Journal of Law, Property, and Society

Volume 8 **Article 1**

October 2023

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Recommended citation: Susan Bright, *Resilient High-Rise Property? Grenfell Tower and Beyond*, 8 J. L. PROP. & SOC'Y 9 (2023), https://www.bit.ly/JLPS-Bright

Resilient High-Rise Residential Property? Grenfell Tower and Beyond

Susan Bright*

In June 2017, the tragic fire at Grenfell Tower, London, led to the loss of seventy-two lives. Since then thousands of blocks of flats in England have been discovered to have life-critical safety failures. In England, flats are owned on a long leasehold basis, and this Article explains the devastating impact that this building safety crisis continues to have on leaseholders and residents in affected blocks. This has triggered a "property moment" that brings to the fore questions about the state's role in shaping property. The Article sets out the surprising interventions in both property law and private law implemented through the Building Safety Act 2022 and how they disrupt established norms. This includes complex provisions that override lease terms to provide (some) leaseholders with protection from remediation costs. Throughout this Article, the lens of resilience is adopted to reflect on the many understandings of property – as real estate, as a form of ownership, as home, as investment, and as a legal institution. It is argued that the 2022 Act reveals the adaptive resilience of the legal institution of property, and that property laws must be further adapted to meet contemporary challenges of aging structures and net-zero.

* Professor of Land Law, University of Oxford. I'm very grateful to many who have helped my understanding of the issues, including Fabiana Bettini, Sarah Blandy, Helen Carr, Nicholas Hopkins, Antonia Layard, Ben McFarlane, Jessica Owley, Luke Rostill, the Twitter community, the End our Cladding Scandal campaign group, and the ALPS community of scholars. This was first delivered as a Keynote Paper at the ALPS annual conference 2023. A special acknowledgement must go to Peter Apps whose outstanding journalism has benefited us all.

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I. Introduction

It is more than six years from June 14, 2017, a moment in time that is steeped into the memory of so many affected by the fire at Grenfell Tower, London. Seventy-two people died. It soon became apparent that the cladding that had been put on the exterior of the building in a recent refurbishment caused the rapid spread of fire. This ACM (aluminum composite material) cladding, with a polyethylene core, is a highly flammable material, "[…] the plastic in the middle will burn like solid petrol in the event of a fire."[1] The Grenfell Tower Inquiry, set up to investigate the causes of that fire, has exposed multiple and shocking failures in building regulation, corporate wrongdoing, and greed that together provided the environment in which this could happen. Investigations on other blocks post-Grenfell revealed around five hundred high-rise residential and public buildings in England had the same type of ACM cladding.[2] But the problem of fire safety is not confined to ACM: insulation materials and other

[1] Peter Apps, 'Was the Cladding Legal' *Inside Housing* (London, 23 March 2018).
[2] Department for Levelling Up, Housing & Communities, 'Building Safety Programme Monthly Data Release, England: 30 April 2023'.

cladding types may also be combustible, and defective design and construction, such as missing cavity barriers, create further hazards.

According to UK government estimates, around 10,000-12,000 medium- and high-rise buildings need life-critical safety work.[3] These buildings need hugely expensive remediation, and in the meantime flats (apartments) cannot be mortgaged or sold and the lives of the owners are on hold. There are many heartbreaking stories involving financial fears, dashed hopes, and destroyed life plans, yet this building safety scandal engulfing residential apartment blocks in England is far from being solved.[4]

The title of this Article is intended to provoke reflection on whether high-rise residential property is resilient. Both "property" and "resilience" have multiple facets, and this Article encourages us to think about the interconnections between them. Indeed, resilience is a fragmented and ambiguous term, with different disciplines adopting differing meanings or objectives for it.[5] This Article does not narrowly confine resilience to any particular term of art but draws on the myriad ways in which it is understood. At times, resilience suggests both robustness and stability, perhaps closest to what is often termed "engineering resilience,"[6] whilst also being accommodating of adaption, innovation, and transformation.[7]

In the context of social systems such as law, resilience may need to be more accommodating of change beyond adaptation to provide "awareness of power and distributive dimensions of complex problems" (referred to by

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[3] Peter Apps, 'The Building Safety Crisis: Far from Over' *Inside Housing* (London, 29 March 2023).

[4] The focus here is on England as regulation, and responses, differ in Scotland and Wales.

[5] Khalilullah Mayar, David G. Carmichael, and Xuesong Shen, 'Resilience and Systems—A Review' (2022) 14 Sustainability 8327.

[6] C S Holling, 'Engineering Resilience versus Ecological Resilience' in P Schulze (ed) *Engineering within Ecological Constraints* (Academy Press 1996) 13.

[7] Referred to as "evolutionary or transformative resilience" by Elsabé van der Sijde in E van der Sijde, 'What Can (South African) Property Lawyers Learn from Resilience Thinking? An Exploratory Note on the Aftermath of the Covid-19 Pandemic', in Zsa-Zsa Boggenpoel, Elsabé van der Sijde, Mpho Ts'episo Tladle and Sameera Mahomedy, *Property and Pandemics: Property Responses to Covid-19* (Juta 2021). See also BREEAM, 'Encouraging Resilient Assets Using BREEAM' <https://files.bregroup.com/breeam/BREEAM_Resilience_BRE_115440.pdf> (accessed 4 August 2023).

Elsabe van der Sijde as "equitable resilience").[8] In this Article, the concept of resilience, with its variable understandings and malleability around a systemic idea, provides a lens through which to reflect on our understandings of property.

Likewise, property is a broad term. It includes the real estate itself, that is, the building infrastructure, as well as property as a form of ownership, as home, as investment, and as a legal institution.

From the devastating tragedy at Grenfell Tower, together with the unfolding building safety crisis in England, it is evident that our built environment is not resilient. The building safety crisis also causes us to reflect on resilience in other registers of property: ownership is now vulnerable for those facing financial ruin, and the ontological security of home providing a sense of the reliability of things and place[9] is threatened as flat owners are stripped of the ability to write and rewrite their life stories.[10] A further perspective reveals the adaptive resilience of the legal institution of property, and its potential to provide for transformative resilience. Although property rights themselves are often portrayed as stable, the UK government's response to the building safety crisis (which, as discussed later, overrides certain vested contractual property rights) reveals a more adaptive conception. This adaptability of property rights is also crucial for buildings to be resilient in the face of the challenges of climate change. As Bram Akkermans argues, property law needs reform, and "that reform needs to be transformative."[11]

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[8] van der Sijde (n 7).

[9] Anthony Giddens explains it as, "The confidence that most people have in the continuity of their self-identity and in the constancy of their social and material environments." Anthony Giddens, *The Consequences of Modernity* (Polity Press 1991) 92.

[10] Hanoch Dagan argues that a liberal theory of property should permit self-determination and self-authorship. Hanoch Dagan, *A Liberal Theory of Property* (Cambridge University Press 2021) 42-44.

[11] Bram Akkermans, 'Sustainable Property Law: Reckoning, Resilience, and Reform', (2022) 24 Maastricht Law Series <https://cris.maastrichtuniversity.nl/en/publications/sustainable-property-law-reckoning-resilience-and-reform-2> 14.

Property law, and private law more generally, have failed to provide effective remedies for flat owners in the face of the emerging fire safety problems, and as the UK government has struggled to control the crisis, it has made surprising interventions in both areas. Beyond property law, there has been a retrospective extension of limitation periods and the creation of new forms of "unanchored" remedies, that is, remedies not rooted in any of the usual private law justificatory reasons for liability.[12]

Returning to the shores of property, there has been a specific disruption that shakes the idea of property's "stability and precommitment to private parties,"[13] removing vested contractual rights of some property rights holders (landlords) to provide financial protection for other property rights holders (leaseholders). To adopt the terminology used by Nestor Davidson and Rashmi Dyal-Chand to illustrate the U.S. government's response to the financial crisis earlier this century, this represents a "property moment" bringing to the fore the State's role in shaping property when "seemingly settled questions about the balance of individual autonomy and state authority, the role of the state in regulating property, and the role of property in social ordering rise to the cultural and legal surface."[14]

To flesh out the claim that this represents a "property moment," this Article explains the nature of the crisis, how it has impacted the autonomy of flat owners, and the government's response. Part II outlines the property "type"—leasehold—used for the sale of flats in England and Wales, and its significance in the context of the building safety crisis. Part III then explains the fire safety failures that led to the Grenfell Tower tragedy, and Part IV shows how this has spread to become a national building safety scandal.

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[12] For other private law disruptions, see S Bright and B McFarlane, 'Private Law Failings and Policy Development following the Grenfell Tower Fire' in J Gardner, A Goymour, J O'Sullivan, and S Worthington (eds) *Politics and Policy of the Private Law* (Hart Publishing, forthcoming).

[13] Henry E Smith, 'Property as the Law of Things' (2012) 125 Harv LRev 1691, 1724.

[14] Nestor M Davidson and Rashmi Dyal-Chand, 'Property in Crisis' (2010) 78 Fordham LRev 1607, 1623. In using the term "property moment," they were drawing on the work of Bruce Ackerman.

Those trapped by the crisis endure "heart-breaking personal tragedies."[15] One leaseholder, who has recently "escaped" from the nightmare, writes:

> I don't expect anyone who hasn't been on the "inside" of the building safety crisis to understand what it has been like for leaseholders who have been impacted by it. For so many of us, the best way I can describe it is a traumatic experience.[16]

In 2019, there was an unexpected, and encouraging, announcement of government funding being available for private blocks affected by ACM cladding. But that was before the full scale of the problem was known, and the funding has proven to be woefully inadequate. Facing intense political pressure, the State was driven to take further action, and eventually the more surprising legislative and political responses emerged. Part V explains how the UK government was driven to this more radical intervention, and how the measures in the Building Safety Act 2022 (BSA) disrupt established norms of both property law and private law more broadly. As will be seen, the response reveals the complex interaction between State intervention and private law, influenced by the pull of a private law focus on fault and deeply imbued with practical policies seeking to allocate costs to those better able to pay.

The Article then turns away from building safety, to reflect on the theme of resilience in the built environment, and Part VI argues that our property systems should be shaped to support the resilience of buildings so that they are safe and can be adapted to meet contemporary challenges such as net-zero. The final Part draws together ideas from within the Article but is not a conclusion: the crisis is far from resolved.

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[15] Ending our Cladding Scandal, 'Living and Campaigning in the Building Safety Crisis' (*End Our Cladding Scandal*, 11 July 2022) <https://blogs.law.ox.ac.uk/blog-post/2022/07/living-and-campaigning-building-safety-crisis> (accessed 4 August 2023).
[16] Sophie, 'Life After the Building Safety Crisis: Sophie's Story' (*Ending Our Cladding Scandal*, 25 February 2023) <https://endourcladdingscandal.org/newsfeed/life-after-the-building-safety-crisis-sophies-story/> accessed 4 August 2023.

II. Leasehold, Autonomy, and Resilience

Unlike the practice in other jurisdictions, the "property" interest held by flat owners in England and Wales is a leasehold with a term of, perhaps, 99, 125, or even 999 years.[17] Although there are no standard terms, the leaseholder will invariably have a contractual obligation to pay a service charge towards the repair and maintenance of the building. In the simplest structure, the landlord will be the freeholder of the building with an obligation to look after the building that matches the service charge liability. In some blocks, the freeholder may take the form of a company in which all leaseholders own a share; more commonly it will be an independent legal entity. In practice, there is often much more complexity in the ownership structures with various intermediate leaseholds between the freehold and the flat lease.

These reversionary leasehold interests are financial assets. Until July 2022, leases often provided that ground rents would double at regular intervals. As all the uncertain management costs, such as maintenance, repair, etc., can be passed through to leaseholders, freeholds are very low risk investments offering a secure, and rising, income stream. Sometimes the freehold is retained by the original developer, or a linked corporate body, but often the freehold is sold to investors, such as pension funds, ground rent companies, or offshore trusts. Recent legislation has prohibited the use of ground rents at more than a notional amount for new leases,[18] but many other opportunities remain for income generation by landlords.

This ownership structure has added to the complexity of the building safety crisis. Three key points are relevant here. First, it is the landlord who is Larissa Katz's "agenda-setter" possessing the owner's "special sphere of

[17] A commonhold legal framework (akin to the condominium system) was introduced in 2002 but failed. David Clarke, 'Long Residential Leases: Future Directions', in Susan Bright, *Landlord and Tenant Law: Past, Present and Future* (Hart Publishing 2006) 181. More recently, see N Hopkins and J Mellor, 'A Change is Gonna Come': Reforming Residential Leasehold and Commonhold' (2019) 4 Conv 327.

[18] Leasehold Reform (Ground Rent) Act 2022, s 3.

practical authority over others."[19] The absence of voice in governance is felt keenly by leaseholders, and the reality of the lived experience is commonly one of "powerlessness and exclusion from the norms of control and responsibility associated with home ownership."[20] This lack of voice is heightened by the building safety crisis where it is the landlord—not those whose homes are affected—who has the power to make buildings safe. The landlord decides whether to act, sets the pace of any work, selects the standard of remediation works, and yet passes on all of the costs to the leaseholders.

The impact extends beyond building governance issues. Flats cannot be mortgaged or sold, the bills leaseholders face are eye-watering, and leaseholders are stripped of the ability to shape their lives. Hanoch Dagan has argued that autonomy is the core justificatory value for property; not a narrow "separation autonomy" that gives the power to exclude and retreat,[21] but a broader autonomy that emphasizes the opportunity for self-authorship and self-determination.[22] But, as we shall see, leaseholders have been stripped of this.

The second key point stemming from the leasehold system is that the worth of the freehold interest is relatively small as it lies primarily in the income stream. Indeed, as the Chair of the Leasehold Knowledge Partnership explains, the cladding replacement costs will almost always exceed the value of the landlord's interest.[23]

Third, this separation of interests between landlords and leaseholders provides the siting of the government's disruptive intervention. The details are tremendously complex, but, in outline, the Building Safety Act 2022 overrides leasehold terms to protect (some) leaseholders from the massive,

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[19] Larissa Katz, 'Exclusion and Exclusivity in Property Law' (2008) 58 UTLJ 275, 278.
[20] Sarah Blandy and David Robinson, 'Reforming Leasehold: Discursive Events and Outcomes, 1984–2000' (2001) 28 JL&Soc 384, 396.
[21] Laura S. Underkuffler, 'The *Telos* of Property' (2022) 13 Juris 660, 663.
[22] Dagan (n 10) 42-44.
[23] Sebastian O'Kelly, 'Why should Will Astor, Tchenquiz etc be Paying to Remove Grenfell Cladding?' (*LKP The Leaseholders Charity* 22 October 2018) <https://www.leaseholdknowledge.com/why-should-will-astor-tchenguiz-etc-be-paying-to-remove-grenfell-cladding/> (accessed 4 August 2023).

unaffordable, bills they otherwise face for remediation. These leaseholder cost protections eased the political pressure that the government was under from the mounting cries of desperate leaseholders, at least for a while, but will not necessarily significantly improve the speed at which buildings are remediated. In effect, the Building Safety Act passes the bills from one set of property rights-holders (leaseholders) to another (landlords) and deflects attention away from the government's own moral and political responsibility to solve the problem. It is now becoming apparent that there are unanticipated consequences as the practical complexity of the cost protections has led to many conveyancers no longer being able to act on the sale of flats in affected blocks.[24]

Unlike the balance addressed by Davidson and Dyal-Chand between individual autonomy and state authority, the balance unsettled here is between vested property interests and the role of the state, begging the question of how resistant property rights are to state action. In her book, *The Idea of Property*, Laura Underkuffler explains two visions of property taken from U.S. jurisprudence.[25] In the common conception, property is protection; individual rights are fixed in time and space and are presumptively superior to competing public interests, only to be overridden by interests of a particularly dire or compelling nature. Under a "property as protection" vision, leasehold terms should therefore be overridden only exceptionally. The alternative idea, that Underkuffler terms the "operative conception," envisions change as a part of the idea of property.

Fluidity and change, and the state's role in this, is also explored in the work of Lorna Fox O'Mahony and Marc Roark on resilient property theory. The concept of resilience that they adopt emphasizes adaptive capacity,[26]

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[24] Lubna Shuja, 'Building Safety Legislation: What Needs to Change' (*The Law Socierty Gazette* 28 July 2023) https://www.lawgazette.co.uk/practice-points/building-safety-legislation-what-needs-to-change/5116809.article (accessed 4 August 2023); The Secret Conveyancer, (*Twitter* July 29, 2023) <https://t.co/vpaJoS0WXM>.

[25] Laura Underkuffler, *The Idea of Property* (Oxford University Press 2003) ch 3.

[26] Lorna Fox O'Mahony and Marc L. Roark, *Squatting and the State: Resilient Property in an Age of Crisis'* (Cambridge University Press 2022) 225 (explaining resilience as "the ability

and when responding to "wicked" property problems they argue that the state's action will be shaped and constrained by the jurisdiction's property nomos or "normative universe."[27] English law has always leaned towards the operative conception, particularly in the field of landlord and tenant regulations where rent controls have come and gone, security of tenure has been imposed, and the landlord's ability to control alienation by tenants has been constrained. Nonetheless, the particular intervention in the Building Safety Act 2022—preventing landlords from exercising contractual rights to recover remediation costs—unsettles the seeming balance between the adaptability of property rights and expectations of stability.

III. Fire and High-Rise Residential Property

Fire is not an uncommon hazard. There were 714 fires in purpose-built high-rise flats of ten stories or more in 2016/2017,[28] but resilient buildings are designed and built to withstand these. Grenfell Tower was a 24-story block with 120 flats, built in 1974, and it underwent a major refurbishment during 2015 and 2016. This refurbishment included adding combustible insulation and cladding to the external walls.

The fire began with overheating in a fridge-freezer in Flat 16 on the fourth floor and spread to the external wall—either through an extractor fan and infill panel or through the construction around the window.[29] Once escaped from Flat 16, the fire spread rapidly up the tower, around the top and then down the other sides. The entire building was enveloped in fire within three hours. It should not have been possible for the whole building to be engulfed in fire, and at such speed.

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to respond to, and rebound or recover from, shocks (sudden or extreme events) and stresses (long-term trends that undermine the system) without changing its basic state").

[27] ibid 228.

[28] Home Office, 'Fires in purpose-built flats, England, April 2009 to March 2017' (27 June 2017) Statistical Bulletin 12/17 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/622114/fires-in-purpose-built-flats-england-april-2009-to-march-2017.pdf> at 4.

[29] Grenfell Tower Inquiry, *Phase 1 Report*, October 2019, Vol 4, para 22.41. The final cause should be explained in the Phase 2 report, which is not yet available.

Under English building regulations, materials used on the exterior are required to "adequately resist the spread of fire over the walls and from one building to another" (B4), and internally "the building shall be designed and constructed so that, in the event of fire, its stability will be maintained for a reasonable period" (B3).[30] Hence the materials used must be of limited combustibility, and the use of cavity barriers and compartmentation form part of the design process to ensure that fire does not spread.

There were, however, indications well before the Grenfell fire that buildings were not performing as intended. In 1999, a dropped cigarette at Garnock Court in Scotland led to a fire that rapidly spread through the fourteen-story block, causing one fatality and leading to a recommendation that "all external cladding systems should be required either to be entirely non-combustible, or to be proven through full-scale testing not to pose an unacceptable level of risk in terms of fire spread."[31] In 2009, a fire caused by a faulty television set in a twelve-story block in South London, Lakanal House, spread rapidly, resulting in the death of six people and injuring more than twenty. An inquest found that fire stopping materials had been removed, and newly installed window panels burnt through in five minutes. The coroner recommended that the Secretary of State for Communities and Local Government review building regulations and provide clear guidance concerning the external spread of fire.[32] In 2010, a fire broke out in a fifteen-story block in Southampton, Shirley Towers, when curtains above a light fitting caught fire. Two firefighters died, and

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[30] HM Government, 'The Building Regulations 2020. Fire safety Approved Document B <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1124733/Approved_Document_B__fire_safety__volume_1_-_Dwellings__2019_edition_incorporating_2020_and_2022_amendments.pdf> (accessed 4 August 2023).

[31] Select Committee on Environment, Transport and Regional Affairs First Report, 'Potential risk of fire spread in buildings via external cladding systems' (5 January 2000) <https://publications.parliament.uk/pa/cm199900/cmselect/cmenvtra/109/10907.htm> (accessed 4 August 2023) para 20.

[32] Letter from to Frances Kirkham to Eric Pickles (28 March 2013) https://www.lambeth.gov.uk/sites/default/files/ec-letter-to-DCLG-pursuant-to-rule43-28March2013.pdf (accessed 4 August 2023).

again the coroner recommended that sprinklers be fitted to existing residential buildings over thirty meters tall.

The risk of rapid fire spread from ACM polyethylene cladding panels was also evident from fires abroad. There have been multiple fires in Dubai with tall towers clad in combustible material, similar to that used at Grenfell Tower, but no fatalities, probably due to a mix of luck but also effective evacuation policies.[33] The Lacrosse Tower fire in Melbourne in 2014 began with an incorrectly extinguished cigarette that ignited with the timber top of a balcony and, fueled by the ACM cladding, spread from the 8th to 21st floor in just eleven minutes. Again, there were no fatalities. The evidence was clear before Grenfell: modern construction materials presented a new and particularly dangerous hazard. Yet notwithstanding the earlier coroner recommendations and evidence available from elsewhere, no changes had been made to the building regulations in England before the fire at Grenfell Tower; there was no requirement for sprinklers to be retrofitted, and there was no requirement for more than one staircase even in the tallest of blocks.[34]

It was the brutal fire at Grenfell Tower and the death of seventy-two people that made the government pay attention. The Grenfell Tower Inquiry has exposed multiple reasons why English high-rise buildings are not resilient; anyone wishing to understand how all of this has come about should read Peter Apps book, *Show Me the Bodies: How We Let Grenfell Happen*.[35] As he so clearly explains, there has been a collective failure. The government's drive to cut red tape and deregulate meant that clear warnings were ignored. Organizations whose role was to protect lacked agency and were under-resourced.

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[33] Adam Bannister, 'Dubai High-Rise Fires: Sky-High Cladding Costs Might Prompt Focus on Active Fire Protection Instead', (*IFSEC Insider* 26 July 2016) <https://www.ifsecglobal.com/global/the-grim-inevitability-of-yet-another-dubai-skyscraper-fire/> (accessed 4 August 2023).

[34] In July 2023, Michael Gove announced that two staircases will be required in all new residential high-rises taller than eighteen meters.

[35] Peter Apps, *Show me the bodies: How we let Grenfell Happen* (Oneworld 2022).

And there was blatant corporate wrongdoing. One of the most egregious illustrations is the behavior of the cladding manufacturer, Arconic. Tests on the particular form of cladding panel used at Grenfell Tower (a cassette form) showed it behaved horrendously, but notwithstanding this, Arconic explained the test as "a 'rogue result' and continued to market its product on the basis of the fire-safety grade achieved by the [alternative] rivetted system."[36] All—as the current Secretary of State for Levelling Up, Housing and Communities, Michael Gove MP has stated—in the name of making higher profits.[37]

IV. The Impact of the Building Safety Crisis and Leaseholder Autonomy

A. The Unfolding Crisis

What began with a concern about high-rise buildings with ACM cladding, rapidly spread to encompass a range of other issues. Other types of material on external walls, such as some forms of High-Pressure Laminate (HPL) and timber cladding, and plastic-based insulation materials, have also been found to be combustible. As investigations began on buildings at risk for cladding fires, it became apparent that there were also failings in the delivery of the design principles for internal fire safety, such as compartmentation. In many blocks, cavity barriers are missing, sometimes through poor design, sometimes through bad workmanship.

The government took some unwise turns in its attempt to contain the crisis, including issuing Advice Notes that required building owners to inspect their buildings for the presence of certain materials, and imposing standards that were more demanding than those in the building regulations

[36] Peter Apps, 'The Dark Heart of the Cladding Scandal has been Exposed' (*The Spectator* 30 March 2021).

[37] Letter from Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities to Arconic Corp, (*Twitter* 29 March 2023) <//twitter.com/michaelgove/status/1641378296943333378> (accessed 25 August 2023).

that applied at the time of construction.[38] In response, surveyors developed a form of certification, known as EWS1, so that mortgage lenders would know it is safe to lend. Without an EWS1 to the required standard, mortgage finance is unavailable, but a shortage of relevant professionals meant that securing EWS1 certification was difficult. Further, when inspected, many buildings failed to reach the required standard. The absence of a satisfactory certificate means that flats can only be sold to cash buyers, usually at substantial discounts, and re-mortgaging is impossible. The result is that thousands of leaseholders are trapped with non-mortgageable and non-tradable assets, unable to move; unable to "discard one story and begin another."[39] The right to alienate is illusory, like the *Emperor's New Clothes* in Hans Christian Andersen's short tale, it is not really there at all.

The widespread failures mean that defective blocks require remediation. Pending completion of the necessary works, it may no longer be safe to rely on the standard policy for what to do in the event of a fire. "Stay put" advice has been central to the UK's approach to fires in purpose-built blocks of flats for more than sixty years.[40] The original concept is sound: compartmentation and the use of fire resisting materials would allow fire and rescue services to deal with the hazard whilst residents beyond the immediate vicinity of a fire stay safely in their own flats. This policy had design implications: there was no need to provide means of alerting residents of a fire beyond their immediate vicinity. But what happened at Grenfell Tower, and the emergence of widespread defects in other blocks, meant staying put may no longer be an option. For residents

[38] Liam Spender, Extra-statutory Guidance and its Role in Relation to the Building Safety Scandal—Part 1: Advice Notes (*University of Oxford Housing After Grenfell Blog* 31 March 2021) <https://blogs.law.ox.ac.uk/housing-after-grenfell/blog/2021/03/extra-statutory-guidance-and-its-role-relation-building-safety> (accessed 4 August 2023).
[39] Dagan (n 10) 185.
[40] Criticized in Stuart Hodkinson and Phil Murphy, 'Grenfell, Three Years On: A Preventable Disaster that Could Still Happen Again' (*Greater Manchester Housing Action* 17 June 2020) <http://www.gmhousingaction.com/grenfell-preventable-disaster/> (accessed 4 August 2023).

in affected blocks, there were now two key questions: how can I get my building fixed, and is it safe for me to be living here in the meantime?

The safety question depends on the severity of the defects. For some buildings, there has been no way to make the building safe enough and residents have been forced to move out, often on virtually no notice.[41] For others there has been a change of policy, from "stay put" to "get out." Recent figures found that almost 1,200 buildings in London alone remain so unsafe that they still have a simultaneous evacuation policy.[42] For buildings designed with a stay put policy in mind, and therefore no warning system to tell residents of the need to evacuate, an alert system has to be introduced. Initially, the requirement for an alert system led to the employment of staff employed to patrol the building 24/7, who became known as the "waking watch," and whose job is to raise the alarm if there is a fire. Although no evidence has been produced to support their effectiveness, the Fire and Rescue service has imposed waking watches in many blocks at private, not public, cost. As explained below, this is one of many costs being passed onto leaseholders, and for each flat the waking watch cost alone can be several hundred pounds per month. In some blocks, leaseholders take turns in patrolling their blocks after work and at weekends, to try and contain the costs.[43] In place of waking watch, interconnected alarm systems may be installed, again at considerable cost to leaseholders. On top of this, building insurance premiums have also soared, sometimes by as much as 2000%,[44] and obtaining insurance has become difficult.

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[41] E.g., Aleksandra Cupriak, 'Cardinal Lofts: Fire Service Issues Second Safety Notice' *Ipswich Star* (Ipswich, 14 March 2023) <https://www.ipswichstar.co.uk/news/23385846.cardinal-lofts-fire-service-issues-second-safety-notice/> (accessed 4 August 2023).

[42] ITV London, (*Twitter*, 13 March 2023) <https://twitter.com/itvlondon/status/1635353817301544963> (accessed 4 August 2023).

[43] R Saha, 'How my life has been affected' (12 September 2019) (unpublished talk at the Oxford conference on Legal perspectives on putting buildings right post-Grenfell); Jack Simpson, 'The Watchers: Behind the Scenes with the Residents Doing Their Own Waking Watch' *Inside Housing* (London, 23 May 2019).

[44] Levelling Up, Housing and Communities Committee, 'Building Safety: Remediation and Funding', HC 1063 BRF 047, para 24.

B. Fixing Defective Blocks

The question of getting blocks remediated has proven hugely complex, a very "wicked" problem.[45] Although work has begun, and even been completed, for some buildings, many blocks still have no plans in place. There is technical complexity, about which professionals disagree: what needs to be done to remediate, and to what standard? Who is going to take the lead on developing remediation plans? Who is going to pay the up-front costs for investigations, and professional fees? Who is going to pay for the remediation itself, the cost of which typically runs to several million pounds?

The difficulties for leaseholders have been exacerbated by the leasehold system. For many high-rise blocks, the building itself is owned by an investor freeholder with no local interest. Leaseholders have no legal powers to carry out remediation works, and usually have no means to compel work to be carried out. Not unreasonably, most leaseholders initially assumed that their landlords would fix the building, and could be made to do so, and that they, innocent parties in this sorry tale, would not have to pay. This idea was fed by the oft-repeated government mantra that "building owners should do the right thing," by which it meant they should fix the building and not pass on the cost. Neither the moral nor the legal basis for this assertion was clear. Morally, why should the "building owner"(presumably the landlord) fix it at its own cost? As the judge in the *Citiscape* case discussed below observed, the original freeholder has effectively relinquished any capital interest in the flats by granting 999 year leases.[46] In such circumstances, the judge notes, it is reasonable to conclude that the parties would have intended all future costs associated with the blocks would be the responsibility of the leaseholders. Unless the freeholder was also the developer who had built the defective building, what is the justification for them carrying the entire financial burden? The

[45] Horst WJ Rittel and Melvin M Webber, 'Dilemmas in the General Theory of Planning' (1973) 4 Policy Sciences 155.
[46] *Citiscape* [2018] LON/OOAH/LSC/2017/0435, <https://perma.cc/CPQ6-XBDL> para 62.

assertion that building owners should do the right thing also overlooked the legal matrix. It is true that the landlord is, to return to Katz's phrase, the "agenda-setter," that is the one who has practical authority to decide whether, and what, works need to be carried out, as well as being the person with the legal powers to fix the problem. Yet prior to the Building Safety Act 2022 landlords did not, generally, owe a duty to remediate buildings with inherent defects.[47] It was, as one of the leading cladding campaigners soon discovered, no more than government bluster:

> Our freeholder's position was: this was not a problem of their making, and they would simply wind up the company and walk away rather than spend £3.5million to remediate cladding on a block where they received a ground rent of £7,500 a year only. They rightly dismissed the government's words of warnings to "building owners" as an empty and hollow threat, not backed up by any laws. They were untouchable and they knew it.[48]

In the absence of a private law duty to remediate owed by landlords to leaseholders, the only route to compel remediation would be through the exercise of regulatory powers by a public body. This could be either through action taken by the Fire and Rescue Service under the Regulatory Reform (Fire Safety) Order 2005, or by the local authority under the Housing, Health and Safety Rating System in the Housing Act 2004. Grenfell exposed that the jurisdictional lines drawn between these two regimes, and the different bodies, was fuzzy.[49] Where buildings have presented serious risks of imminent harm, notices requiring immediate evacuation have, however, been issued by both the Fire and Rescue Service

[47] The BSA 2022 has now created a statutory duty to prevent building safety risks materializing, but only for buildings at least eighteen meters or seven stories high (not in force as at 4 August 2023). BSA, ss 65, 84.

[48] R Saha (n 43).

[49] Hence the Operating Guidance under the Housing Act 2004 was amended at the end of 2018 to make clear that local authority powers extended to common parts and cladding systems, and the Fire Safety Act 2021 clarifies the Fire Service's powers to act in relation to external walls and individual flat entrance doors.

and local authorities,[50] and there are some instances of a local authority requiring remediation works through the service of improvement notices under the 2004 Act.[51]

Of course, a responsible landlord may decide to remediate the building in the absence of a legal duty to do so. If it does so, the costs of remediation—the professional fees, intrusive investigations, building work, and so on—can almost always be passed on to leaseholders as part of the service charge. The first Tribunal case to confirm this was *Citiscape*,[52] involving a block of one hundred flats built in 2001 by Barratts. Units were sold on 999-year leases. By the time the fire safety problems were discovered, the freehold was owned by a ground rent investor, Proxima. The Tribunal held that under the wording of their leases the leaseholders would be liable for both waking watch and cladding costs.[53] *Citiscape* was quickly followed by the *Cypress Place and Vallea Court* decision,[54] likewise finding leaseholders liable, and since then it has entered public consciousness that under most leases leaseholders can be made to pay.

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[50] Susan Bright, 'Using Enforcement Powers to Move Occupiers Out' (*University of Oxford Housing After Grenfell Blog* 27 August 2019) <https://blogs.law.ox.ac.uk/housing-after-grenfell/blog/2019/08/using-enforcement-powers-move-occupiers-out> (accessed 4 August 2023).

[51] E.g., as in *Waite v Kedai Ltd* [2022] LON/ooAY/HYI/2022/0005 & 006. It is an offense not to comply with an improvement notice, and there is a recent report of a case in which the local authority took the recipient to court for this failure. James Riding, 'London Council Takes Tower Owner to Court Over Delay to Replace Flammable *Cladding*' *Inside Housing* (London 31 July 2023).

[52] *Citiscape* (n 46) para 62.

[53] Shortly after the result the original builder, Barratts, did, however, step up and agree to pay, a cost that has turned out to be around £16 million. Sebastian O'Kelly, 'Barratt's £15.8m Bill at Citiscape…and £70m Bill for All Cladding Sites' (*LKP The Leaseholders Charity* 6 July 2020) <https://www.leaseholdknowledge.com/barratts-15-8m-bill-at-citiscape-and-70m-bill-for-all-cladding-sites/>. Reportedly, the costs later increased to around £20 million. More recently, it has been reported that Barratts has bought the flats from leaseholders and is buying the freehold. Louisa Clarence-Smith and Martina Lees, 'Barratt Breaks New Ground Buying Back Flats After Cladding Scandal' *The Times* (London 22 May 2021).

[54] *Cypress Place and Vallea Court* [2018] MAN/00BR/LSC/2018/0016. Discussed here in Susan Bright, 'The Green Quarter Decision: Leaseholders Have to Pay' (*University of Oxford Housing After Grenfell Blog* 30 July 2018) <https://www.law.ox.ac.uk/housing-after-grenfell/blog/2018/07/green-quarter-decision> (accessed 4 August 2023).

Leaseholders have been sent huge individual bills, typically in the tens of thousands of pounds, sometimes more than £200,000.

C. Finding Someone to Blame

The impact of the fire safety crisis on leaseholders has been devastating. Some leaseholders are investors, but for those living in affected blocks there is the ever-present fear of whether they will get out safely in the event of a fire. Evidence given to a parliamentary committee by residents of a building of twenty-three flats destroyed by fire two years after Grenfell explains the lingering pain:

> We lost our homes and all of our possessions in the fire and today we are in temporary accommodation, uncertain of how to rebuild our lives….
>
> Many of us, including children, are deeply traumatized and continue to suffer from serious psychiatric and psychological illnesses caused by our experiences of the fire and by seeing our homes and possessions destroyed.[55]

Facing unaffordable bills, leaseholders have explored whether they can recover expenses/costs from anyone else. The UK government is, of course, responsible for the regulatory system, described as "not fit for purpose" in the 2018 Hackitt Review of Building Regulations and Fire Safety.[56] More recently, Michael Gove MP has admitted that the government's "faulty and ambiguous" guidance was a contributing factor to the Grenfell Tower fire.[57] Indeed, evidence given to the Grenfell Tower Inquiry shows that the government failed to heed repeated warnings that the guidance needed

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[55] Written evidence to Levelling Up, Housing and Communities Committee, 'Pre-legislative scrutiny of the Building Safety Bill', HC 466 BSB 143 <https://committees.parliament.uk/writtenevidence/11708/pdf/#:~:text=1.1%20A%20year%20ago%2C%2060%20residents%20of%20Richmond%20House%2C%20including,fire%20on%209%20September%202019> (accessed 24 August 2023).

[56] Dame Judith Hackitt, 'Building a Safer Future, Independent Review of Building Regulations and Fire Safety: Final Report' May 2018, Cm 9607 at 11.

[57] Peter Apps, 'Gove Accepts "Faulty" Government Guidance Contributed to Grenfell Fire' *Inside Housing* (London 30 January 2023).

changing. Yet, notwithstanding the clear messages that certain forms of external wall systems were unsafe, the regulatory regime remained unchanged.

There is no effective mechanism for holding the government to account in law. Judicial review can only challenge particular decisions or acts, and although there is strong evidence that the State and its emanations have failed, and continue to fail, to take appropriate steps to discharge their positive obligations to protect life under Article 2 of the European Convention on Human Rights, it would be extremely difficult to mount a legal claim.[58] The admission by Gove that the government is partially at fault may explain why HM Treasury had already been persuaded to release money for funds to pay for replacing certain types of cladding (but not other remediation costs). These funds are, however, limited in scope and have not (yet) had a significant impact, at least in non-ACM buildings.

There is also the potential for a leaseholder to bring a private law action against a wrongdoer, that is, someone who is in breach of a private law duty,[59] but litigation is particularly difficult in multi-owned blocks. There are both substantive and procedural challenges. The most likely private law claim is under the Defective Premises Act 1972, which provides that a person carrying out work in connection with the provision of a dwelling owes a duty to someone with an interest in that building to see that the work is done in a workmanlike manner with proper materials so that it will be fit for habitation when completed. Contractual claims may be possible, but generally the principle of caveat emptor applies in England and relevant contractual warranties only tend to be used when flats are bought off-plan. Further, the English rules on privity mean that only the initial purchaser has an actionable contractual claim. The limited scope of contractual rights has come as a surprise to campaigners, who note that a

[58] Susan Bright and Douglas Maxwell, 'The Right to Life, Positive Duties, and Fire Safety Defects' (*University of Oxford Housing After Grenfell Blog* 17 October 2021) <https://blogs.law.ox.ac.uk/housing-after-grenfell/blog/2021/10/right-life-positive-duties-and-fire-safety-defects>; Susan Bright and David Maxwell, 'Human Rights and State Accountability for Fire Safety in Blocks of Flats' 2019 QMHRR 5(2).

[59] For discussion, see Bright and McFarlane (n 12).

purchaser has more rights when buying a toaster than when buying a home. Recovery in tort law from the developer is perhaps the most intuitive claim: you built my flat badly and so you should pay to fix it. But this is not possible in English law: remediation costs are seen as unrecoverable economic losses.[60]

One major hurdle for all claims has been limitation periods: until a change in the Building Safety Act 2022, a claim had to be brought within six years of the action arising (which is generally completion of the building), and in the majority of cases claims are "timed-out" by the time potential claimants are aware of the defects.[61] In a bold move, the Building Safety Act 2022 has opened up the limitation period under the Defective Premises Act 1972 to a thirty-year period retrospectively, meaning that claims can now be brought for buildings built since 1992.[62] However, even if a substantive right exists, litigation is always risky. It will be protracted and thus requires stamina and emotional strength. Huge up-front costs are required to issue a claim and even though a win will result in damages, the amount of the court award is unlikely to cover all costs incurred. By way of illustration, litigation is underway in relation to a development of 457 apartments across 7 blocks in Cardiff, Wales. The claims relate to serious building defects, including, but not limited to, fire safety problems. The claimants first instructed solicitors in 2012. More than twelve years later the case has still not come to trial.[63] The estimated costs to trial exceed £5 million.

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[60] *Murphy v Brentwood District Council* [1991] 1 AC 398.

[61] For a contract under deed, a twelve-year limitation applies. In practice only commercial contracts will be entered by deed.

[62] See Susan Bright and Douglas Maxwell, 'Extending Limitation Periods in the Defective Premises Act 1972: A Breach of Article 1 of Protocol No . 1?' (*University of Oxford Housing After Grenfell Blog* 2 September 2021) <https://blogs.law.ox.ac.uk/housing-aftergrenfell/blog/2021/09/extending-limitation-periods-defective-premises-act-1972-breach> (accessed 25 August 2023) for a discussion of whether an earlier draft of the legislation, a fifteen-year extension, is likely to constitute a breach of Article 1 of the First Protocol.

[63] *Wilson and others v Redrow PLc and others, and HB (SWA) Ltd v Lang O'Rourke* – claims have been issued but there is no substantive decision yet. It was listed for an eleven-day hearing in November 2023 but has now been postponed.

There are further practical challenges with leasehold buildings. In some cases, a freeholder may be willing to claim against the developer, but there is little incentive to do so when the costs of remediation can simply be passed on to the leaseholders. Further, the freeholder will sometimes be the developer who has retained its interest in the site post completion. In practice, it is the leaseholders who most need a remedy, yet there is no collective body to act as claimant and it is not realistic for individual leaseholders to commence litigation. Unlike some jurisdictions, class actions are not possible in England for this type of claim. In the relatively small number of cases involving actions by leaseholders for defective works it is only a subset who claim: in *Naylor v Roamquest,* there were more than 1,000 flats in the development, but the claimants represented only 82 properties;[64] in *Rendlesham Estates Ltd v Barr* around two-thirds of flat-owners were claimants.[65] There will also be further challenges: securing evidence for any claim is likely to require intrusive investigations of building parts in the ownership of the freeholder, which may require a court order,[66] and any remediation ordered is likely to be highly disruptive and may require unit-owners to consent to access their flats, possibly in return for compensation.[67]

There is now case law at the High Court level that supports leaseholders being able to recover the cost of remediation for an entire building even when not all leaseholders are claimants. In *Rendlesham Estates v Barr* (a two-block development of 120 flats) recoverability of the whole building costs was allowed in an action under the Defective Premises Act 1972, and in *Hunt v Optima* (two-conjoined blocks comprising 26 flats in total) it was permitted for a contractual claim. But there may still be a need for creative solutions to ensure that any damages awarded are held by a party able to direct that they are spent on remediation (rather than pay shares to

[64] *Naylor v Roamquest* [2021] EWHC 567 (TCC).
[65] *Rendlesham Estates v Barr* [2014] EWHC 3968 (TCC), [2015] 1 WLR 3663.
[66] *Naylor v Roamquest* [2021] EWHC 2353 (TCC), 199 ConLR 114.
[67] *Hunt v Optima (Cambridge) Ltd* [2013] EWHC 681 (TCC) [97].

individual leaseholder claimants).[68] Many of these procedural issues are likely to be less challenging in a condominium-based system.

D. The Impact on Leaseholders

The negative impact of the building safety crisis on leaseholder wellbeing is immense; in their words, it is "a living nightmare."[69] The media is full of harrowing stories: bankruptcy, suicide, leaseholders unable to move jobs or to move to care for terminally ill family members, young couples unable to start families, couples who have split up but are unable to live apart, retired leaseholders returning to work, and so on. Research by Jenny Preece says that leaseholders describe it as "catastrophic," "devastating," and "traumatic."[70] As one respondent said,

> You have to work so hard and expend so much personal energy in coming to terms with [that fact that you're stuck] and finding ways to tell your brain that it's okay, just so you don't go into a spiral of despair. But you have to do it to stay afloat...You can't just roll over and die, even though some days I wake up and think that would be the easy option.[71]

This sentiment echoes findings from a survey done by one of the campaign groups, UK Cladding Action Group, in 2020 where 90% said their mental health had deteriorated.[72] The leading campaign group, End our Cladding Scandal, is comprised of a collection of skilled and articulate leaseholders impacted by the crisis. In a blog post marking the fifth anniversary, they wrote of the toll it has taken: of how the stories they have

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[68] ibid [242].

[69] End our Cladding Scandal, 'Living and Campaigning in the Building safety crisis' (*University of Oxford Housing After Grenfell Blog* 11 July 2022) <https://blogs.law.ox.ac.uk/blog-post/2022/07/living-and-campaigning-building-safety-crisis> (accessed 25 August 2023).

[70] Jenny Preece, 'Living Through the Building Safety Crisis', UK Collaborative Centre for Housing Evidence, 2021 <https://housingevidence.ac.uk/publications/living-through-the-building-safety-crisis/> (last accessed 8 September 2023).

[71] ibid [20].

[72] UK Cladding Action Group, Cladding and Internal Fire Safety, Mental Health Report 2020 <https://www.leaseholdknowledge.com/wp-content/uploads/2020/06/UKCAG-MENTAL-HEALTH-REPORT-2020.pdf> (accessed 25 August 2023).

heard in trying to support others affect them profoundly, of nights and weekends taken over by "cladmin," and of how they have suffered from burnout.[73] They have had to become experts in law, construction, and at "playing politics."

There is universal acceptance that flat owners are not to blame; no one suggests they had acted foolishly and should be left to suffer the consequences of their mistakes. But where, then, should the answer come from? As the crisis showed no sign of abating and few buildings were being fixed, the UK government shifted its rhetoric away from building owners and towards developers, those who are more likely to have caused the problem and have profited from it. This turn reflected the appeal of a strong campaign run under the slogan that the "Polluter must Pay," echoing morally intuitive ideas that wrongdoers should be held to account. It was the appointment of Michael Gove as Secretary of State (and later reappointment after the political upheavals during the summer of 2022) that led to a dramatic change in the government's tone. He did not mince his words. Adopting a surprising position for a senior Conservative politician he stated: "I say to all developers who have built unsafe buildings over 11 metres, 'I am putting you on notice. You will be asked to step up.'"[74]

V. The Government's Response

The building safety crisis was, and remains, an urgent property problem that cannot be solved without government intervention. Nor can it be seen as a purely property-based problem; the complexity of issues requires a holistic approach, and inevitably the "competing claims advanced by individuals, aggregated or collective interests and institutions [will be]… overlaid with state (or government) self-interest."[75]

Pressure on the government comes from many directions. The fifth anniversary of the Grenfell Tower fire and the wrapping up of the Inquiry

[73] End our Cladding Scandal (n 69).
[74] HC Deb 30 January 2023, vol 727 col 45.
[75] L Fox O'Mahony and M Roark, 'Resilient Property Theory' in B Akkermans (ed), *Research Agenda on Property Law* (Edward Elgar, forthcoming).

at the end of 2022, served as reminders that, even after so much time has elapsed, thousands of blocks remain unsafe. Mainstream media continue to report the human-interest side of the stories. The property market is stalling as many flats, often the entry point into housing ownership, became unsellable.[76] Frequent questions are tabled in Parliament as elected politicians voice the concerns of their constituents. Alongside this are the collective voices of those impacted, becoming more cohesive and louder through the availability of social media to bring them together. Two parallel movements have had particular impact. One was the formation of the campaign group, End our Cladding Scandal, working alongside the trade journal *Inside Housing* (with lead journalist Peter Apps), which has provided coverage of the Grenfell Tower Inquiry and penetrating analysis of the issues.

The other was a concerted campaign by a small, but effective, group who worked with the then Building Safety Minister, Lord Greenhalgh, and were seeking a specific polluter pays amendment to be incorporated into the Building Safety Bill. Although this particular measure was not implemented, the language of polluter pays entered the parliamentary vocabulary.[77] Fox O'Mahony and Roark comment on how an aggregation of interests may "garner state support through the exercise of collective influence or voice," "raising the stakes and the urgency placed on the state to respond in ways that protect those interests."[78] In their book focused on state responses to squatting, they observe how the state may adopt the discourse of moral panic to buttress the state response.[79] The building safety campaigners adopted a similar discourse as they campaigned for more state action; identifying the fears of leaseholders, their status as victims, and a general consensus that the wrongdoer, the developer who had built defective blocks, should pay to protect the innocent victims.

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[76] Levelling Up, Housing and Communities Committee, 'Seventh Report: Cladding Remediation – Follow up' (HC 1249, 2021) [41]-[44].
[77] HL Deb, 11 Jan 2022, vol 817, col 1037.
[78] Fox O'Mahony and Roark, (n 26) 293, 295.
[79] ibid, 298.

It was these mounting voices and the appointment of Michael Gove as Secretary of State that caused the dial to shift so dramatically in the government's response. The announcement of a new policy in January 2022 turned attention away from building owners to the wider construction industry. Leaseholders were (rightly) portrayed as innocent (victims) and although some developers were already doing the "right thing," the government's intention was to "round up the wrong 'uns."[80] The government's tone had now changed: the strong message was that the mess had to be sorted and those who had been making profits, including developers, should pay.

There were multiple strands to the government's response. One focused on new liabilities and remedies, such as a new cause of action that allows for manufacturers and sellers of construction products to be held accountable where the use of a construction product in the course of residential building works causes or contributes to a dwelling being unfit for habitation.[81] Another was the important extension of the limitation period, retrospectively from six to thirty years, in relation to actions under the Defective Premises Act 1972.[82] In practice, however, given that litigation will seldom be a realistic option for leaseholders, these litigation-based changes are most likely only to benefit commercial parties.

Some of the response was political rather than legislative. Under threat of being unable to secure planning permission for new developments, the Department for Levelling Up, Housing & Communities persuaded a significant number of the larger developers to sign a "pledge" agreeing to fix blocks they had built in the last thirty years. These pledges have since been converted into binding remediation contracts, but to those developers who were initially dragging their feet Michael Gove said, "those companies will be out of the house building business in England entirely unless and until they change their course."[83] Attempts have been made to get

[80] HC Deb, 10 January 2022, vol 706, cols 285 and 300.
[81] BSA 2022, ss 147, 148.
[82] Limitation Act 1980 s 4B.
[83] HC Deb, 14 March 2023, vol 729, col 727.

commitments to help fund remediation from those in the supply chain, but to date they have resisted,[84] a cause of resentment to those developers who are on the hook. Michael Gove clearly means business: he has written to both Arconic[85] (the manufacturer of the cladding used on Grenfell Tower) and Kingspan[86] (one of the suppliers of insulation materials) stating that those companies who "do not share our commitment to righting wrongs of the past must expect to face commercial consequences."

Returning to our theme of property moments, the Building Safety Act 2022 radically interferes with the vested rights of landlords. As noted earlier, under nearly all leases the costs of remediation and interim measures can be passed onto leaseholders through the service charge provisions. Through an extremely complex set of provisions in sections 116-125 and Schedule 8 of the Act, the landlord's right to do this is, in certain instances, entirely removed. These leaseholder protection provisions draw various distinctions. What follows is a simplified overview to provide the broad approach, but the detail is far more nuanced.

First, there are provisions that apply where the landlord was also the developer of the block. All leaseholders are then protected from paying.[87] The Explanatory Notes accompanying the legislation explain, "this aligns with the Government's position that those directly responsible for creating historical building safety defects need to pay to put them right." That is, the interference with the landlord's property rights is justified because they are responsible for the wrong. Further, the provision also applies if the landlord is "associated" with the developer. Again, the details are complex,[88] but the

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[84] Letter from Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities to the Construction Products Association, 13 April 2022 <https://perma.cc/ZZA2-Q2RR> (accessed 25 August 2023).

[85] Letter from Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities to Arconic Corp (*Twitter* 29 March 2023) <//twitter.com/michaelgove/status/1641378296943333378> (accessed 25 August 2023).

[86] Letter from Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities to Kingspan Group HQ (*Twitter* 23 March 2023) <https://twitter.com/michaelgove/status/1640703571309068291>.

[87] BSA 2022, sch 8, para 2.

[88] See BSA 2022, s 121.

broad idea is that a company should not escape the net if it is connected to the developer, perhaps by both having a common person as director. These associate provisions appear in various places in the Act in recognition of the fact that special purpose vehicles with limited assets are often created to do development work but are part of a well-capitalized wider group structure.[89] This extension of liability to associates has been referred to by commentators as a "follow the profits" approach to liability.

The other payment protections are available only to "qualifying" leaseholders, that is, for whom this lease relates to their principal home, or if they own no more than three dwellings in the UK.[90] If the landlord has "deep pockets," based on the landlord group's net worth,[91] qualifying leaseholders pay nothing.[92] This forms part of what has become known as the "waterfall" provisions, a cascade of responsibility. Here, responsibility is being attributed to "those with the broadest shoulders."[93] But as only qualifying leaseholders are protected, the effect is that investors with a portfolio of more than three dwellings still have to pay. The financialization of housing means that in many blocks a significant proportion of leaseholders are investors, rather than owner-occupiers. Given the need for adequate funds to be raised before remediation can commence, the existence of a potentially significant number of non-qualifying leaseholders will make this difficult if they cannot raise their share.

There is also complete protection for qualifying leaseholders where the lease is for a low value property.[94] Differentiating between differing classes of leaseholders and properties in this manner is part of the government's

[89] Building Safety Act Explanatory Notes, Part 5 [957] <https://www.legislation.gov.uk/ukpga/2022/30/notes/division/11/index.htm> (accessed 25 August 2023).
[90] BSA 2022, s 119. This is the government intention (see BSA Explanatory Notes (n 89) [940], but the section has been criticized for lack of clarity.
[91] BSA, sch 8, para 3; The Building Safety (Leaseholder Protections) (England) Regulations 2022, SI 2022/711; amended by The Building Safety (Leaseholder Protections) (England) (Amendment) Regulations 2023, SI 2023/126.
[92] BSA 2002, sch 8, para 3(1).
[93] HL Deb, 29 March 2022, vol 820, col 1516.
[94] BSA 2022, sch 8, para 4.

proportionate approach to allocating costs, providing that "those leaseholders who are least likely to be able to afford to make a capped contribution are protected from all costs."[95]

The residual category of qualifying leaseholders (who do not have a developer landlord, a landlord with deep pockets, or a low value property) benefit from a cap on the amount that they can be required to pay. Non-qualifying leaseholders still have to pay everything, but qualifying leaseholders within this group do not have to pay for cladding remediation,[96] and for other remediation costs they do not have to pay beyond the level of a cap that takes account of costs already paid by the leaseholder towards remediation or interim measures.[97] For most qualifying leaseholders, the maximum that they will be able to be charged for costs relating to historical building safety defects is £10,000 (or £15,000 for properties in London), although the cap is greater for high value properties.[98]

Notwithstanding the government claims that most leaseholders are protected, two important groups have no protection. The first are the non-qualifying leaseholders, that is, those who for whom the flat is not home and whose lease is part of an investment portfolio of more than three dwellings; and the second is those in blocks that are leaseholder owned.[99] This latter is an important exception: there is no support for leaseholders in enfranchised blocks, apart from the limited possibility of financial support towards cladding remediation via the government funds. The absence of protection for leaseholders in leaseholder-owned blocks also highlights that it is only the vagary of the English ownership model—with the separation of building ownership from flat ownership—that has provided a route to

[95] Building Safety Act Explanatory Notes, Part 5 [1706] <https://www.legislation.gov.uk/ukpga/2022/30/notes/division/11/index.htm> (accessed 25 August 2023).
[96] BSA 2022, sch 8, para 8.
[97] ibid, paras 5-7.
[98] ibid, paras 5-6.
[99] This stems from the fact that these blocks are excluded from being a relevant building by BSA 2022, s 117 (3).

protect some leaseholders from having to pay. Where the ownership of the block comes closer to models found in other jurisdictions where unit-owners also have an ownership interest in the building (as in condominium and strata-title), the buck stops with the unit owners.

There is a further measure designed to help leaseholders who are not fully protected.[100] The intention is that before the landlord can pass on remediation costs to leaseholders it must explore alternative cost recovery avenues, perhaps, for example, claiming under a warranty, or considering litigation against a developer.

The complexity of the leaseholder protection provisions reflects a nuanced and delicate political balancing, perhaps with an eye on the moral basis for intervention, and on Article 1 Protocol 1 of the European Convention of Human Rights (A1P1). In essence, A1P1 protects the right to peaceful enjoyment of possessions, which would include the landlord's rights under the lease. Any interference with the peaceful enjoyment of possessions by the state will be unlawful unless it is in the public interest, and proportionate. Whenever draft legislation is presented, section 19 of the Human Rights Act 1998 requires a ministerial statement to the effect that in the minister's view the bill is compatible with Convention rights or, even if not compatible, the government nevertheless wishes Parliament to proceed with the bill. A previous Secretary of State introduced the Building Safety Bill in the House of Commons on July 5, 2021, with the Explanatory Notes simply stating that the "provisions of the Bill are compatible with the Convention rights." The dramatic shift in tone came in January 2022, just a few months before the bill needed to receive Royal Assent, and new, extremely complex, policy was then developed and translated into legislative wording, at breakneck speed with no effective opportunity for scrutiny or consultation.[101] The scaling of the leaseholders' protection

[100] Landlord and Tenant Act 1985, s 20D, inserted by BSA 2022, s 133 (not in force as of August 25, 2023).

[101] Susan Bright, 'Rushed legislation: scrutiny and human rights' (*University of Oxford Housing After Grenfell Blog* 9 April 2022) <https://blogs.law.ox.ac.uk/housing-after-grenfell/blog/2022/04/rushed-legislation-scrutiny-and-human-rights> (accessed 25 August 2023).

perhaps reflects the concern that the intervention with the landlord's vested interests must be shown to be proportionate, as the Building Safety Minister, Lord Greenhalgh, stated in Parliament:

> The Bill changes the private contract between the landlord and the leaseholder by stating that leaseholders will not pay any costs except in certain circumstances. Government can do this if it is in the general interest to do so, provided there is a fair balance between all the parties. Therefore, we need to make sure that the Bill is both proportionate and fair to all parties.[102]

In England, the legitimacy of state action in moments of crisis is navigated by a combination of the democratic process, protest, and cross-checked for lawfulness by human rights legislation. Property theorists, often perceive the function of property as protecting what is ours, offering the promise that entitlements will not change,[103] and promoting protection of "stable expectations" as a virtue.[104] Indeed, Dagan argues that it is the stability of property that enables it to serve autonomy, connecting it to the idea of a plan.[105] But the disturbance of the vested rights of certain categories of landlords through the leaseholder protections is likely to have significant financial impact; it is not only the "rapacious" who are affected but it will hit several pension funds hard given that remediation costs on individual blocks typically run into several million pounds. Developer landlords, and landlords with deep pockets, may well think that the government has gone too far and this is not a fair distribution: they should not be forced, through a seismic intervention in vested rights, to bear a burden which ought, in all fairness and justice, to be borne by the public as a whole, particularly given that the government itself is not without responsibility for the problem. This is not the modest incremental change of gentle accretion that Dagan accepts as a legitimate part of the life of

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[102] HL Deb, 29 March 2022, vol 820, col 1517.
[103] Laura S Underkuffler, 'Lessons from Outlaws' (2007) 156 PENNumbra 262, 267.
[104] Dagan (n 10) 151.
[105] ibid 211. Dagan, however, focusses only on human actors; most landlords will be artificial persons.

property but more of an avulsion, a change that undermines the owner's ability to plan.[106] It is an upending of the pre-existing balance, punctuating the equilibrium. [107]

It may be that the nuanced protections in Schedule 8 of the Building Safety Act 2022 provide support for the differentiation that Dagan suggests exists among different categories of landowners. Indeed, his version of autonomy is intimately connected with human, rather than corporate, life stories. For him, the private authority of commercial actors is only indirectly conducive to their autonomy. Dagan also suggests that the case for awarding full compensation for regulatory change is much less strong where land is owned as part of a diversified investment portfolio, or where landowners, as members of powerful and organized groups can use non-legal means to influence public officials.[108] Albeit a very different context, these types of distinctions are what we see in the leaseholder cost protection provisions.

The approach of Schedule 8 provides synergies with the shifts noted by Davidson and Dyal-Chand in the state's response to the foreclosure crisis in the United States: conceptual shifts that bring the state's response to the fore, placing great weight (then and there) on the "public, communitarian, and even punitive aspects of the nature of property."[109] In England, the shifting of costs from the innocent (leaseholders) to either the wrongdoer or profiteer (developer) or the deep-pocketed landlords is clearly intended as a practical intervention that will both get things sorted and protect the innocent. It is early days to know if this might work but the signs are not promising. A recent survey shows that only 21.8% of leaseholders in dangerous blocks have seen remediation start.[110] Indeed, the complexity of the legislation (which has been described as a "car crash") is probably contributing to further delays, and is certainly stalling the property market

[106] ibid ch 8.
[107] Davidson and Dyal-Chand (n 14) 1619.
[108] Dagan (n 10) ch 8, esp 224, 235.
[109] Davidson and Dyal-Chand (n 14) 1607.
[110] Apps (n 3).

as a significant number of conveyancers are refusing to act on these transactions.[111]

The building safety crisis in England suddenly burst into the public domain following the Grenfell Tower fire as the impact of decades of poor construction and an inadequate regulatory system were revealed. Alongside the urgent issues caused by these unsafe building practices there is a further emerging crisis that property law needs to engage with proactively: the question of how property law can be adapted to support the resilience of high-rise buildings.

VI. Resilience, Property Systems, and Buildings

The building safety crisis has exposed that buildings are not fire-resilient, but this Part discusses whether property systems support the resilience of our built environment more generally. Buildings are vulnerable both to the aging process and the impact of climate change. They need to be robust throughout their life cycle, so as to be able not only to withstand sudden shocks, such as fire, but also to protect human life and provide shelter as they age. Additionally, they must be adaptable to meet changing social and environmental challenges. To enable the necessary adaptations to building infrastructure, our laws regulating multi-owned property must be designed to mitigate the impact of these threats.

Just as the disaster of the Grenfell Tower Fire woke us up to the hazards of modern construction materials and poor building practices so the collapse of Champlain Towers in Miami should wake us to up to the risks of an aging building stock. This twelve-story condominium building suffered sudden catastrophic failure in June 2021, causing the death of ninety-eight people. There are ongoing investigations as to the causes of the collapse, but what is already clear is that both the condominium association in charge of maintaining the forty-year-old building, as well as local

[111] Jamie Lennox, 'Building Safety Act: Conveyancers Halt Leasehold Transactions Affected by "Car Crash" Legislation' *Today's Conveyancer* (5 April 2023) <https://todaysconveyancer.co.uk/building-safety-act-conveyancers-halt-leasehold-transactions-affected-car-crash-legislation/> (accessed 25 August 2023).

government agencies, had been advised of serious structural problems that needed immediate repair, and yet nothing was done.

There has been slow, but growing, awareness that buildings also need to be adaptable to meet the challenges of the climate emergency in terms of withstanding disasters, such as flooding, as well as enabling net zero benchmarks to be met. To enable buildings to move away from fossil fuel technologies and become more energy efficient, the kind of measures that may be necessary include: improving the thermal efficiency of the building envelope (insulation and windows), lower carbon and renewable energy heating systems, installation of renewable electricity generation (principally solar photovoltaics), and the installation of smart metering.

In older housing stock, environmental upgrades will require deep renovation, as at Grenfell Tower where improved environmental performance was one of the drivers for the refurbishment. The local authority that owned the freehold had a Carbon Management Plan 2009 that talks of "going into battle in the war on climate change," with plans for "better insulation, improved energy efficiency."[112] Sadly, the aspirational energy and climate change targets impacted on material and design choices made with the refurbishment of Grenfell Tower, with devastating consequences.[113]

At present, at least in England, property law pays little attention to the resilience needs of buildings. In response to the Champlain Tower collapse, the state of Florida was quick to pass legislation making it mandatory for thirty-year-old high rise buildings to be inspected for structural soundness, and the inspection is to be repeated every ten years.[114] In England, there are no requirements for regular inspections, and no requirements for reserve

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[112] Royal Borough of Kensington and Chelsea, 'Carbon Management Plan' (11 August 2009) <https://www.rbkc.gov.uk/pdf/Carbon%20Management%20Plan.pdf> (accessed 21 September 2023) p 3.

[113] Susan Bright, 'Renovations and Complexity: Environmental Goals and Fire Safety' (*University of Oxford Housing After Grenfell Blog* 16 August 2021) <https://blogs.law.ox.ac.uk/housing-after-grenfell/blog/2021/08/renovations-and-complexity-environmental-goals-and-fire-safety> (accessed 25 August 2023).

[114] Michael Teys, 'Strata Health and Safety: A Call for New Reforms' (17 June 2022) at <https://michaelteys.com/article/strata-health-and-safety> (accessed 25 August 2023).

funds.[115] In relation to environmental adaptations, there is a growing awareness of the barriers to adaptation and refurbishment of multi-owned properties, at least in energy literature.[116] Attention is drawn to the uncertainties about cost-effectiveness, decision-making processes, financial barriers, organizational problems, lack of information and skills,[117] and, crucially, property law. But policymakers have paid them, and the related property laws, insufficient attention.

Funding is a major issue for both repair and upgrade. Even day-to-day maintenance is expensive, particularly in high-rise properties where height adds significantly to the costs of routine cleaning and repair. In the medium-long term, ordinary wear and tear requires major building components to be replaced. As Evan McKenzie points out, condo associations in the United States seldom have enough money put aside in reserves for this.[118] Lack of funding may also explain failures to fix inherent defects after any warranty has expired; a recent report from Deakin University, Australia, found a reluctance to fix passive fire defects where costs were significant. One interviewee remarked:

> [I]f there's less than $5,000 worth of defects maybe within a three year period, eventually the owners corporation will allocate some money towards the budget and do it. But once you start getting over $5,000 in terms of repair costs, I find that the drop-off rates like a cliff. When it gets around $10,000, $15,000, $20,000, $30,000, whatever it is in terms of

[115] For "higher-risk" buildings (BSA 2002 s 65), there is now a requirement (s 83) to have regular assessments of "building safety risks" (which means risk due to spread of fire or structural failure, s 62).

[116] Kaisa Matschoss, Eva Heiskanen, Bogdan Atansiu, and Lukas Kranzi, 'Energy Renovations of EU Multifamily Buildings: Do Current Policies Target the Real Problems?' (2013) ECEE Summer Study Proceedings: Rethink, Renew, Restart 1485; David Weatherall, Frankie McCarthy, and Susan Bright, 'Property Law as a Barrier to Energy Upgrades in Multi-Owned Properties: Insights from a Study of England and Scotland' (2018) 11 Energy Efficiency 1641.

[117] Matschoss et al (n 116) 1486.

[118] Evan McKenzie, 'Private Covenants, Public Laws, and the Financial Future of Condominiums' (2019) 52 UIC J Marshall L Rev 715.

> that repair quote, whether it is going to be a fix all the issues that are there, that it goes into the too hard basket.[119]

Given the funding deficits for what is essential maintenance and repair, climate change adaptations may appear an impossible luxury. Change is, however, beginning to happen, at least in the United States where net-zero policies are already beginning to impact condominium associations. As in the English response to the building safety crisis, state legislators have not been afraid to interfere with vested property rights, passing laws that render unenforceable certain provisions in association governing documents that prevent compliance with environmental policy goals.[120]

England lags behind and, as David Weatherall and I explain, the leasehold system is a major hurdle to building adaptation:

> Viewed from the perspective of 'barriers', many of the governance problems for energy improvements in [multi-owned properties] are … so complex and messy that they just seem intractable, for example the problems of aligning the incentives and benefits for energy upgrades between freeholders, leaseholders and flat residents. Through the technology of law perspective, … the lease ends up constituting social relationships and material realities that are inimical to a long term, large scale transformation of the energy performance of the housing stock.[121]

One of the important functions of property law must be to provide the resources necessary to support the resilience of our built environment. In Florida it took a tragic property moment to prompt important changes to property law to address the inevitable problems that flow from aging structures. Renovation of residential blocks of flats is complex, not only due

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[119] Deakin Business School, 'Investigating Passive Fire Protection Defects in Residential Buildings' (2022) para 6.2.6. (7 - Fire safety and compliance practitioner).

[120] Evan Mckenzie, 'Net Zero and Condominiums: Emerging US Policies and Practices' (*University of Oxford Housing After Grenfell Blog* 16 13 March 2023) <https://blogs.law.ox.ac.uk/blog-post/2023/03/net-zero-and-condominiums-emerging-us-policies-and-practices> (accessed 25 August 2023).

[121] Susan Bright and David Weatherall, 'Framing and Mapping the Governance Barriers to Energy Upgrades in Flats' (2017) 29 JEL 203, 228.

to technical challenges but because of the complexity of ownership and governance structures. There is a need for better understanding of the ways in which law acts as a technology that shapes the social-material world, and for the development of environmental and fiscal policies that engage with these complexities. Too often blocks of flats are put into the "too difficult to deal with" box. In addition, a paradigm shift in the way that apartment ownership is understood is essential for property systems to address the vulnerability of buildings. Weatherall, Frankie McCarthy, and I argue that the "self-seeking" and individualistic notions of ownership that underpin the property systems of many legal traditions inhibit the kinds of measures that are necessary for future-proofing buildings.[122] Drawing on the work of progressive property scholars, we argue that the promotion of human flourishing—a principal value served by property—must not only provide for the security of property that is required for a good life, for example, the home, but must also recognize that owners of assets have obligations to others in society.[123] This other-regarding perspective will encompass broader environmental concerns, including protecting future generations,[124] as well as enabling the pursuit of wider social and collective goals.

The final Part recaps on the narratives of the building safety crisis and how they have impacted on the resilience of the many dimensions of property.

VII. No Conclusion: The Continuing Property Crisis

The tragedy at Grenfell Tower, alongside other international building disasters, showed that high-rise property is at a critical juncture, both the

[122] Weatherall et al (n 116) 1652.
[123] ibid 1652-53, referring to G Alexander, 'The social-obligation norm in American property law' (2009) 94 Cornell Law Review 745.
[124] ibid 1652-53, referring to G Alexander, 'The social-obligation norm in American property law' (2009) 94 Cornell Law Review 745, and E Peñalver, 'Land Virtues' (2009) 94 Cornell Law Review 821, 868-869.

built form and the legal infrastructure. The Grenfell Tower fire triggered a spiraling crisis in English blocks of flats that has yet to be brought under control. It exposed that light touch regulation, driven by a deregulatory government agenda, provided an enabling environment for developers to put profit ahead of resilience and safety. During this period, rapid urban growth, new construction techniques, and the financialization of housing saw many high-rise blocks built, changing the urban landscape in major cities. In addition to cost drivers and aesthetic appeal, pressure to meet demanding climate targets led to the widespread use of combustible cladding and insulation products both in these new build blocks and in the refurbishment of older blocks owned by social housing providers. Tests that showed the material could result in a "raging inferno" were buried, and the government ignored the warnings that the regulatory guidance needed to change.

Thousands of buildings in England are now known not to be resilient. Unlikely to withstand the relatively commonplace hazard of fire, they need remediation. More than six years after the Grenfell Tower fire, insufficient progress has been made. In turn, the impact of the building safety crisis has exposed the vulnerability of ownership and home. Some residents have been forced out of their homes, with an uncertain future. Others are trapped in homes that are unsafe, relying on effective evacuation to get out in time if there is a fire, and knowing that their treasured possessions will be lost. Leaseholders caught up in this mess can no longer self-author their life stories. They can neither sell, nor even re-mortgage, their flats. They cannot plan to grow their family. They cannot move homes to progress their careers or to care for loved ones. The financial costs are impossible for many to pay. In some tragic cases, they have decided it is too much and their life story has ended.

The cause of the problem is hugely complex, but property and profit play into how to respond to the crisis. In the English leasehold system building owners—the freeholders and landlords—are separate from those most impacted. Indeed, as the leasehold system provides an opportunity for secure revenue streams from leasehold properties, there is a thriving

investment market in freehold reversions, with owners often being pension companies or offshore investors. These are the "agenda-setters" with the legal powers to remediate, but until the Building Safety Act 2022 no duty to do so. In the absence of any duty and knowing that the cost of interim safety measures such as the waking watch could simply be passed on to leaseholders, there was no urgency. And if they did decide to remediate, again it would be at the cost of leaseholders, even though the bill payers had no voice in the decisions taken, the contractors employed or the standard of remediation.

Those campaigning for reform of the leasehold system have repeatedly complained about the absence of autonomy, the exclusion of leaseholders from decisions about how their buildings are run, and their exposure to financial exploitation. Further, it is wholly unfair that the only innocent party, the leaseholder, is the one left paying the bills. As the government's own contribution to creating the problem became clearer with evidence emerging from the Grenfell Tower Inquiry, there was mounting political pressure for it to do more. Eventually, the state acted—driven by political pressure, as well as the need to make buildings safe and to unblock the property market. At this point in the story, the peculiarity of leasehold provided a surprise opportunity: the separation of building ownership from unit ownership meant that costs could be transferred from the leaseholders to the landlord. The government's intervention—preventing the recovery of costs to which the landlord is entitled under the lease[125] and imposing a duty to remediate[126]—is disruptive of the stability norm of property, an illustration of what Davidson and Dyal-Chand refer to as a "property moment" unsettling the perceived balance between property and state authority. However, at least in England, there is an acceptance that the state can interfere with existing property rights for legitimate reasons.

[125] In some circumstances, and in relation to some leaseholders, as explained above.

[126] It is more complex than the text suggests. A duty to prevent building safety risks materializing is placed on "accountable persons" (BSA 2022, ss 72, 84), which will include a landlord in relation to the common parts of the building.

Property law needs to be capable of adaptation, reflecting the operative conception of property that Underkuffler refers to. In line with the broader understanding of equitable resilience, property law needs to take account of the "specific effects of capitalism on the legal system," particularly in a crisis context.[127] It is also needed for property law to enable the adaptation of our built environment to the challenges of climate change. Examples of adaptive resilience are frequently seen in interventions in tenancy law, for example with rent control and controls on termination, and is also acknowledged by the qualified nature of the right to peaceful enjoyment of possessions in the Human Rights Act 1998. Indeed, the need for a proportionate response is reflected in the complexity of the leaseholder protections in the Building Safety Act 2022—such as providing that those landlords with deep pockets (neither wrongdoers nor having profited from the initial sales) would be prevented from recovering from some, but not all, types of leaseholders. The more complete prohibition on costs recovery by landlords who profited from the sale of defective flats (the developers) perhaps reflects what Davidson and Dyal-Chand suggest was seen in the response to the financial crisis, "a … 'cram-down' of sorts to mandate responsible behavior."[128]

To end with a note on the building safety crisis and the thousands of blocks that remain unsafe, it may be that the strong rhetoric of Michael Gove—that the government is coming for those who profited and were at fault—coupled with the interventions to property rights through the leaseholder protection provisions in the Building Safety Act 2002, took the heat off the government for a while. But a year further on there is little evidence that the new approach has enabled a much faster pace of remediation and it is evident that the crisis is far from being solved. The voices of discontent are rising again. High-rise property remains in crisis.

[127] van der Sijde (n 7) 350.
[128] Davidson and Dyal-Chand (n 14) 1659.