

SPOTLIGHT ON CONSTRUCTION LAW

February 2024

It has been a busy year in the construction industry and within our team. There have been some standout legislative changes, including in relation to the Building Safety Act 2022, and the Government has issued a significant paper in respect of behaviours relating to PFI contracts.

All the while the impact of inflation and interest rates has meant that the UK economy, and as a result, construction projects have felt the pinch.

We set out below our observations on some key issues this year together with our horizon scan for what to expect in 2024.

THE ECONOMY & SUPPLY CHAIN ISSUES

The UK economy has been in a state of flux for some time – we lurched from Covid-19 into the war in Ukraine, with sharp increases in inflation and interest rates to match – and all topped off with severe spikes in energy costs.

The Construction Products Association set out in its Autumn Forecasts that it predicts that the major sectors of construction activity in the UK, such as new build housing, repair, maintenance and improvement, will see work pushed back until 2025 until the economy has, hopefully, recovered from its current inflation and interest rate spikes.

The construction industry is well versed in weathering disruption within projects, but this convergence of issues has meant that labour shortages and difficulties in obtaining materials persist for many projects.

Arguably one of the biggest issues within supply chains is a how best to procure those supplies in light of the ever-mounting climate change crisis. Construction firms are under increasing pressure to source responsibly and sustainably, but this is difficult to implement where there is a lack of an alternative.

Against this backdrop our public sector clients are under increasing pressure to deliver their services within ever shrinking budgets. We have already provided an insight earlier in the year in relation to Birmingham City Council's s.114 notice and we are acutely aware that other authorities will also be under significant financial pressure, which will not change going into 2024. Read the s.114 article [here](#).

We have been working with a number of our local authority clients to help ensure that their construction projects are on course to maximise value, whilst also looking at inventive ways to be able to help them meet their housing needs.



PROJECT FINANCE INITIATIVE (PFI)

In July the Infrastructure and Projects Authority (IPA) issued the results of its review into the status of behaviours, relationships and disputes across the PFI sector – the White Frasier Report, you can read the report [here](#).

Whilst the Report summarised a number of key issues including a need for parties to invest more into contract management of PFI projects, it also recommended a ‘reset’ of relationships across the PFI sector, with one of the aims being to remove some of the frequency and risk of PFI projects going into distress or default.

There is an increasing need to look at how best to manage PFI contracts and also how parties deal with deductions. The IPA recommendation is that planning for expiry of PFI projects should be commencing at least seven years in advance.

Our team are already considering how clients can position themselves for expiry of their projects including, as a result of this Report, whether there are any opportunities to share knowledge and expertise to explore the ‘reset’ approach further.

BUILDING SAFETY ACT 2022

On 17 August 2023, the Government published new secondary legislation under the Building Safety Act 2022. This new legislation amounted to five new sets of regulations which brought the new building control regime for all buildings into force from 1 October 2023.

There are transitional provisions, which means for certain construction works the new building control regime will not apply. However, these transitional provisions will fall away in April 2024.

The Building Safety Act has broad implications and the new building control regime includes the new ‘Dutyholder’ role which applies to all building work as defined by amendments to The Building Regulations 2010.

Our team has been advising our clients on these new regulations in particular the role of Dutyholder together with the transitional provisions and working alongside our clients’ operation and risk teams to be able to ensure they are equipped to manage these new obligations.

Looking ahead, 2024 will be a significant year for the construction industry as a whole as all parties consider how to manage these risks within their contracts. We are already tracking approaches taken and look forward to seeing how far the JCT seeks to consider the Building Safety Act in its new suite of standard form contracts due to be published in the Spring next year.

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MEET THE TEAM

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