



# Martlet Homes Ltd v Mulalley & Co Ltd – A Landmark Decision in Cladding Disputes?

Ever since the unfortunate tragedy of the Grenfell Tower in 2017, the use of cladding in the construction in both residential and commercial buildings has been the subject of necessary scrutiny and is a growing concern amongst building owners across the UK.

Building owners are now becoming caught up in legal disputes with those involved in the construction of the building and ascertaining who is responsible for remedying defective cladding. However, until recently none of these disputes have reached the Technology and Construction Court (TCC).

After some five years following Grenfell, in July 2022, the TCC gave its first judgment on a dispute surrounding defective cladding in the recent case of *Martlet Homes Limited v Mulalley & Co Limited*.

While the facts of this case may not apply entirely to others, the ruling in this case offers food for thought to all parties involved in cladding disputes, whether claimant or defendant.

## Background

The dispute involved Martlet Homes Limited (Martlet), a housing association that had acquired five tower blocks in Gosport, Hampshire (the Towers) in 2017 from Kelsey Housing Association Limited (Kelsey). The Towers were built in the 1960s and by a JCT design and build contract, Kelsey engaged with Mulalley & Co Limited (Mulalley) in 2005 to refurbish the Towers which also involved the installation of external wall insulation (EWI) rendered cladding.

In the weeks following the Grenfell tragedy, EWI came into the spotlight and Martlet conducted an inspection of the EWI installation on the Towers. An inner layer of combustible expanded polystyrene (EPS) similar to the Grenfell Towers was discovered within the EWI following which, on the same day of discovery, Martlet organised a temporary ‘waking watch’ fire patrol system until remedial works were completed.

Martlet’s investigation also revealed other serious installation defects, including, but not limited to, defective fire barriers on each floor in the Towers.

Following expert advice, Martlet decided to remove the EWI cladding installed by Mulalley and instead, replace it with a new non-combustible cladding system using stone wool insulation panels.

## The claim

In the process of investigating, removing and replacing the EWI cladding from the Towers, Martlet incurred considerable costs and sought to recover these by issuing a claim against Mulalley. The claim was approximately £8m.

By way of an alternative claim, Martlet submitted in addition that the EPS installation was a breach of the design and build contract as well as the Building Regulations.

During the course of the proceedings, Mulalley accepted to some extent its liability in respect of its defective installation of the EPS and fire barriers. Mulalley however rejected the notion that the gaps between the fire barriers and the dowels used to affix the system were inadequate. Mulalley also submitted, amongst other things, that its use of a certain adhesive in the EPS insulation was irrelevant for fire safety purposes and suggested that a more economical repair of the EWI could have been carried out.

Mulalley also disputed that its installation of the EPS complied with the standards at the time and was indeed passed off by way of certification.

## The decision

In favour of Martlet, the TCC found that Mulalley's installation of the fire barriers including the dowels was defective and inadequate. The TCC also held that Mulalley's choice of adhesive was a clear and very serious breach.

The TCC rejected Mulalley's defence in that its installation of the EPS complied with the standards at the time. Instead, the TCC commented that it is a strict obligation with a contractual requirement to comply with Building Regulations. Mulalley failed to meet this obligation and would not have complied with the Building Regulations at the time. The TCC concluded that, in the circumstances, certificates "*cannot amount to a form of "guarantee" or "passport" to compliance with the Building Regulations*" and are "*simply one of a number of such specified aids*".

The TCC ultimately held in Martlet's favour and awarded approximately £8m in damages.

## Comment

Whilst this decision may prove to be a precedent in the future, the influx of disputes surrounding cladding fire safety issues continues. That being said, the decision may serve to offer some guidance to parties on either side of a cladding dispute.

Claimant parties and building owners alike will welcome the TCC's stance that a certificate certifying construction to comply with Building Regulations at the time does not necessarily guarantee compliance in the future. Building owners will also be encouraged to read that the TCC accept the use of waking systems as a typical and widely adopted method of precaution.

In contrast, the Defendants to such a dispute, likely design and build contractors, will appreciate the TCC's inadvertent guidance and insight as to what factors and events are considerable and carry weight. As a result, parties may prepare and come better equipped to a cladding dispute which will undoubtedly aid their negotiations.

If you have any questions or concerns in relation to cladding disputes, please contact our specialist property litigation lawyers by emailing [online.enquiries@la-law.com](mailto:online.enquiries@la-law.com).