



Sheena Sood previews what 2021 will hold for the construction industry from a legal point of view

THE YEAR AHEAD IN CONSTRUCTION

WHAT THE INDUSTRY NEEDS IS CLARITY AS TO THE REVISED REGULATORY SYSTEM, THE EXACT BUILDING TYPES IT WILL ENCOMPASS, AND WHO WILL REGULATE THAT SYSTEM

A year ago, when I considered what 2020 might hold for the industry, no one could have foreseen the turbulence ahead – a global pandemic was far from anyone’s mind. Covid-19, uncertainty over the terms of our exit from the EU and continued concerns over building and fire safety made for a difficult year, but UK construction has soldiered on. Building work continued through the pandemic where safe site operating procedures were in place, and ONS figures showed construction output slowly growing towards the end of 2020.

A Trade and Cooperation Agreement was reached between the EU and the UK on 24 December 2020, just a week before the transition period ended. The trade deal means no tariffs or quotas on goods exported to or imported from the EU for goods that meet the relevant rules of origin but customs declarations are now required. Delays are anticipated as new transit processes bed in and while we are still catching up with the effect of lockdowns across

Europe, and from 1 January 2022 a UK marking system will be introduced for products to be used in the UK market to replace the CE system.

In terms of resources, contractors and consultants across the supply chain are likely to feel the effects of a shortage of skilled migrant site labour and design professionals as stricter immigration rules come into force. Anyone wishing to come to work in the UK will now be subject to a points-based application system designed to attract “skilled workers” but note that the trade deal does not provide for mutual recognition of professional qualifications.

With uncertainty over the cost and availability of materials and resources, the pricing and programming of new projects will remain a challenge. On existing projects, it will be interesting to see if so-called Brexit clauses in contracts, which allow for renegotiation or termination of contracts, come into operation and, if so, how these are interpreted by adjudicators and the courts.



Building and fire safety issues look set to take centre stage well into 2021. Phase 2 of the Grenfell Inquiry examining the causes of the fire began at the start of 2020 but, with progress slowed by the pandemic, Sir Martin Moore-Bick's Phase 2 report is not set to be published until 2022. Some three-and-a-half years after the fire, aside from a ban on combustible cladding in buildings over 18m, we still await clarity on what the post-Grenfell regulatory environment will look like.

We have seen several government consultations since the fire. The Building Safety Bill, published in July 2020, has been making slow progress through parliament but is unlikely to come into force until late 2021 and may be delayed further. The industry looks set to continue to have to cope with a patchwork of interim measures; guidance notes (not legislative change) and ill-thought out solutions to certain issues such as the EWS1 form. These measures seek to instil confidence but seem to be doing exactly the opposite. What the industry needs is clarity as to the revised

regulatory system, the exact building types it will encompass, and who will regulate that system. Only then can effective education, training and accreditation be put in place.

Unfortunately, the array of issues that continue to affect the industry will not help alleviate the difficulties in obtaining professional indemnity insurance cover or the soaring premium rises we saw in 2020. Fewer insurers are covering construction risks and those that do will often restrict cover, with exclusions for cladding-related risks and fire safety-related issues. The expertise of architects, building surveyors, fire engineers and facade engineers is being called upon to opine on the safety of external wall systems and the need for remediation, yet this is often without any limitation on their own liability and often without the comfort of adequate professional indemnity cover.

The uptick we saw in construction disputes towards the end of 2020 looks set to continue into 2021. Virtual court hearings, protocol meetings

and mediations showed the legal process can continue remotely. New arbitration rules have been issued by the London Court of International Arbitration and the International Chamber of Commerce. Both include provisions to streamline the arbitral process and expedite proceedings. With court backlogs caused by covid-19, we foresee more arbitration, adjudication and ADR to get disputes resolved.

As the industry battles with the impact of covid-19, our departure from the EU and the furore over fire safety, one positive outcome is the focus this has given to competency in the industry and raising standards. The Competency Steering Group's recently published final report, *Setting the Bar*, provides a blueprint to improve competence and instil cultural change.

Consultations will take place through 2021 leading to an overarching competency framework enshrined into a British Standard by March 2022. Thirteen working groups have set out sector-specific frameworks providing the skills, knowledge, experience and behaviours needed to carry out specific roles. What is encouraging about this is the focus on education and good practice.

Another positive is the government's publication of its construction playbook for public sector works. The aims are laudable: getting projects and programmes right from the start.

If they become embedded in the industry, both initiatives will improve outcomes on projects such that we will see a reduction in the disputes and claims that blot the economic and social contribution of the construction industry. Certainly 2021 will be a year like no other as UK construction all gets to grips with a future as post-pandemic and post-Brexit.

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