Neutral Citation Number: [2026] EWHC 2526 (TCC)

Case No: HT-2025-000362

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Rolls Building
Fetter Lane, London EC4A 1NL

Date: 7 October 2026

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

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Between :

TAYLOR WIMPEY UK LIMITED

Claimant

- and -

(1) TAYLOR WOODROW CONSTRUCTION
(2) VINCI CONSTRUCTION HOLDING LIMITED

Defendants

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Jonathan Selby KC and **Daniel Khoo** (instructed by **Gateley Legal**) for the **Claimant**
Steven Walker KC and **David Johnson** (instructed by **Simmons & Simmons LLP**) for the **Defendants**

Hearing dates: 23-24 June 2026
Draft judgment circulated: 2 October 2026

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Approved Judgment

This judgment was handed down remotely at 2pm on 7 October 2026 by circulation to the parties by email and by release to the National Archives.

MR JUSTICE PEPPERALL:

1. This case concerns the question of whether claims under the *Defective Premises Act 1972* ("the *DPA*") and for a contribution under the *Civil Liability (Contribution) Act 1978* should be struck out in circumstances where an associated company's claim for the same damage under the *DPA* was dismissed as statute-barred in an earlier arbitration but the law has now changed such that there would be no limitation defence to this action.

BACKGROUND

2. In or around 2005, Taylor Wimpey Developments Ltd ("TWDL") appointed Taylor Woodrow Construction ("Woodrow") to design and build Victoria Wharf; a residential development in Cardiff comprising seven high-rise buildings. The only contract that has been located was dated 6 January 2005 and concerned phase 1 of the works, although it is common ground that the lost contracts for phases 2 and 3 were in the same terms. The contracts were executed as deeds. Practical completion was achieved on the blocks between 11 November 2005 and 3 July 2008.

3. Following the Grenfell Tower fire, a number of fire safety defects were identified in the development. On 20 October 2020, a letter before action was sent on behalf of TWDL, Taylor Woodrow UK Ltd ("TWUK") and Taylor Wimpey Holdings Ltd asserting unspecified claims in respect of such defects against Woodrow. In short order, a standstill agreement was negotiated between all parties in order to preserve the limitation position. It was, however, already more than 12 years after completion of the final phase of the works.

4. On 2 August 2021, TWDL served a notice of arbitration upon Woodrow seeking to recover the cost of the necessary remedial works. Its claim was pleaded in contract, in negligence and on the basis that Woodrow had breached the duty owed pursuant to s.1(1) of the *DPA* to see that the works of design and construction were carried out in a workmanlike or professional manner and with proper materials so that the dwellings would be fit for habitation on completion. TWDL, as the employer under the design and build contract, was the sole claimant. Chantal-Aimée Doerries QC was appointed as the arbitrator.

5. At a hearing on 11 April 2022, Woodrow argued that TWDL's claims in both contract and under the *DPA* were out of time. Woodrow was right as the law then stood and by an award made on 12 May 2022, Ms Doerries QC determined that both claims were statute barred.

6. The position in respect of the claim under the *DPA* was, of course, about to change. The *Building Safety Act 2022* ("the *BSA*") received royal assent on 28 April 2022 after the parties had argued the limitation point and a couple of weeks before Ms Doerries' award. Section 135 of the *BSA*, which came into force on 28 June 2022, amended the *Limitation*

Act 1980 to extend the limitation period for old claims under s.1 of the *DPA* retrospectively to 30 years after the date on which the right of action accrued.

7. After the law changed, TWDL sought to amend its claim in order to revive its *DPA* claim. By her further decision dated 27 September 2022, Ms Doerries concluded that TWDL could not rely on the extension to the limitation period because its *DPA* claim had been finally determined by her earlier award before s.135 had come into force. Thus, by s.135(6) of the *BSA,* time for bringing TWDL's claim was not retrospectively extended. Thereafter the arbitration claim continued solely on the basis of TWDL's tort claim.

8. On 22 May 2023, just weeks before the date set for the final hearing of the tort claim, TWDL's solicitors wrote to Woodrow to inform them that the firm had recently been provided with an agreement dated 21 December 2007. The agreement transferred TWDL's UK property development and housebuilding business to TWUK with effect from 1 January 2008. Among other assets, the 2007 agreement transferred an equitable interest in the Victoria Wharf development and purported to assign TWDL's rights and claims under certain contracts to TWUK. There was, however, no evidence that notice of the assignment had been given to Woodrow and accordingly TWDL pursued its remaining claim within the arbitration.

9. In the course of their respective submissions in the arbitration:

   9.1 TWDL argued that although TWUK had funded the professional and investigatory fees, including the costs of the arbitration and separate High Court proceedings against the architects, the losses claimed had been suffered by TWDL; whereas

   9.2 Woodrow argued that TWDL, having sold its business to TWUK, was not involved in any remedial work and would not suffer any loss.

10. By her further award dated 1 March 2024, Ms Doerries dismissed the tort claim. Most fundamentally the claim failed because the arbitrator found that Woodrow did not owe TWDL any concurrent or co-extensive duty of care. She also found that:

    10.1 the Alsecco and Enivrowall systems would have complied with the *Building Regulations* in the event that they had been constructed in accordance with their design; but

    10.2 the timber and weatherboard systems were not compliant because they incorporated combustible materials and/or lacked relevant fire barriers.

11. Just six weeks later, a further letter of claim was sent to Woodrow on behalf of both TWUK and TWDL.

12. On 28 October 2025, TWUK issued this claim. As against Woodrow, it seeks to bring its own claim pursuant to s.1(1)(b) of the *DPA*. Further, it seeks a building liability order pursuant to s.130 of the *BSA* against Woodrow's own parent company, Vinci Construction Holding Ltd. The claim in these proceedings very largely mirrors that

pleaded in the arbitration. The core claim is brought pursuant to the *DPA* and pleads that the same external wall types in the same development were defective. In addition, TWUK pleads a new claim in respect of the steelwork.

13. Both TWDL and TWUK are part of the Taylor Wimpey group and their ultimate parent company is Taylor Wimpey plc. TWDL is itself TWUK's immediate parent company. Each of TWDL's three directors is also a director of TWUK.

THE ARGUMENT

14. Steven Walker KC and David Johnson, who appear for Woodrow, complain that this action is an attempt by the Taylor Wimpey group to relitigate through TWUK substantially the same claim that was previously referred to arbitration and pursued to a final award. Mr Walker points out that the alleged defects are to the same external wall systems that were the subject of the arbitral claim and that it is pursued by the same solicitors. He argues that TWUK's claim is an abuse of process for two related reasons:

    14.1 First, it is a second attempt by an intimately connected corporate claimant to relitigate a claim that has already been brought against Woodrow.

    14.2 Secondly, it is an impermissible collateral attack on the arbitrator's awards.

    Mr Walker complains that the court is being invited to treat the arbitration as nothing more than a dress rehearsal. That, he submits, is manifestly unfair and contrary to public policy.

15. Even if the lawyers were not aware of the 2007 agreement until May 2023, Mr Walker insists that it cannot be said that TWDL and TWUK were not aware. In any event, he submits that if the Taylor Wimpey group had wished to contend that TWUK was the proper or an additional claimant or that it had a freestanding *DPA* claim, it could and should have raised that issue at the time. Faced with the risk of parallel proceedings, Mr Walker argues that Woodrow would have been likely to have consented to the two claims being consolidated. Taylor Wimpey's failure to do so at the time was, he argues, a clear breach of the guidelines established in *Aldi Stores v. WSP Group plc* [2007] EWCA Civ 1260, [2008] 1 W.L.R. 748. Furthermore, he argues that TWDL could have withdrawn its claim in the arbitration before it was finally determined.

16. Mr Walker acknowledges that this claim is pursued by a different legal personality. Nevertheless, he stresses the close relationship between the two companies and argues that they are in law privies. He submits that there is nothing in the point that TWDL's cause of action arises under s.1(1)(a) of the *DPA* whereas TWUK's cause arises under s.1(1)(b). Further, he complains that the allegations were somewhat historical even at the time of the arbitration and points to the increasing limitations on the reliability of witness evidence as time passes.

17. Mr Walker argues that there is no merit in the point that TWUK's claim is also brought against Vinci. The claim under the *BSA* is, he submits, simply parasitic on the *DPA* claim that has already been determined. Alternatively, he argues that there is no reason to think that Woodrow would not comply with any judgment against it, and that it is in any event

not just and equitable to make a building liability order against Vinci given that the Taylor Wimpey group drew substantial dividends from Woodrow after the completion of the works and before selling the company to Vinci. Mr Walker acknowledges that such arguments have nothing to do with abuse of process and suggests that the court might give Vinci leave to amend its application to seek summary judgment on the building liability order claim.

18. Jonathan Selby KC and Daniel Khoo, who appear for TWUK, stress that the duty under s.1(1) of the *DPA* is owed to multiple persons. Mr Selby points to the fact that TWDL's claim as the developer was brought under s.1(1)(a) of the *DPA* whereas TWUK's cause of action as a subsequent owner is under s.1(1)(b). Further, he argues that the extension of the limitation period enacted by s.135 of the *BSA* operates separately by reference to the individual causes of action held by different claimants. Quite simply, Mr Selby contends that while TWDL's *DPA* claim has been finally determined, TWUK's claim has not and accordingly s.135(6) has no effect upon its case. He submits that the effect of the arbitrator's decision was that TWDL lost the ability to pursue its *DPA* claim on limitation grounds without the substance of its claim ever being investigated.

19. Mr Selby points to evidence that TWDL and TWUK were entirely separate and unrelated companies at the time of the development. While TWDL was part of the Taylor Woodrow group, TWUK was then known as George Wimpey UK Ltd and part of the George Wimpey group. The two groups merged in July 2007 and it was only in December 2007 that TWDL became TWUK's parent company. TWDL had previously been a housebuilder with the Taylor Woodrow group but, from the date of the transfer agreement, had transferred its housebuilding business to its subsidiary. TWDL is now a non-trading holding company with a total of nine subsidiaries.

20. Mr Selby also points to the ongoing proceedings brought by both TWDL and TWUK against the architects for this development, Holder Mattias Architects Ltd, under the *DPA* in respect of the fire safety defects. He observes that in the event that the architects were to be found liable to TWUK, they would in principle be able to bring a contribution claim against Woodrow. Such contribution claim could not, he argues, be defended on the basis that TWDL's own claim in the arbitration had been dismissed.

DISCUSSION

21. Rule 3.4(2)(b) of the *Civil Procedure Rules 1998* provides that the court may strike out a statement of case if it appears to the court that it is "an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings". The burden is upon Woodrow to show that the current proceedings should be stopped as an abuse: *Bragg v. Oceanus Mutual Underwriting Assoc. (Bermuda) Ltd* [1982] 2 Lloyd's Rep. 132, at page 138; *Calyon v. Michailaidis* [2009] UKPC 34, at [35].

22. In *Calyon,* Lord Rodger explained, at [36]:

> "The test to be applied is exacting: the claimants must show that it would be manifestly unfair to them that the same issues should be relitigated or that to permit such relitigation would bring the administration of justice into disrepute."

23. To similar effect, Simon LJ referred to the threshold being high in *Michael Wilson & Partners Ltd v. Sinclair* [2017] EWCA Civ 3, [2017] 1 W.L.R. 2646, at [87].

RELITIGATION ABUSE

The rule in Henderson v. Henderson

24. In *Virgin Atlantic Airways Ltd v. Zodiac Seats UK Ltd* [2013] UKSC 46, [2014] A.C. 160, Lord Sumption analysed the defence of res judicata. He said, at [17]:

> "Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle.
>
> The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is 'cause of action estoppel'. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings.
>
> Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see *Conquer v. Boot* [1928] 2 K.B. 336.
>
> Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given on it, and the claimant's sole right as being a right on the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as 'of higher nature' and therefore as superseding the underlying cause of action: see *King v. Hoare* (1844) 13 M & W 494, 504 (Parke B) …
>
> Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: *Duchess of Kingston's Case* (1776) 20 State Tr 355. 'Issue estoppel' was the expression devised to describe this principle by Higgins J in *Hoysted v. Federal Commissioner of Taxation* (1921) 29 CLR 537, 561 and adopted by Diplock LJ in *Thoday v. Thoday* [1964] P 181, 197-198.
>
> Fifth, there is the principle first formulated by Wigram V-C in *Henderson v. Henderson* (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones.
>
> Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."

25. It is common ground that the first four principles are not in play. In particular, cause of action estoppel is not relevant although it would prevent TWDL from challenging the

dismissal of its own *DPA* claim, which would in any event remain statute-barred by reason of s.135(6) of the *BSA*. The real issue is whether the rule in *Henderson v. Henderson* should preclude TWUK from now raising in these proceedings its own *DPA* claim.

26. In the landmark case of *Henderson v. Henderson*, Wigram V-C said, at page 114:

> "… where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points on which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time …"

27. In *Johnson v. Gore Wood & Co.* [2002] 2 A.C. 1, Lord Bingham of Cornhill restated the rule, at page 31:

> "*Henderson v. Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before."

28. Stressing the need to take into account all of the circumstances, Stuart-Smith LJ added in *MW High Tech Projects UK Ltd v. Outotec (USA) Inc.* [2024] EWCA Civ 844, [2024] 4 W.L.R. 85, at [89], that the court should take a "generous view" of the matters to be taken into account.

29. In *PJSC National Bank Trust v. Mints* [2022] EWHC 871 (Comm), [2022] 1 W.L.R. 3099, Foxton J (as he then was) observed at [77]-[78] that, while unlikely to be determinative, there is some support in the authorities for the proposition that a distinction can be drawn between those who positively invoke the court's process to secure substantive relief and those whose involvement is essentially defensive, and that "the actions of the former more readily lend themselves to the characterisation of 'vexing' an opponent than the latter".

30. It is not necessary before a claim can be struck out that the court should find that the claimant has acted in any way that was culpable or improper: *Aldi*, at [18].

31. In *Aldi,* Thomas LJ (as he then was) cautioned, at [31], that where in complex commercial multi-party litigation a party wishes to pursue other proceedings while reserving a right in existing proceedings, the proper course is for the issue to be raised with the court seised of the existing proceedings. That, he explained, was "not only in the interest of the parties, but also in the interest of the efficient use of court resources".

Claims under the Defective Premises Act 1972

32. Section 1 of the *DPA* provides:

> "A person taking on work for or in connection with the provision of a dwelling … owes a duty–
>
> (a) if the dwelling is provided to the order of any person, to that person; and
>
> (b) without prejudice to paragraph (a) above, to every person who acquires an interest (whether legal or equitable) in the dwelling;
>
> to see that the work which he takes on is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed."

33. Self-evidently, a builder may owe a duty pursuant to s.1 of the *DPA* to multiple persons: to his employer under s.1(1)(a), and to anyone who thereafter acquires an interest in the dwelling under s.1(1)(b). Where a builder fails to carry out the construction work in a workmanlike manner and with proper materials so that a dwelling is not fit for habitation, both the employer and any legal or equitable owner are entitled to sue for the full cost of repair: *Rendlesham Estates plc v. Barr Ltd* [2014] EWHC 3968 (TCC), [2015] 1 W.L.R. 3663, at [226]-[235].

34. Here, TWDL as the employer under the building contract could bring a claim for breach of duty against Woodrow under s.1(1)(a) of the Act while TWUK and the leaseholders of the affected apartments could bring claims under s.1(1)(b). In the case of a development comprising apartments across seven high-rise apartment blocks in which long leasehold interests have been sold, there will inevitably be many potential claimants who might bring a claim under s.1(1)(b) in respect of fire-safety defects.

35. Both TWUK and those with an interest in the apartments therefore had independent causes of action and the dismissal of TWDL's claim did not extinguish Woodrow's potential liability to anyone who has acquired an interest in the affected dwellings. Both TWDL and TWUK could therefore claim for the full costs of the required remedial works although, as Edwards-Stuart J explained in *Rendlesham* at [241], the law is quite capable of ensuring that no injustice is suffered by Woodrow by preventing both companies from enforcing the same judgment debt. Here, of course, TWDL's claim has been dismissed and accordingly there has been no earlier recovery.

The arbitration

36. By the building contracts and with limited exceptions, TWDL and Woodrow had agreed to refer any dispute to binding arbitration. TWDL was therefore obliged to bring its *DPA* claim within the arbitration. TWUK was not a party to the contract. While TWDL had purported to assign its contractual rights to TWUK, it accepted that it had not given notice of the intended assignment such that the arbitration claim had to be pursued in TWDL's name. Accordingly, TWUK was a stranger to the building contract and had no standing to insist on being joined to the arbitration or to bring its own freestanding arbitral claim. Thus:

    36.1 absent agreement releasing TWDL from its obligation to refer its dispute to arbitration, TWDL could only pursue its *DPA* claim by arbitration; and

    36.2 absent agreement conferring jurisdiction on the arbitrator, TWUK could only pursue its separate *DPA* claim by litigation.

37. TWUK did not seek to be joined to the arbitral proceedings. The parties made rival submissions as to what might have happened had it done so, but the reality is that TWUK would only sensibly have sought to bring its own *DPA* claim on or after 28 June 2022 when the limitation period was extended retrospectively, by which time the arbitrator had already dismissed TWDL's claim under the Act and the only extant claim was in tort. In my judgment, it is most unlikely that, once TWUK's interest was appreciated, Woodrow would have consented in late May or early June 2023 to the consolidation of TWUK's claim under the *DPA* such that the imminent final evidentiary hearing was concerned both with TWDL's outstanding tort claim and the question of liability under the *DPA* that would suddenly have been revived by TWUK's claim.

Privies

38. Although TWUK was not party to the arbitration, it is necessary to consider whether it should in law be treated as TWDL's privy. In *Gleeson v. J Wippell & Co. Ltd* [1977] 1 W.L.R. 510, Miss Gleeson sued Wippell in respect of shirts manufactured in alleged infringement of her copyright in design drawings. Her claim in a previous action against another company that had itself copied the allegedly infringing Wippell shirt had been dismissed. Sir Robert Megarry V-C considered whether an issue estoppel arose to prevent Miss Gleeson from pursuing her new claim. He observed that the basic difficulty faced by Wippell was that it had not been a party to the earlier action. The case therefore turned on whether Wippell was to be regarded as the privy of the successful defendant in the first action. He observed, at page 515E-F:

> "… a man ought not to be allowed to litigate a second time what has already been decided between himself and the other party to the litigation. This is in the interest both of the successful party and of the public. But I cannot see that this provides any basis for a successful defendant to say that the successful defence is a bar to the plaintiff suing some third party, or for that third party to say that the successful defence prevents the plaintiff from suing him, unless there is a sufficient degree of identity between the successful defendant and the third party. I do not say that one must be the alter ego of the other: but it does seem to me that, having due regard to the subject-matter of the dispute, there must be a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings to which the other is party. It is in that sense that I would regard the phrase 'privity of interest'. Thus in relation to trust property I think there will normally be a sufficient privity between the trustees and their beneficiaries to make a decision that is binding on the trustees also binding on the beneficiaries, and vice versa."

39. The issue arose again in *Johnson* in which the issue was possible privity between the claimant and a company that had pursued an earlier claim against the same defendant solicitor for the same professional negligence. At page 32D, Lord Bingham endorsed Sir Robert Megarry's approach to privity. Applying that test, he roundly rejected the suggestion that the rule in *Henderson v. Henderson* was not engaged because the parties were different. He described the company as the "corporate embodiment of Mr Johnson" and observed that had he wished to bring his own personal claim in the company's action then he had the power to do so.

40. More recently, Floyd LJ gave the following useful guidance in *Resolution Chemicals Ltd v. H Lundbeck A/S* [2013] EWCA Civ 924, [2014] R.P.C. 5, at [32]:

> "a court which has the task of assessing whether there is privity of interest between a new party and a party to previous proceedings needs to examine (a) the extent to which the new party had an interest in the subject matter of the previous action; (b) the extent to which the new party can be said to be, in reality, the party to the original proceedings by reason of his relationship with that party; and (c) against this background to ask whether it is just that the new party should be bound by the outcome of the previous litigation."

41. In this case, TWUK has its own independent cause of action pursuant to s.1(1)(b) of the *DPA,* as indeed do the individual leaseholders of the affected apartments in this development. The position is, however, slightly more complicated in that, by clause 8.1 of the transfer agreement, TWDL purported to assign the benefits of and its rights and interest under its "Business Contracts" which were capable of assignment without the consent of the other party to TWUK. That gives rise to four further questions:

    41.1 Which, if any, relevant contracts were assigned?

    41.2 Did any assignment take effect at law or only in equity?

    41.3 What was assigned?

    41.4 What effect does any assignment have on the privity argument?

(1) Which contracts were assigned?

42. The "Business Contracts" were defined as the contracts that were unperformed, whether in whole or in part, at 1 January 2008. Given the dates on which practical completion was achieved in this case, it would appear that the transfer agreement only purported to assign the benefit of the contract for block 1.

(2) Did any assignment take effect at law or in equity?

43. Insofar as any contract had not been wholly performed by 1 January 2008, clause 18.1.2 of such contract (as amended by the special conditions) did not require the employer to obtain the contractor's consent for an absolute legal assignment. That said, a legal assignment could only have been effected by giving written notice to Woodrow in accordance with s.136 of the *Law of Property Act 1925.* No such notice having been given, the assignment in this case could only take effect in equity and accordingly TWDL held the benefit of any claim to enforce its contractual rights on trust for TWUK.

(3) What was assigned?

44. Clause 8.1 assigned TWDL's benefits, rights and interest under the relevant contracts. While I was not addressed on the issue at the hearing, it is arguable that TWDL's claims under s.1(1) of the *DPA* are not contractual claims but rather claims for breach of statutory duty and that they were not therefore assigned. That said, there is authority that an arbitration or adjudication clause framed in such terms would be wide enough to confer jurisdiction on the arbitrator or adjudicator in respect of a claim under the *DPA:* see *Fiona Trust & Holding Corp. v. Privalov* [2007] UKHL 40, [2007] 4 All E.R. 951, at [6]-[13]; *BDW Trading Ltd v. Ardmore Construction Ltd* [2024] EWHC 3235 (TCC), [2024] Bus LR 1481, at [41]-[80]; and *Crest Nicholson Regeneration Ltd v. Ardmore Construction Ltd* [2026] EWHC 789 (TCC), [2026] T.C.L.R. 4, at [143]-[171]. I do not accept that it necessarily follows that the same broad construction should be afforded to this assignment clause as has been given to dispute resolution clauses. Nevertheless, I have not been fully addressed on this issue and I do not therefore seek to determine it.

(4) What is the effect of assignment on the privity argument?

45. Even if there had been an effective equitable assignment of TWDL's claim under s.1(1)(a) of the *DPA*, TWDL would have held the benefit of that cause of action on trust for TWUK. It might therefore be thought that to that extent TWUK is clearly TWDL's privy. There are, however, three problems with that argument:

    45.1 First, there was only an assignment in this case of the benefit, rights and interest of the contract concerning block 1 of the development.

    45.2 Secondly, clause 18.1.2 prohibited any assignment by the employer of the benefit under the building contracts save by way of legal assignment. Accordingly, the assignment was not effective against Woodrow, and TWUK cannot maintain an action on the basis of the assignment: *Linden Gardens Trust Ltd v. Lenesta Sludge Disposals Ltd* [1994] 1 A.C. 85.

45.3 Thirdly, the claim actually pleaded is not premised on an assigned benefit under the building contract but upon TWUK's independent claim pursuant to s.1(1)(b) as equitable owner of the development.

46. Drawing these threads together, TWUK is undoubtedly closely connected with TWDL. I do not, however, accept that there is privity of interest between TWDL as the employer in pursuing its claim under the *DPA* and TWUK in seeking to pursue its own independent claim under the Act on the basis of its interest in the development.

Conclusions in respect of Henderson v. Henderson abuse

47. Accordingly, I do not consider that TWUK's claim should be struck out on the basis of relitigation abuse:

47.1 First, a builder who fails to carry out construction work in a workmanlike manner and using proper materials such that a dwelling is not fit for habitation is liable not just to the employer pursuant to s.1(1)(a) of the *DPA* but also to those who acquire an interest in the affected dwelling pursuant to s.1(1)(b).

47.2 Secondly, while the two companies are very closely related, TWUK and each of the affected leaseholders have their own independent claims under s.1(1)(b) of the *DPA* which could not reasonably have been pursued in the arbitration.

47.3 Thirdly, while I accept that there is very substantial overlap between the two claims, TWDL's claim under the *DPA* was not determined on its merits but dismissed because it was brought out of time. The law has now changed and the claim pleaded by TWUK in these proceedings is not liable to be defeated by a limitation defence.

47.4 Fourthly, there is no force in the complaint that this claim is long in the tooth. Parliament determined that the time for bringing a claim in respect of an existing cause of action under the *DPA* should be extended retrospectively to 30 years. Prejudice caused by the delay expressly countenanced by Parliament cannot justify striking out a claim that has been brought well within that very long limitation period. In any event, the earlier arbitral proceedings are an advantage to Woodrow in that they mean that it has already investigated the majority of the claims now pleaded some years ago.

47.5 Fifthly, striking out this claim would not prevent the individual leaseholders from pursuing their own claims under the *DPA*. It is just and convenient that those claims be pursued on their behalf by TWUK.

48. Standing back, I am satisfied that TWUK is not misusing or abusing the process of the court by seeking to litigate its own independent claim under the *DPA* in circumstances where TWDL's own attempt to pursue a similar claim in arbitration was defeated not on the merits but by a limitation defence that is not now available in these proceedings.

49. Woodrow's argument brings to mind the observation by Edis J (as he then was) in *National Crime Agency v. Simkus* [2016] EWHC 255 (Admin), [2016] 1 W.L.R. 3481, at [102]:

> "[Mr Simkus] therefore argues not that he should not be vexed twice by it, but that he should never be vexed with it at all."

50. On proper analysis, Woodrow's argument is not that it should not be vexed twice by the merits of a claim under the *DPA* but that, TWDL having made the tactical error of bringing an arbitration claim before the law was amended such that it could be defeated by a limitation defence, it should never be vexed with the merits of a claim under the Act at all.

51. In my judgment, requiring Woodrow now to address this *DPA* claim on its merits is not unjust harassment.

COLLATERAL ATTACK ON ARBITRATION PROCEEDINGS

52. *Hunter v. Chief Constable of the West Midlands Police* [1982] A.C. 529 concerned an action brought by one of the so-called Birmingham Six, being the men convicted of the Birmingham pub bombings in November 1974. In 1978, Mr Hunter sued the police alleging that he had been assaulted by both Lancashire and West Midlands officers in the days after his arrest. That was not a new allegation. Defence counsel had sought to exclude the men's confessions at their criminal trial on the basis that they had been procured by police violence and threats. The trial judge heard the evidence on that issue by way of a voir dire and declared himself satisfied beyond reasonable doubt that the men had not been assaulted and that their confessions were freely given such that they could be relied upon in evidence. In summing up that issue, the judge directed the jury that if the defendants' allegations were or might reasonably be true, the confession evidence was worthless.

53. Given the central importance of the confession evidence to the case against Mr Hunter, the House of Lords concluded that the civil action was an abuse of process in that it amounted to a collateral challenge to the jury's verdict. In explaining the decision of the House, Lord Diplock rejected the argument that there was any issue estoppel but found, at page 541B-C, a separate head of abuse being "the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made".

54. In *Bragg,* Kerr LJ made plain, at pages 137-138, that while an attempt to relitigate in a second action issues which had been fully investigated and decided in an earlier action "may" constitute an abuse of process, such conclusion did not follow automatically. Concerned in that appeal with a case in which the same claimant had pursued claims against two different defendants, Sir David Cairns said, at page 138:

> "I do not accept the proposition advanced by counsel … that when an issue has already been decided in proceedings between A and B it is prima facie an abuse of the process of the court for B to seek to have the issue decided afresh in proceedings

> between himself and C, and that in such circumstances there is an onus on B to show some special reason why he should be allowed to raise the issue against C."

55. The particular feature of *Hunter* abuse is that, as Lord Hoffmann explained in *Arthur JS Hall & Co. v. Simons* [2002] 1 A.C. 615, at page 701, it is wider than res judicata and issue estoppel, which are concerned with the interests of the defendant in not being troubled twice for the same reason. *Hunter* abuse, he said, is concerned with the interests of the state in that there is a general public interest in the same issue not being litigated over again. He added that this policy "can be used to justify the extension of the rules of issue estoppel to cases in which the parties are not the same but the circumstances are such as to bring the case within the spirit of the rules". Such power is, he said at page 702E, "used only in cases in which justice and public policy demand it".

56. Lord Diplock's speech in *Hunter* was endorsed by the Supreme Court in *Mueed-Uddin v. Home Secretary* [2024] UKSC 21, [2025] A.C. 945, at [38]. Lord Reed stressed, at [39], two aspects. First, that the power to strike out is to prevent misuse of the court's procedure and that it follows that it cannot be exercised where the claimant is making proper use of the court's jurisdiction to protect his rights. Secondly, that the power arose where the court's procedure was being misused in a way that would be "manifestly unfair" to another party or would otherwise "bring the administration of justice into disrepute among right-thinking people". He added:

> "The primary purpose of the doctrine, in other words, is to preserve public confidence in the administration of justice."

57. In *Mueed-Uddin,* the Supreme Court held that it was an essential element of *Hunter* abuse that the claimant had had a full opportunity of contesting the prior decision upon which his claim was said to be a collateral attack.

58. To determine whether particular proceedings are abusive, the court must engage in a close merits-based analysis of the facts taking into account the private interest of a party not to be vexed twice for the same reason and the public interest of the state in not having issues repeatedly litigated and focusing on the crucial question of whether in all the circumstances a party is abusing or misusing the court's process: see Lord Bingham in *Johnson* at page 31D, and Simon LJ in *Michael Wilson* at [48].

59. In this case, there has not of course been prior litigation but rather arbitral proceedings between TWDL and Woodrow. In *Michael Wilson,* Simon LJ considered a number of first instance decisions as to the approach to be adopted in such cases and concluded, at [67]-[68]:

> "67. In my view, Teare J correctly stated the law in [50] of his judgment in the present case. There is no 'hard edged' rule that a prior arbitration award cannot found an argument that subsequent litigation is an abuse of process. The court is concerned with an abuse of its own process; and there are abundant references in the authorities to the dangers of setting limits and

fixing categories of circumstances in which the court has a duty to act so as to prevent an abuse of process.

68. I agree with Reyes J's observation in the *Parakou* case [2011] 2 HKLRD 1 that, although a court will be cautious in circumstances where the strike-out application is founded on a prior arbitration award, that caution should not inhibit the duty to act in appropriate circumstances. I would also add my agreement with Teare J's observation at [50] of his judgment that it will probably be a rare case, and perhaps a very rare case, where court proceedings against a non-party to an arbitration can be said to be an abuse of process."

60. In this case, the only relevant decisions made by the arbitrator in respect of claims under the *DPA* were:

60.1 her decision before the law changed that TWDL's *DPA* claim was statute-barred; and

60.2 her further decision after the law changed that TWDL's *DPA* claim had been finally determined by her earlier award such that, by virtue of s.135(6) of the *BSA,* the limitation period for such claim was not retrospectively extended.

61. TWUK does not challenge either finding by these proceedings. Rather it seeks to pursue its own independent cause of action under s.1(1)(b) of the *DPA*. Accordingly, Woodrow's argument that this claim amounts to an abusive collateral challenge to the arbitrator's dismissal of TWDL's claim falls at the first hurdle. The limitation issue that Ms Doerries decided simply does not arise in this litigation and she made no findings as to the merits of the *DPA* claim.

62. I accept, however, that the tort claim required the arbitrator to consider issues that will also be relevant in these proceedings. At para. 158 of her second award, Ms Doerries recorded that TWDL did not pursue any complaint about workmanship. Nevertheless, even if this claim involves a collateral challenge to the arbitrator's decision, I would, in any event, conclude that it is neither manifestly unfair nor that it would bring the administration of justice into disrepute to require Woodrow to answer this claim:

62.1 First, Parliament's clear intention in enacting s.135 of the *BSA* was that the liability of builders of residential buildings that were not fit for habitation by reason of defects in workmanship or a failure to use proper materials should be significantly extended so that they can more often be held to account.

62.2 Secondly, the arbitrator's decision in respect of the *DPA* claim was not reached upon consideration of evidence and argument as to the underlying merits of TWDL's claim; rather the company's claim fell at the first hurdle of being out of time whatever its merits.

62.3 Thirdly, while the evidentiary hearing and the second award considered a number of issues that might well need to be determined in these proceedings, fundamentally the tort claim failed for want of proof of a concurrent and co-extensive duty of care and the focus of the arbitration was not on workmanship and materials but upon design.

62.4 Fourthly, TWUK had no opportunity to contest the arbitration proceedings.

62.5 Fifthly, the legal and equitable owners of the individual apartments would in any event be able to pursue their own claims under the *DPA*. What, I ask rhetorically, is gained by dismissing this claim and requiring such individual owners to pursue their own claims against Woodrow?

SUMMARY JUDGMENT

63. There is no application for summary judgment before the court and I decline to circumvent the careful procedural machinery in Part 24 of the rules, and particularly the mandatory requirements of r.24.5, as invited by Mr Walker.

CONCLUSIONS

64. For these reasons, I dismiss Woodrow's application.