Important new guidance on Building Information Orders: BDW Trading Ltd -v- Ardmore Construction Ltd and Others [2025] EWHC 434 (TCC)

The TCC has today handed down judgment in BDW Trading Ltd -v- Ardmore Construction Ltd and Others [2025] EWHC 434 (TCC) where a Mantle team acting for the Ardmore Respondents successfully defeated wide-ranging applications brought by BDW for Building Information Orders.

The Mantle team comprised Gurbinder Grewal, Alice Andreoletti and Oliver Pickford instructing Sean Brannigan KC and Thomas Crangle of 4 Pump Court.

The judgment provides for the first time, guidance to the industry on how Section 130 and Section 132 of the Building Safety Act 2022 ("**BSA**") are to be interpreted.

Section 132: Information Orders

Section 132(2) permits parties to apply for information orders to require a specified body corporate to give specified information or documents relating to persons who are (or have at any time in a specified period) been associated with that body corporate ("**Information Order**").

Section 132(3) provides:

"An information order may be made only if it appears to the court—

(a) that the body corporate is subject to a relevant liability (within the meaning of Section 130), and

(b) that it is appropriate to require the information or documents to be provided for the purpose of enabling the applicant (or the applicant and others) to make, or consider whether to make, an application for a building liability order."

An Information Order exists to support a prospective applicant for a building liability order ("**BLO**") under Section 130 of the BSA to obtain information or documents to enable it to make, or consider whether to make, such an application.

Background

BDW Trading Ltd ("**BDW**") issued an application against Ardmore Construction Ltd ("**ACL**") under Section 132 requiring that ACL provide it with a wide ranging list of commercially sensitive documents ranging from cash flow forecasts, management accounts, details of provisions, through to asset registers and group security arrangements relating to both ACL and entities that BDW said were associated with ACL – Ardmore Construction Group Ltd ("**ACGL**"), Ardmore Group Ltd ("**AGL**") and Ardmore Group Holdings Ltd ("**AGHL**") (together the "**Ardmore Companies**"). It was not in dispute prior to the application that ACGL and AGL were associates of ACL.

In the run up to the hearing of the application, BDW issued a second application in like terms against the Ardmore Companies for the same relief.

BDW's alternative case was that if it was not entitled to any of the information or documents sought under Section 132, it was entitled to an order in like terms under the Court's inherent jurisdiction or Section 37(1) of the Senior Courts Act 1981.

BDW asserted that it had claims against ACL for fire safety and/or structural defects in relation to six developments (one of which was the Crown Heights development, the subject of prior reported enforcement proceedings). It was not in dispute between the parties that the claims in relation to the six developments had not been decided and all were either stayed, in the pre-action stages or in disputed proceedings (including arbitration). It was agreed that the prior adjudication between the parties had been discharged in full by ACL.

ACL and the Ardmore Companies resisted the applications.

What the Court decided

Against whom can an Information Order be made?

The Ardmore Companies submitted that an Information Order could not be made against them. The wording of Section 132(2) was clear that an order can be made against a body corporate to require specified information or documents to be given that relate to persons who are..."associated" with the body corporate. An order cannot be made against those said to be associated.

BDW's case was based on an example in the Explanatory Notes to the BSA where the Information Order was made against the associate and not the original body corporate. The Court agreed with the Ardmore Companies that the example was inconsistent with the wording of Section 132 in numerous ways. BDW conceded one such inconsistency. As a result the Court considered that, although an admissible guide to interpretation, the Explanatory Notes cannot override the statute and, accordingly, the second application against the Ardmore Companies, was dismissed.

Is ACL subject to a "relevant liability"?

Section 132(3) set out two conditions that must be satisfied before the Court can make an Information Order. The first being that it appears to the Court that the body corporate (here, ACL) is subject to a "relevant liability", which is defined in Section 130(3) as a liability either under the Defective Premises Act 1972 ("**DPA**") or a building safety risk[1].

ACL submitted that BDW needed to have established ACL's relevant liability and had made no effort to do so; that exercise could only be carried out by an adjudicator[2], Court or arbitrator under the relevant dispute resolution mechanisms of the underlying contracts unless those matters had been admitted and/or agreed (which they had not). ACL referred to the words of Section 132(3), which uses the present tense – "is subject to a relevant liability".

BDW submitted that it:

(i) had received advice from experts that in respect of each of the developments there are serious fire safety and/or structural failures that give rise to serious risks to the safety of people in or about the buildings and that require remedial works;

(ii) in respect of each development, it had been advised by lawyers that a claim can be made against ACL under the DPA; and

(iii) BDW intends to seek damages from ACL.

Again, BDW relied on the example of an Information Order given in the Explanatory Notes. Further, BDW submitted that the Court could be satisfied ACL had a relevant liability because:

(i) it was implausible ACL could defeat the case against BDW in respect of the developments in question; and

(ii) on one of those developments, Crown Heights, BDW had an adjudicator's decision in its favour and that it would incur costs in respect of a future appeal in connection with that decision.

The Court rejected BDW's interpretation. The example in the Explanatory Notes failed to address this point and that the wording "is subject to a relevant liability" cannot be construed to mean "might have" a relevant liability.

The Court held that Section 132(3)(a) requires the Court to form a view on the question for the purpose of considering the application for an Information Order. The Court did not consider that in this process, it would be interfering with any arbitration agreement between the parties.

The Court rejected BDW's case that the prior adjudicator's decision was sufficient to establish a relevant liability as that liability had been discharged by ACL paying it in full. As to appeal costs relating to that adjudicator's decision, the Court stated that any such liability was a liability for costs and it was not clear that such a liability could be said to be incurred under the DPA or be as a result of a building safety risk. Even if it was, it was not sufficient to justify the making of an Information Order.

[1] Defined in Section 130(6) as a risk to the safety of people in or about the building arising from the spread of fire or structural failure.
[2] It had been established in earlier proceedings, BDW could refer a claim under the Defective Premises Act 1972 to adjudication. ACL has been granted permission to appeal that finding to the Court of Appeal.

The Court rejected BDW's case that the prior adjudicator's decision was sufficient to establish a relevant liability as that liability had been discharged by ACL paying it in full. As to appeal costs relating to that adjudicator's decision, the Court stated that any such liability was a liability for costs and it was not clear that such a liability could be said to be incurred under the DPA or be as a result of a building safety risk. Even if it was, it was not sufficient to justify the making of an Information Order.

Dealing with BDW's argument that it was likely that ACL had a relevant liability as its claims related to multiple developments, the Court considered that the relevant liability was not constrained in its definition by reference to a specific building. However, the very purpose of an Information Order is to facilitate an application for a BLO and such an order would have to do with a relevant liability relating to a specified building. Therefore as a matter of construction or "appropriateness", BDW must satisfy the condition in Section 132(3)(a) in respect of a relevant liability relating to a specified building in respect of which it was considering making an application for a BLO.

This in itself was sufficient to dispose of BDW's application as the condition in Section 132(3)(a) was not satisfied and the Court could not make an order.

BDW submitted that it was prevented from adducing documents from an arbitration between the parties to demonstrate a relevant liability and an adverse inference should be drawn against ACL. The Court rejected this stating as a party to an arbitration, ACL was entitled to stand on the confidentiality of that process.

Timing of a BLO

The Court also noted that there is nothing in Section 130 which makes the prior establishment of a relevant liability a pre-condition to a BLO. In obiter comments diverging from recent authorities, the Court also set out its reasoning why there was nothing to prevent a BLO being made prior to the establishment of a liability on the part of the original body and that it may make good sense for a BLO to function as a prior indemnity ("if this original body has any relevant liability in respect of this specified building, this associate shall also have that liability").

Was it 'appropriate' to make the order sought?

The second condition in Section 132(3(b) is that it is appropriate to require the information or documents to be provided for the purpose of enabling the applicant to make, or consider whether to make, an application for a BLO. The Court did not have to consider whether the order sought by BDW was appropriate as BDW failed to satisfy the relevant liability condition but it did consider the question.

It found that:

(i) Section 132 does not stipulate the kinds or categories of information that may be specified in an Information Order;

(ii) It will clearly include information and documents to enable the applicant to identify associates;

(iii) In an appropriate case, it will also include matters concerning the financial position of the associate as such information may be highly material to a decision on whether to apply for a BLO;

(iv) If the information and documents are publicly available or if an applicant does not need the information or documents to make a BLO application (or decide whether to make one), it is difficult to see why it would be appropriate to make an Information Order.

The Court then considered the categories of information and documents sought by BDW (which in themselves had been reduced by BDW prior to the hearing).

In doing so the Court appeared to include in its considerations privacy, confidentiality, control and commercial sensitivity of the documents.

In respect of the request for ACL's management accounts and reports for various years, the Court said it would have refused the request. An Information Order cannot compel ACL to provide information about itself and those categories of documents, insofar as they related to the Ardmore Companies, were not in ACL's possession or control. Overall, these were not documents BDW required to decide whether to apply for a BLO.

The alternative case under Section 37 of the Senior Courts Act 1981 and inherent jurisdiction

The Court decided that even if the Court had the power to make the suggested orders against the Ardmore Companies (because the BSA did not permit this) then it would have declined to do so. The applications related to the remedy provided by a BLO and there is no general power to impose on one person the liabilities of another, just because it seems desirable or convenient.

Section 132 is Parliament's ancillary provision to secure the efficacy of Section 130 on BLOs. Even if it could, the Court should not disregard the limits placed on the power to make Information Orders because it considers some wider power would be more convenient.

Practical Consequences

The judgment is helpful for the industry and represents clarification from the Court that the scope of Section 132 Information Orders is narrower than parties may have thought.

Applications for Information Orders can only be made against those said to have a relevant liability (and not associates) and relates only to information and documents about associates and not the body subject to the relevant liability.

When weighing up whether ordering the documents or information is appropriate, the Court will take into account:

(i) Whether the information sought is publicly available;

(ii) Whether a relevant liability has been established;

(iii) The commercial sensitivity and privacy relating to the information and documents sought;

(iv) How commercially intrusive any order would be and whether that can be justified;

(v) Whether those documents are in the possession and control of the body subject to the Information Order; and

(vi) Whether the provision of those documents or information can be said to be required for an applicant to decide whether to apply for a BLO.

The Court will not exercise its inherent jurisdiction or Section 37 to order the provision of information where it cannot do so under Section 132.

This judgment means that parties considering applying for an Information Order in anything other than the most straightforward case will likely consider the hurdle a high bar. Even if that high bar was overcome, the information and documents the Court is likely to consider appropriate to order is likely to be construed narrowly.

The difficult outstanding question

The Court was clear that a relevant liability did not have to be established prior to applying for an Information Order. However, it was equally clear that assessing whether a party had a relevant liability did not require trial procedures or examination of factual or expert witnesses.

This leaves a difficult question of what would a party need to do to show a relevant liability if one had not already been established?

The Court stated that a Section 132 application should be short and uncomplicated with the applicant putting its evidence before the Court and inviting a non-binding assessment on the merits without the Court becoming embroiled in an assessment of the merits of disputed matters.

This likely means that any future applications for Information Orders are likely to be sparingly made. Where the underlying liability is contested by the body corporate, an applicant may find it may not be able to demonstrate a relevant liability and as such, is well advised to await the outcome of the underlying claim or if it has sufficient information to identify the target, proceed straight to a BLO. However if it intends to do so, it will need to carefully consider how it would satisfy the "just and equitable" test in Section 130 for a BLO if the relevant liability has not been established.

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