

Post Grenfell: The law is beginning to take shape.

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Major developments

- Grenfell Enquiry Phase 1 Report / ongoing Phase 2
- **Building Safety Act 2022**
- Longer limitation periods under Defective Premises Act 1972
- Changes to Section 38 of the Building Act 1984
- Building Liability Orders
- Claims against the manufacturers of construction products
- **The nature of claims**

A busy year for the legislature....

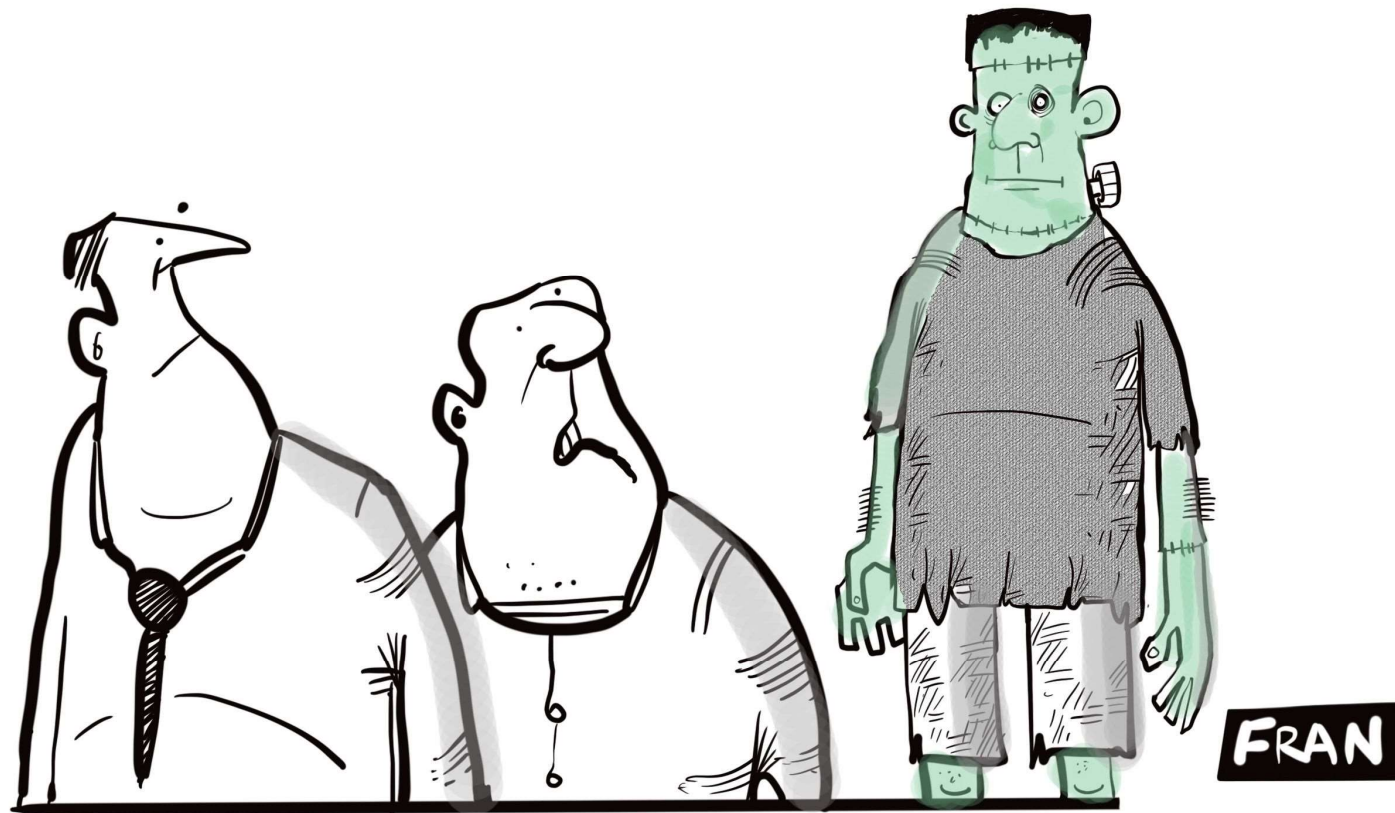


Building Safety Act 2022...a bit of this, a bit of that and..

everything and the
kitchen sink.



Frankenstein's Act



They say he's a man of many parts.

Building Safety Act 2022

- **Overview – amendments of other acts**
- **Longer limitation periods within the Defective Premises Act 1972 - Impacts**
- **Changes to Section 38 of the Building Act 1984**

Longer limitation periods under the DPA – Impacts 1.

- Past claims - determined or rejected on limitation grounds cannot be resurrected.
- After 30 years increased risk of companies' insolvencies – solvent companies in UK carry disproportionate load.
- After 30 years slim likelihood of solvent, insured Ds worth suing for a contribution.
- After 30 years individuals concerned (witnesses) - retired, uncontactable, deceased.

Longer limitation periods under the DPA – Impacts 2.

- Documentation lost by planned destruction (compliance with GDPR?) - Ds cannot be given a fair trial.
- Future changes to policies for documentation storage.
- Period of insurance under building contracts – 10-12 years post PC
- Extensions to policies ? Is that insurance market going to exist?
- Increased importance of Net Contribution Clauses?
- Expert opinion evidence - decades back to reflect knowledge at the material time*

* Though DPA is not same as negligence – test of “fit for habitation” will involve fire consultants’ opinions which depends on what was known at and permissible within the applicable Fire Safety Orders’ regime, at time of completion.

Section 38 of the Building Act 1984 - thoughts

- Approved 1984...30 years later in force
 - “Civil liability” for breaches of duties imposed by building regulations if causes “damage”
 - All buildings not just residential
 - Solely prospective – no retrospective effect
 - Extended limitation period to 15 years
 - “damage” means “includes” Personal injury, consequential loss
 - Government says NOT pure economic loss – but they were wrong on gaskets (!)
 - Is there any distinction between claims via Section 38, the DPA and ordinary claims in negligence/breach of duty to exercise reasonable skill and care.
 - Are these claims free of expert dependent parameters of contemporary professional judgment?
- * As for DPA test of “fit for habitation” will involve fire consultants’ opinions which depends on what was known at and permissible within the applicable Fire Safety Orders’ regime, at time of completion.

Building Liability Orders - thoughts

- Piercing the corporate veil – at last.
- High Court must consider it is “just and equitable”
- If it does – will extend liabilities of a company “specified body corporate” to its connecting companies & associates
- “associate” means:
 - “a body corporate (A) is associated with another body corporate (B) if—*
 - (a) one of them controls the other, or*
 - (b) a third body corporate controls both of them.”*
- Specific scenarios which meet the criteria “controls”
- Information orders in order to establish if there is a basis for a BLO

Claims against construction product manufacturers

- Pre-BSA – duty to warn, *E Hobbs (Farms) Ltd v Baxenden Ltd* [1992] 1 Lloyd's Rep 54.
- BSA new cause of action, Sections 147 to 149
- Accrues at point of completion of building or dwelling
- Limitation period 15 years prospectively / 30 years retrospectively
- Ds are construction product manufacturers and sellers
- Four conditions to be met:

A: product fails to comply with construction product requirement, or marketed via a misleading statement or is inherently defective

B: product is installed in, applied or attached to a relevant building in course of works

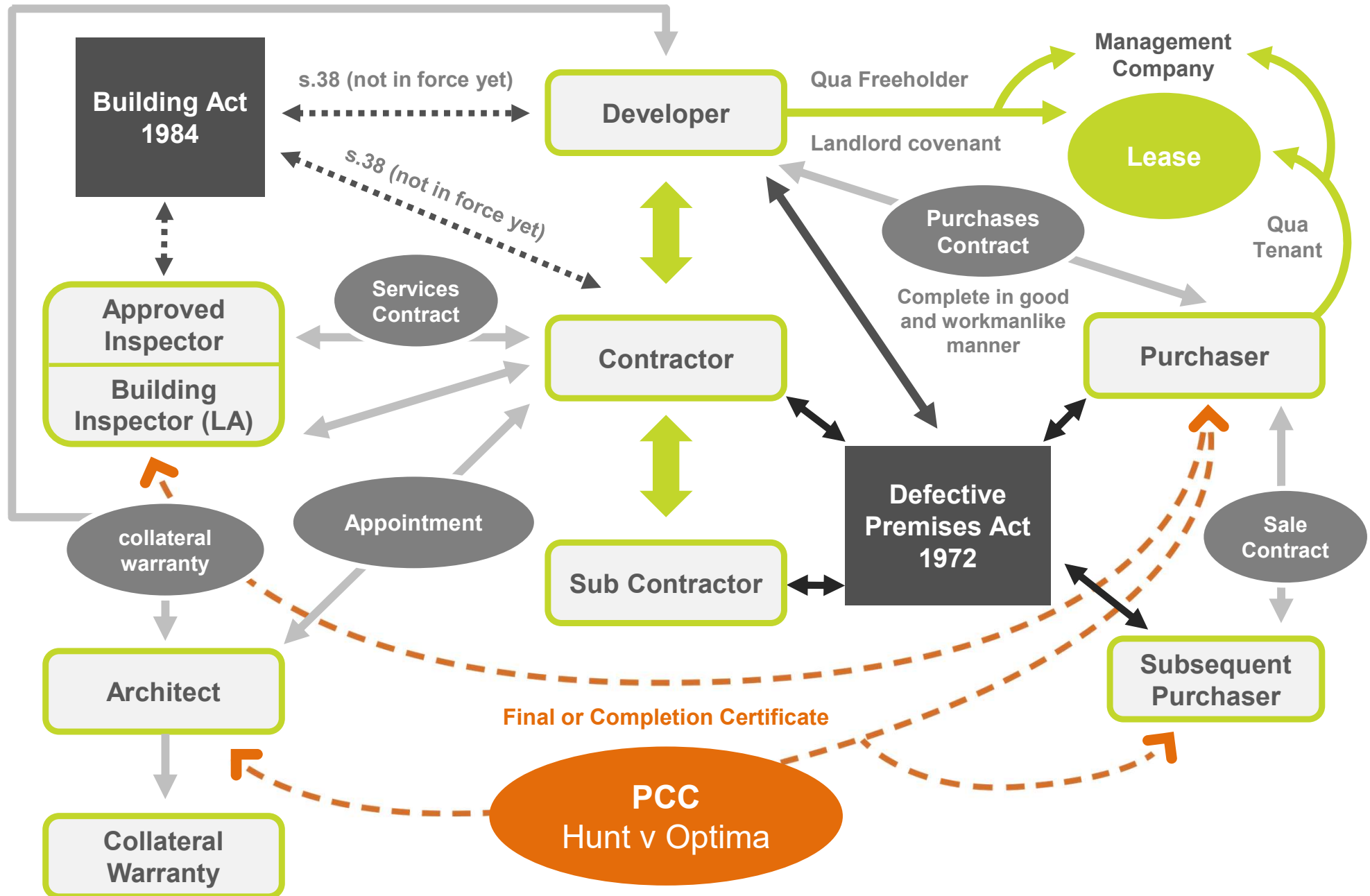
C: when works are completed, the building or dwelling is unfit for habitation

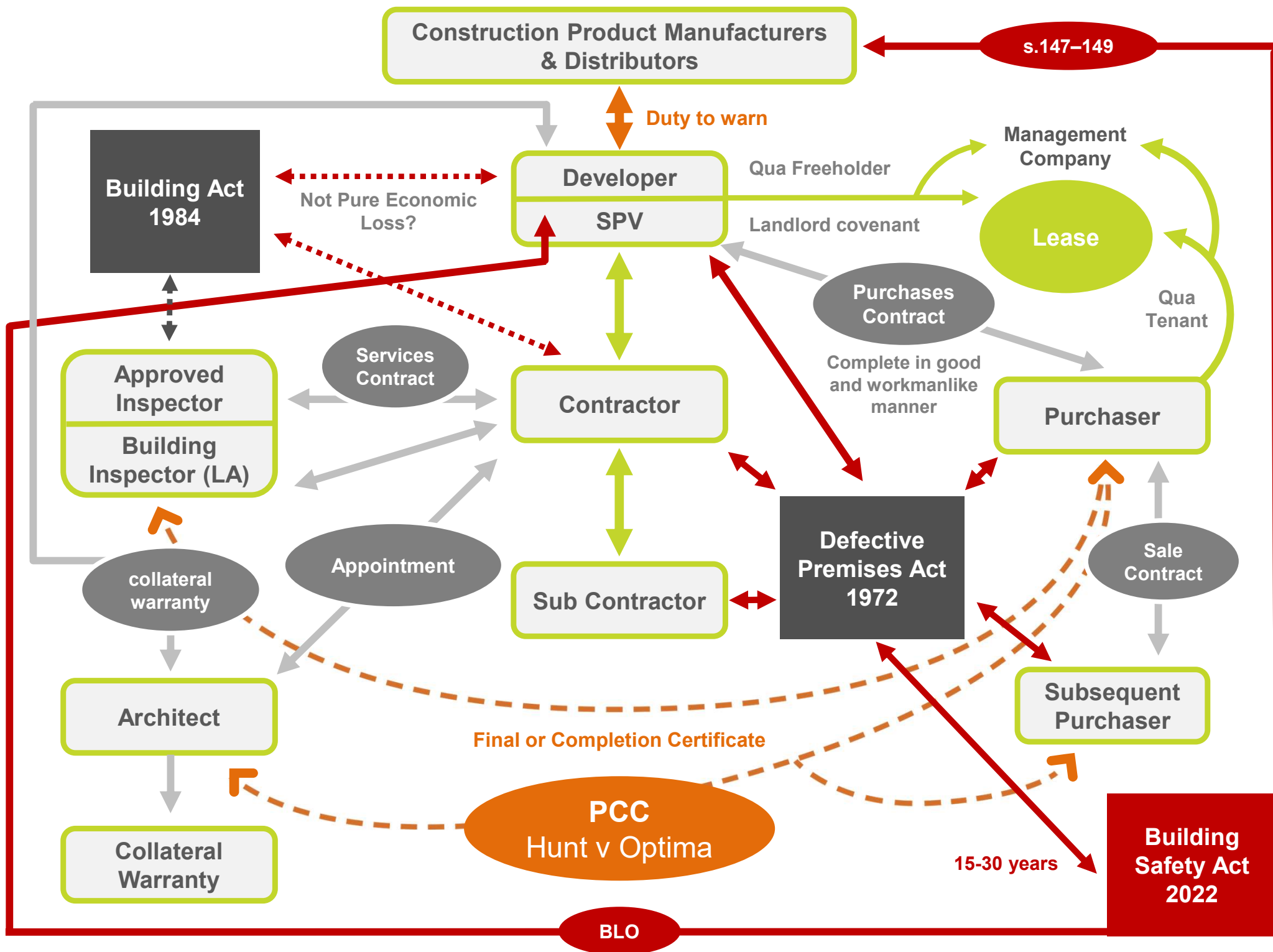
D: the matters under A to C were the cause or one of the causes for the unfitness for habitation

- Cost Contribution Orders – contribution to remedial costs if manufacturer is prosecuted under construction product regulations

The nature of Claims

The nature of Claims





Things seem to be getting better.



"I'm looking for something to change
my life from quiet desperation
to utter jubilation."



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