



Sheena Sood sets out what to expect in the year ahead for construction law, including a variety of regulatory changes

WHAT CAN WE EXPECT IN 2025?

In 2024 we witnessed the insolvency of several ISG entities and the impact upon the progress of projects and the supply chain. According to government statistics, the number of registered company insolvencies in England and Wales stood at 1,747 in October 2024. Although this is slightly fewer than for the previous month and for the same period a year earlier, insolvencies remain higher than in 2014-2019 and during the pandemic. Unfortunately, the economic outlook suggests little improvement this year.

Contractor insolvencies can disrupt projects and create uncertainty, prompting contract reviews, suspensions or terminations, and even payment withholdings. To manage these risks, it is vital to conduct appropriate due diligence, stay alert on projects and maintain solid contractual and financial strategies. We may see a rise in “smash and grab” adjudications as companies strive to sustain cash flow.

Following the September 2024 publication of the Grenfell Tower Inquiry Phase 2 Report, the government committed to responding to its recommendations within six months - thus building safety will remain a significant focus for the construction industry and its insurers this year. Further clarification around the application of the new laws and procedures is likely, including via decisions coming from the courts and first-tier tribunal and discussions around defining “higher-risk buildings”.

Under its Remediation Acceleration Plan, the government announced measures to expedite the removal of unsafe cladding. Consequently, 2025 may bring a rise in civil claims on liability and the apportionment of responsibility for remediation costs. We are already seeing claims arising from the 30-year retrospective limitation period for defective premises brought in by the Building Safety Act 2022.

There are industry reports of challenges being faced by the Building Safety Regulator, causing delays to gateway application approvals and impacting remediation and construction starts. It is worth monitoring how this will play out

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on projects and contracts through 2025.

The Public Procurement Act 2023 is set to come into force in February. It reforms public sector procurement by increasing transparency in processes, emphasising value for money and maximising public benefit. Supplier performance will be evaluated, such as via key performance indicators for higher-value contracts.

Qualifying construction companies will also need to grapple with new measures such as the Fair Payment Code and Reporting on Payment Practices and Performance (Amendment) (No. 2) Regulations 2024. These regulations, which mandate reporting on the proportion of retention sums withheld from suppliers under qualifying construction contracts, come into force from 1 March (applying to financial years starting on or after 1 April 2025), with the objective of improving payment practices and transparency. Non-compliance will result in sanctions and reputational impact.

Significant global environmental litigation and judicial review challenges were brought in 2024, aiming to impact government policy and planned projects. Environmental actions will continue, influenced by continued press attention, the Water (Special Measures) Bill and the integration of ESG (environmental, social and governance) requirements into bespoke and industry-standard contracts. Companies

face increased pressure to operate ethically and sustainably. Additionally, the biodiversity net gain requirements, which began in February 2024, are anticipated to become more evident in planning processes throughout 2025.

Many ongoing PFI projects are likely to face considerable scrutiny as they approach the required review or handover stages. Misaligned interests or incentives could create terminations or disputes. The PFI landscape may evolve further, driven by government commitments to rejuvenate public infrastructure via innovative financial models (such as the potential introduction of PFI 3.0, a national wealth fund, or public/private financing mechanisms).

Meanwhile, technological advancements - such as enhanced opportunities for the effective use of information management processes, project delivery models, communication platforms, safety applications and sustainability innovations - offer the potential to push the boundaries of design and construction processes, together with risk management and efficiencies. However, they may create concerns around the ethical and appropriate use of technologies, user understanding and training, information bias and accuracy, and liability or intellectual property issues. We anticipate greater corporate governance around this, together with additional government, judicial, and industry regulation or guidance on the use of digital tools in the coming year.

Finally, a personal wish for 2025 is for the industry to embrace collaboration. Counsel to the Grenfell Inquiry spoke of the “merry-go-round of buck-passing”, and we see that played out time and again in the tsunami of cladding litigation in the wake of the fire. Collaboration will lead to better, safer project outcomes - as well as innovation to achieve the industry’s aims for climate reduction. We have seen successful projects delivered through collaborative contracting, so we know that it can be done. Let’s see more of that in 2025!

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