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**Fire safety defects:
possible types of claim**

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Overview of talk

- Initial key questions
- Types of claim:
 - Building warranty insurance
 - Breach of contract
 - Defective Premises Act 1972
 - Professional negligence
 - Fraud
- Reform

Initial key questions

- Is there new build warranty insurance cover?
- What types of loss do you want to claim?
- When was each flat completed?
- Who is potentially liable? Landlord, developer, building contractors/professionals, building control?
- Are any of the potential defendants good for the money?

Building warranties

- Typically provide 10 years' insurance cover
- Policy may only cover damage to building caused by defects, not for breaches of building regs identified before damage caused
- If have building regs cover, will generally need to show:
 - building regs breached at time of construction; and
 - present or imminent danger to health & safety of occupants

Building warranties

- Not all types of loss covered:
 - Covered: costs of remedial works and moving out
 - Any other losses excluded: reduced property values, lost rent, distress/ inconvenience, waking watch*
- May wish to sue other parties to claim uninsured losses

Breach of contract

- Only available where buyer entered contract for build/design of new flat
- Contract generally with developer (who may also be landlord)
- May contain terms that flat/buildings to be built in:
 - good and workmanlike manner with good quality materials
 - accordance with planning permission
 - accordance with building regulations/NHBC requirements
- Time limitation: 6 years from completion

Defective Premises Act 1972

- Section 1 DPA imposes a statutory duty that:
 - a person taking on or arranging work for or in connection with the provision of a dwelling
 - owes a duty to persons who ordered the dwelling or acquire an interest in the dwelling
 - to see that the work he takes on is done in a workmanlike or, as the case may be, in a professional manner, with proper materials
 - so that as regards that work the dwelling will be fit for habitation when completed

Defective Premises Act 1972

- Potential defence where contractor is following instructions given by another, provided:
 - Work done properly in accordance with those instructions
 - Does not owe a duty to warn of any defects in the instructions.
- Time limitation 6 years from completion

Professional negligence

- More generous limitation period: 3 years from date of knowledge, subject to 15 year longstop from date of negligent act/omissions
- Generally developers/builders do not owe duty of care as to build quality independent of contract; only owe duty not to cause personal injury or damage to other buildings negligently
- Flat buyers unlikely to have contract directly with any negligent building professionals such as architects

Fraud

- If fraud or concealment provable, then limitation extended until fraud/concealment should have been discovered
- Possible example:
 - Developer/landlord post-Grenfell lies to leaseholders about the cladding being ACM and the lie only discovered after usual 6 year limitation period has expired

Reform

- Biggest problems are 6 year limitation passing before defects discovered and insolvent defendants
- Make Defective Premises Act limitation same as for negligence: 6 years, or 3 years from date of knowledge, subject to 15 year longstop
- New build warranties – legislate to require:
 - Cover for building regs breaches
 - Cover to be for minimum of 15 years