling is fit for habitation against the standards that applied as at the date of completion.



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What can be recovered under the DPA?

If a party is successful in bringing a claim under the DPA, it is entitled to recover its losses suffered as a natural consequence of the breach.

This is essentially equivalent to damages for breach of contract and will cover the cost of remedial works plus consequential losses such as loss of rent or alternative accommodation costs.

What is a Building Liability Order (BLO)?

A BLO is an order providing that any "relevant liability" of a body corporate is also the liability of an associated body corporate. A "relevant liability" includes a liability under the DPA. The court may only make the order if it considers it just and equitable to do so. There is no guidance yet on this.

The rules on associates are complex. In brief, they include any controlling entities, subsidiaries and sister entities.

The effect of these provisions is significant because they pierce the corporate veil: parties who bring successful DPA claims have the option to seek enforcement against related entities.

Final thoughts

The DPA as amended by the BSA will be viewed as a useful tool for developers and owners (in whatever capacity) of residential properties to bring claims against the original construction team.

Along with the new claims available under the BSA (such as remediation orders and remediation contribution orders), there are now several routes available to leaseholders to seek redress in relation to defects in their homes. Consequently, contractors' and developers' liabilities are greatly expanded.

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Contacts

Please get in touch with us if you have any queries about how the Act may affect your property holdings.



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