

CASE NOTE

When adjudication becomes the gateway to group liability.

What *Crest Nicholson v Ardmore* means for adjudication, Building Liability Orders and the commercial position of UK contractors.

THE COMMERCIAL POSITION

An adjudication decision may carry consequences beyond the contracting entity.

Building Liability Orders are High Court remedies. They are not made by adjudicators, and adjudication has not been converted into a court process. That distinction remains important.

What has changed is the practical relationship between adjudication and Building Liability Orders. In *Crest Nicholson Regeneration Ltd & Ors v Ardmore Construction Ltd (In Administration) & Ors* [2026] EWHC 789 (TCC), the High Court confirmed that, in appropriate circumstances, an adjudicator's decision can give rise to a binding interim liability capable of being treated as a "relevant liability" for the purposes of section 130 of the Building Safety Act 2022.

The more important lesson is commercial. Building-safety risk must be identified, priced, insured, managed and evidenced before the contract is signed and throughout delivery. If the project record is later tested in adjudication, it may become part of a wider liability pathway reaching beyond the original dispute.

01 The facts and the wider court context.

Subject to any appeal or later appellate guidance, the decision materially strengthens the practical relationship between adjudication and Building Liability Orders. A claimant may now be able to use adjudication as a fast route to a binding interim decision, and then rely on that decision as the foundation for an application to the High Court for a Building Liability Order against associated bodies corporate. For contractors, particularly design-and-build contractors and contractor groups, the risk is no longer confined to the immediate adjudication award or the original contracting entity.

Crest Nicholson concerned the Admiralty Quarter development in Portsmouth, a residential scheme constructed between 2007 and 2009. Ardmore Construction Ltd had been engaged under a design-and-build contract. Following investigations after Grenfell, alleged fire safety defects were identified, including defects in the external wall systems and other internal fire protection issues.

Crest referred a dispute to adjudication. The adjudicator decided that Ardmore Construction Ltd was liable in relation to the external wall defects and awarded approximately £14.9m. The day before the adjudicator's decision was issued, Ardmore Construction Ltd entered administration. The adjudicator's award was not paid.

Crest then applied to the High Court for Building Liability Orders against associated Ardmore group companies. It sought an anticipatory BLO in relation to liabilities that might ultimately be established, and an adjudication BLO in respect of the sum awarded by the adjudicator.

The High Court granted the Building Liability Orders. In doing so, it held that an adjudicator's decision could, in appropriate circumstances, give rise to a relevant liability under the Building Safety Act 2022, notwithstanding the interim nature of adjudication. The Court also treated the adjudication regime and the Building Safety Act regime as capable of operating together.

The wider court context matters. In the Technology and Construction Court Annual Report 2024–2025, the TCC identified a notable increase in cases concerning flammable cladding, other materials and more general fire protection issues following Grenfell and the Building Safety Act 2022. The Court also referred to Building Liability Orders, the potential extension of corporate liability in the wider BSA landscape, limitation periods of up to 30 years, and the possibility of expansive litigation in respect of historic developments.

That does not mean every contractor will find itself in the TCC. Most construction disputes will never reach a final trial. Many will be resolved commercially, through adjudication, through enforcement pressure, or by settlement before court proceedings become the central battleground.

But the TCC's observation matters because it shows the future regulatory and litigation environment in which building-safety disputes are developing. Historic defects, fire-safety issues, extended limitation periods and group-level liability are no longer peripheral concerns. They are becoming part of the mainstream construction-risk landscape.

For contractors, the practical response should not begin at the point of litigation. It should begin at the point of contract, design responsibility, pricing, programme, insurance, record keeping and adjudication readiness. *Crest Nicholson v Ardmore* makes that point sharper. A Building Liability Order remains a High Court remedy, but an adjudicator's decision may now provide the relevant liability foundation for a BLO application. That means the project record may be tested first in adjudication, not in full litigation. The contractor's best protection is therefore not a court-stage response. It is a live, organised record capable of supporting or defending a fast adjudication referral.

02 Why this matters for contractors.

The decision does not mean that every unpaid adjudication award will produce a Building Liability Order. The High Court must still consider whether the statutory conditions are satisfied and whether it is just and equitable to make the order. The facts will matter. The nature of the defects will matter. The corporate structure will matter. Solvency, restructuring, group control, prior knowledge and the conduct of the parties may all matter.

The significance is that an adjudication decision may now carry consequences beyond the immediate adjudication result. For contractors and contractor groups, that changes the way building-safety risk should be assessed at tender stage, managed during delivery and prepared for if a dispute begins to crystallise.

The real lesson is not only about enforcement. It is about risk acceptance. Contractors need to ask whether the building-safety risk accepted at contract stage was properly understood, priced, programmed, insured, evidenced and managed.

THE LIABILITY PATHWAY

An adjudication award can become part of a wider group-liability route.

In appropriate circumstances, a binding interim adjudication decision can provide the relevant liability foundation for a High Court Building Liability Order application.

03 Building-safety exposure beyond the HRB regime.

Contractors should be careful not to treat the higher-risk building definition as the boundary of serious building-safety exposure. A project may fall outside the higher-risk building regime and still involve significant Building Regulations, fire-safety, structural, design, change-of-use and evidential risk.

For higher-risk buildings, the Gateway regime is now central to the regulatory landscape. Gateway 2 approval before construction, Gateway 3 certification before occupation, change control, competence requirements and golden-thread information are not optional administrative steps. They are fundamental controls affecting whether work can start, proceed, change and ultimately be occupied.

But other projects can still carry serious building-safety risk. A building used entirely as a hotel may fall outside the higher-risk building regime, but serviced apartments, mixed-use arrangements and complex conversions require careful analysis. A hotel conversion, commercial refurbishment or structural alteration project may still involve complex means of escape, compartmentation, fire-stopping, external wall issues, structural interventions, services coordination, building-control approval, specialist design input and long-term compliance evidence.

The better approach is to classify projects by risk, not only by statutory label. Contractors should ask whether the work involves building-safety-sensitive obligations, whether design responsibility is being accepted, whether specialist review is required, whether the programme allows for approval and change control, whether the insurance position reflects the accepted risk, and whether the records will still be intelligible years later if a claim emerges.

The higher-risk building definition is subject to ongoing risk-based review, although the current definition remains unchanged. Contractors should therefore avoid assuming that the present regulatory boundary is the same thing as the future risk boundary. The courts are already dealing with an expanding body of historic building-safety disputes, and contractors should build systems that can withstand future scrutiny, even where a project does not fall within the strict higher-risk building gateway regime.

04

Design-and-build risk requires sharper control.

The decision should prompt contractors to look carefully at how design responsibility is accepted, priced and managed. The label “design and build” can carry consequences that reach far beyond ordinary project administration. Where building-safety defects are alleged, design responsibility may become the route through which statutory liability, adjudication exposure and group-level recovery risk are advanced.

Contractors should be cautious about accepting design-and-build obligations where they are not genuinely controlling, coordinating or managing the design process. The issue is not whether a contractor personally draws the design. Contractors often procure design through consultants, specialist subcontractors and supply-chain designers. The issue is whether the contractor has accepted responsibility for a design function that it has not properly scoped, reviewed, programmed, insured, coordinated or evidenced.

That distinction is critical. A contractor that accepts design responsibility without proper control may find itself exposed to building-safety claims many years after completion. If those claims are adjudicated and the original contracting entity is unable to meet the award, *Crest Nicholson v Ardmore* shows how the dispute may move from adjudication into an application for group-level liability through the High Court.

Design responsibility should therefore be mapped before it is accepted. Contractors should understand who is designing each element, who is checking compliance, who is coordinating interfaces, who is responsible for fire strategy, who controls change, who signs off product selection, who retains the evidence, and whether the contractor has downstream recovery if an upstream claim is later made.

DESIGN RESPONSIBILITY

Risk accepted without adequate design control can outlast project completion.

Design responsibility should be mapped, priced, insured and evidenced before signature, particularly where fire-safety and long-term compliance obligations arise.

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Pricing, programme, insurance and risk acceptance.

Contractors should not price building-safety-sensitive work as ordinary construction work. The correct question is not only whether the labour and materials have been priced. It is whether the contract sum, programme and management allowance properly reflect the risk being accepted.

Where work involves higher-risk buildings, external walls, cladding, fire protection, structural safety, change of use, complex refurbishment or substantial design responsibility, the commercial allowance should reflect more than delivery cost. It may need to include specialist design review, fire engineering input, regulatory coordination, approval management, change control, compliance evidence, document control, competence records, technical inspections, product substantiation, insurance cost, longer record retention and greater management time during and after completion.

This should be treated as a tender-stage risk decision. A contractor that prices building-safety-sensitive work at an ordinary market rate may secure the project but accept a liability profile the contract sum cannot support. The problem is not only reduced margin. It is that the contractor may lack the budget, internal resource and specialist support needed to manage the responsibility it has taken on.

Programme risk should also be addressed expressly. For higher-risk buildings, BSR approval, validation, technical assessment, change control and completion certification are not background administration. They can affect commencement, sequencing, completion, occupation and cashflow. Contractors should therefore avoid absorbing regulatory approval risk through standard programme wording unless the contract clearly allocates responsibility for information production, approval delay, design development, rejected submissions, change-control consequences and extensions of time.

Insurance must be reviewed with the same discipline. Contractors should not assume that ordinary cover is sufficient because a policy exists. The insurance position should be checked against the actual obligations being accepted, including design responsibility, fire-safety exposure, external wall risk, statutory liability, contractual indemnities, fitness-for-purpose wording, exclusions, excesses, aggregate limits, retroactive dates and run-off protection. If appropriate cover is unavailable, restricted or materially expensive, that is not an administrative detail. It is a commercial signal that the risk may need to be excluded, repriced, restructured or declined.

Building-safety-sensitive work should be identified before the contract is signed. Once identified, it should be priced as a different risk category, supported by competent specialists, protected by appropriate insurance, managed through proper records and reflected in the contract's programme, change, payment and liability machinery.

06 The adjudication point.

Legalbuild's view is that *Crest Nicholson v Ardmore* reinforces the need to treat adjudication readiness as part of building-safety risk management. In a building-safety dispute, the adjudication decision may no longer be only a fast interim result between the immediate parties. In the right circumstances, it may become part of the legal foundation for a wider recovery strategy against associated bodies corporate.

That cuts both ways. For claimants, adjudication may become a route to a quick binding decision capable of supporting a subsequent BLO application. For contractors and contractor groups, it means the defence strategy cannot begin when the notice of adjudication arrives. By then, the relevant design decisions, records, approvals, inspections, correspondence and project evidence will, most likely, already have been fixed.

Contractors involved in building-safety-sensitive work should therefore maintain a project file capable of being deployed quickly in adjudication. That file should be capable of being organised and advanced coherently within the adjudication timetable. It should include the contract, appointment documents, design responsibility matrix, design submissions, specialist input, approvals, change-control records, inspection evidence, product data, fire and structural safety material, correspondence, valuation records and decision chronology.

This is not only relevant to claimants. Contractors also need the same discipline when defending adjudication. If an employer, developer or upstream party alleges defective design, fire-safety failure, non-compliance or remediation cost liability, the contractor's ability to respond within the adjudication timetable will depend on the quality of the record already built.

The strongest protection is not a late jurisdictional argument or a reactive defence after an award has been made. It is disciplined pre-contract review, proper risk allocation, competent design management, controlled change procedures, contemporaneous compliance records and a project file capable of being used in adjudication if required.

EVIDENTIAL READINESS

Adjudication readiness must be established while the project record is live.

Contractors need design, inspection, approval, change-control and correspondence records capable of supporting a coherent defence or claim within the adjudication timetable.

LEGALBUILD VIEW

The commercial lesson from Building Liability Orders.

The Building Safety Act 2022 is changing the legal and commercial consequences of defective construction. *Crest Nicholson v Ardmore* is part of that wider development. It shows that statutory adjudication and Building Liability Orders can interact in a way that materially increases the pressure on contractors and associated corporate groups.

For contractors, the response should be structured before risk is accepted. Design responsibility, specialist appointments, insurance, pricing, programme, compliance records and adjudication readiness should all be aligned before building-safety-sensitive work is undertaken. Building-safety compliance is not demonstrated by assertion. It must be supported by organised, durable and intelligible evidence.

The better approach is disciplined control from the outset. Contracts should be reviewed before signature. Design responsibility should be mapped before it is accepted. Building-safety obligations should be understood before works begin. The contract sum should reflect the increased management burden and liability profile. Insurance should be reviewed before the risk is accepted. Compliance evidence should be built during delivery. Adjudication readiness should be maintained while the project record is still live.

In the new building-safety landscape, contractors need to know not only what they are building, but what legal responsibility they are accepting for the design, compliance and long-term safety of that building. Where that responsibility is not properly controlled, the consequences may now move faster, reach further and last longer than many contractors previously assumed.

POSITION PRINCIPLE

Design and building-safety responsibility should be controlled and evidenced before it becomes a group-level recovery risk.

Sources: Building Safety Act 2022, sections 130–131; *Crest Nicholson Regeneration Ltd & Ors v Ardmore Construction Ltd (In Administration) & Ors* [2026] EWHC 789 (TCC); Technology and Construction Court Annual Report 2024–2025; Building Safety Regulator guidance on building control approval for higher-risk buildings; GOV.UK guidance on higher-risk building criteria and duty holder requirements for design and building work.