



Sheena Sood previews the year ahead in construction law, with some major legislative, contractual and policy changes looming

WHAT CAN WE EXPECT IN 2024?

Key provisions of the Building Safety Act 2022 came into force on 1 October 2023, and 2024 will see the new rules for dutyholders fully take effect. We now have a Building Safety Regulator (part of the Health & Safety Executive) as the new building control authority for all higher-risk buildings (HRBs) in England. Its three-year strategic plan spans 2023 to 2026 and details a focus on: delivering consistent standards within the building control profession; overseeing improvements across the built environment; regulating planning, design and construction of new HRBs; and ensuring those responsible for HRBs manage risk.

Laudable aims, and while the enforcement policy statement published in December 2023 emphasises that the BSR will adopt a proportionate approach, it has several enforcement methods at its disposal against both companies and individuals. With a stated objective to implement a more stringent regulatory regime for HRBs in England, it will want to show that it has teeth.

The much-anticipated Phase 2 report from the Grenfell Inquiry will finally be published this year. The inquiry processed more than 320,000 documents and 1,600 witness statements, heard 308 days of evidence and ran for over four years. We expect to see significant criticism of certain participants in the processes that led to non-compliant cladding on the building. As well as a focus on how the industry procures and delivers projects, hopefully the report will also focus on the failures of successive governments to put in place a workable regulatory framework to police safe construction. Both the Metropolitan Police and the HSE will be closely scrutinising the report, and we can expect to learn of their decisions on criminal charges following the fire that killed 72 people.

Beyond building safety, another area that will attract more attention in 2024 is sustainability. Many from the industry are returning from COP28 in Dubai with renewed commitments and ambitions to address the climate crisis. The event saw the launch of Buildings Breakthrough, an initiative seeking to strengthen international

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collaboration around decarbonisation of the building sector, with a target of near-zero emissions and resilient buildings being the new normal by 2030. We will see Europe and the US follow the UK by imposing mandatory climate-related disclosures from 2024.

In the UK, we have seen the Energy Act 2023 become law with an objective to transform the UK's energy system by strengthening energy security and supporting the delivery of net zero. It updates Ofgem's remit so that it considers net zero targets as part of its everyday decisions and facilitates hydrogen heating trials to provide evidence on the technology's role in decarbonising heat. Let us see if 2024 will herald the first of such trials, with schemes so far having hit the buffers due to protestors.

We also have the new Procurement Act 2023, which is expected to come into force in October 2024. Disappointingly, it merely provides the opportunity for more ESG considerations in public procurement - a missed opportunity, perhaps, to make it mandatory to take into account social and environmental factors in awarding public sector projects.

Spring 2024 will see the publication of the long-awaited JCT 2024 Edition suite of contracts. The suite will include a brand-new JCT Target Cost Contract and updates to reflect legislative changes including the Building Safety Act and to

the Construction Act, as well as new insolvency grounds reflecting the Corporate Insolvency and Governance Act 2020. The new suite will also include changes to reflect the objectives of the Construction Playbook.

With FIDIC having recently renewed its agreements with the European Bank for Reconstruction and Development and World Bank, those organisations will continue to use FIDIC's major standard construction contracts and adopt FIDIC's new publications for the next five years. Expect to see new FIDIC contracts for offshore wind farm projects and collaborative contracting in the near future.

As a firm we saw an uptick in adjudications towards the end of 2023. Case law in 2023 is likely to impact how adjudications are framed in 2024; Rupert Choat provided a helpful summary of those decisions in his column last month. Whether the rise in adjudication is related to continued cash flow pressures on businesses, supply chain and raw material issues, or projects continuing to be impacted by economic precarity, who knows - but we are seeing a sharp rise in construction insolvencies.

Last year saw the demise of Tolent and Buckingham, with several other tier one contractors reporting major losses - and many singling out the debilitating effect of certain projects on their finances. It does not bode well for 2024. The answer lies in the hands of the clients for which the industry strives to deliver magnificent, innovative and green construction, engineering and infrastructure: pay a fair price and shoulder some of the risk instead of passing the parcel down the supply chain.

We will see a newly elected government in 2024, bringing very different approaches to key issues such as sustainability, planning, housing and investment in infrastructure. The political uncertainty will certainly not help with the challenges the industry is facing. We need urgent commitment on issues that should transcend politics: if Grenfell showed us anything, it surely showed us that.

Sheena Sood is the senior partner at Beale & Co