The Defective Premises Act

Wider scope for claims

One of the many consequences of the Building Safety Act 2022 (BSA) has been a spike of interest in claims under the Defective Premises Act 1972 (DPA). This is primarily due to the extended limitation periods which the BSA introduced and the widening of the definition of work and services covered. With recent confirmation from the Supreme Court that a developer can also bring a claim under section 1 of the DPA, for recovery purposes, its potential application is greater still.

Vast sums are being expended carrying out remediation work required following the Grenfell Tower tragedy and all potential avenues of recovery are being explored. A previously little-used remedy is now becoming far more prominent in claims, as a result.

Claims under the DPA

The DPA imposes a statutory duty on those involved in the construction of a dwelling (or the carrying out of works to a dwelling), to ensure that the work is designed and then carried out properly, using appropriate materials, making it suitable for people to live in when completed. The duty can be owed by property developers, contractors, and construction professionals. If the dwelling is not "fit for habitation", then a claim can be brought for compensation by the person who originally commissioned the dwelling, or any person who subsequently acquires a "legal or equitable interest" in it.

To bring a claim under the DPA, the following criteria must be met:

- **Dwelling:** What this comprises is not specifically defined under the DPA, but has been the subject of a number of judicial decisions. It will clearly include a house or flat, and may include work to the structure and common parts. There is some argument over whether it extends to student accommodation, hospitals, holiday lets and hotels.

- **Defect:** Defective design, works and materials under the DPA go beyond fire safety issues and can include defects to foundations, structural issues and water ingress, among other problems. The issues covered are potentially wide-reaching, as demonstrated by some of the courts' decisions to date.

- **Unfit for habitation:** It is not enough that the works are "defective". The relevant duty will only be breached if the dwelling is deemed unfit for habitation as a result. Whilst guidance has been provided in case law, this remains a question of fact and will depend on the specific circumstances of each case.

  If a dwelling does not comply with Building Regulations at the time of completion, however, and / or does not meet relevant safety standards, then it is likely to be deemed unfit for habitation. Certainly where remedial works are required on account of fire safety issues, the DPA criteria will most likely be met.

- **Design / workmanship:** A claimant must prove that the work or design was not carried out in a workmanlike or professional manner and/or that proper materials were not used. This may be relatively straightforward where fire safety matters are concerned, although may be more complicated in other scenarios.

- **Causation:** A claimant must show that the inadequate work or design and/or materials has caused the defect which results in the dwelling being unfit for habitation.

- **Loss:** The loss claimed will usually be the cost of making the dwelling fit for habitation and can include consequential losses and loss of amenity. In this respect, the measure of loss will generally mirror that for more usual breach of contract claims.

The limitation period for claims under the DPA was originally six years from completion of the work. Section 135 of the BSA has radically extended time limits as part of the legislative response to deal with the building safety crisis uncovered following Grenfell. The new time limits for DPA claims are:

- 15 years for projects which completed after 28 June 2022; and
- 30 years for those which completed prior to 28 June 2022.

As a consequence, claims can now be brought for work carried out as long ago as 1992.

In addition to extending limitation periods, the BSA more generally broadened the scope of the DPA. Originally the duty imposed only related to work in connection with the construction of a new dwelling, or the conversion or enlargement of a building to a dwelling. Since the introduction of the BSA in June 2022, this has been expanded to any work carried out to an existing dwelling where the work is carried out in the course of a business.

The BSA also introduced a new remedy, a Building Liability Order, which can, in certain circumstances, allow recovery against an associated company. As a result, coupled with the expansion of the DPA, there is now a substantially broader landscape for bringing claims under the BSA.

Impact of recent court decisions

There have been two significant recent decisions which impact on DPA claims.

URS Corporation Ltd v BDW Trading Ltd

In URS v BDW (2025), the commercial developer, BDW, which had carried out remediation work after it had sold a block of high-rise properties, was seeking to recover substantial remediation costs from the consultant engineer, URS. URS argued that it did not owe a duty to the developer as the purpose of the DPA was not to protect commercial developers who would not inhabit a dwelling. The Supreme Court rejected this argument and held that the relevant work was carried out "to the order" of the developer, the first owner, and therefore clearly fell within the wording of section 1. Further, there was no good reason why someone who owed a duty could not also be a person to whom a duty was owed. The claim by the developer for the costs of investigations, temporary works, evacuation of the relevant block and permanent remedial works were the type of losses contemplated by the DPA.

A developer with responsibility for carrying out remediation work will therefore have the opportunity to pass on that liability by itself making a claim under the DPA. This may include claims against sub-contractors or sub-consultants against whom the developer would otherwise have no contractual claim.

BDW Trading Ltd v Ardmore Construction Ltd

The second significant decision, BDW Trading Ltd v Ardmore Construction Ltd (2024), confirmed that a claim under the DPA may be referred to adjudication. The Court rejected the contractor's linguistic argument that the adjudication clause in the building contract (which provided for the referral to adjudication of a dispute arising "under this contract") would not include a claim under the DPA. Accordingly, the adjudicator had jurisdiction to make the award of nearly £14.5 million against the contractor.

The contractor was also unsuccessful in its argument that the adjudication was inherently unfair as the passage of time meant that it had almost no relevant contemporaneous documentation and had to rely upon information provided by BDW, leading, it said, to an inequality of arms in terms of documentation.

The decision opens the way for disputes under the DPA to be referred to adjudication, providing a claimant with a swift decision and leaving those on the receiving end having to deal with historic claims under very tight time restraints. As this case illustrates, those claims can be for very considerable sums and perceived unfairness arising from the passage of time is unlikely to offer a valid defence.

Practical implications for claims being made under the DPA

A key concern for those facing a claim under the DPA is the practical difficulties of responding where works may have been completed decades earlier. Most organisations will have operated a document retention policy based on a 6-year limitation period for contractual claims (or 12 years, where the contract was executed by deed). Coupled with the fact that witnesses are likely to have moved on and memories faded, gathering evidence is likely to be extremely challenging.

There is also some uncertainty as to the meaning of certain non-defined terms – "dwelling" and "fit for habitation", for example – meaning the precise ambit of the DPA is not yet fully known. Further guidance from the Courts will be needed.

Materially, a claim under the DPA will circumvent the network of contractual provisions that have been agreed by the parties. It is not possible to contract out of the DPA, so those liabilities cannot be excluded or restricted. Any restrictions on the duties owed, caps on liability or net contribution clauses, etc., will have no effect in claims brought under the DPA.

Generally, however, the same issues will arise with DPA claims as would be the case for breach of contract. Arguments over causation and quantum will not be radically different, and, if successful, the ultimate redress is likely to be materially the same. The result is that what was previously a little-used remedy is now front and centre in many claims over residential developments. The courts widening the scope of DPA claims in favour of developers, including by allowing these to be referred to adjudication for a quick resolution, is a clear indicator as to

the direction of travel for building safety claims. The signs are that this will remain the direction for the foreseeable future.