



Griffiths  
Armour &



# Constructing change:

Evolving the status quo or time to reset?

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## Executive summary

# Overview

This publication addresses pressing challenges faced by the construction, insurance and legal sectors. These issues were highlighted and discussed at a series of roundtable events held by Griffiths & Armour and were singled out as being major barriers to our clients' ability to operate and their long-term sustainability. The areas of concern were:

## A legal system which has evolved to:

- i. Create an environment in which firms are encouraged to compete on their ability and willingness to assume liability via onerous contracts, rather than given the opportunity to focus on the delivery of quality projects.
- ii. Impose considerable costs on the industry through the creation of bespoke contracts on most projects.
- iii. Continue to impose liability on the construction team on a joint and several liability basis, despite developments internationally in the law which point to a more equitable path.

## A construction sector where:

- i. Quality issues continue to create problems.
- ii. Hybrid working models are creating new opportunities and challenges.
- iii. 'Modern Methods of Construction' are being heralded as solutions, particularly in the context of achieving climate change targets, but with apparent doubts around their efficacy and thereby current insurability.

## A Professional Indemnity insurance market:

- i. Which for decades has acted as an enabler for liability inflation.
- ii. That continues to drive a silo-based approach and, as constituted today, is almost incapable of facilitating true collaboration.
- iii. Where arguments around coverage and value for money continue to be hotly debated.

## Recommendations

Our recommendations for potential change are wide ranging and include short, medium and long-term goals. They include a number of approaches to altering the liability environment for those firms working in construction, whilst seeking to improve the ultimate outcome for those buying design and construction services.

*"All too often I have seen the impact of project teams focussing solely on cost rather than ultimate value, and the associated culture of 'blame' this can generate – projects driven in this way ultimately give the construction industry a poor reputation and lead us to a race to the bottom. Good project management is about people and outturn results." **Peter Anderson***

## CALLS TO ACTION:

- For the construction, legal and insurance industries to come together in an open, collaborative forum to help drive the 'systems thinking' approach at the core of the Building Safety Act and address the climate change emergency.
- For Government in the UK to adopt and mandate a standard form of contract for use on publicly funded work, recognising the need for a more equitable and fair apportionment of risk.
- Consideration be given to adopting statutory 'fair principles' around contracting, aligned to the requirements and expectations of the new building safety regime.
- For Government in the UK and Ireland to revisit the law on joint and several liability and consider new developments internationally that bridge the gap between a pure joint and several liability model and a pure proportionate liability model.
- Cultural shift in the legal and insurance sector to support dispute avoidance initiatives.
- For the insurance industry to be more pro-active in sharing its concerns on modern methods of construction to head off problems and support the construction industry's drive towards addressing the climate emergency.
- To begin thinking about how we can move from an adversarial model of dispute resolution and what insurance solutions could support a genuinely collaborative future.

In presenting this publication our aim is to try to bring about significant change. This goal echoes the sentiments shared by participants at our events, who universally expressed a desire to shift their focus from the burdens of worrying about contracts, liability, and insurance to a stronger emphasis on delivering for their clients. Our aspiration, intention, and commitment lie in facilitating this shift. While the solutions we propose in response to the key issues identified will not be definitive, our primary objective is to start a dialogue. By bringing together diverse voices and perspectives to re-examine our approaches, especially at a time when the industry stands on the cusp of radical change, we believe this effort will prove to be a valuable investment for all involved.

**The key will be what happens next: how are we going to work together to move from dialogue to concerted action?**



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