

ON-SITE REVIEW: 2023 IN PERSPECTIVE

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Many in the construction and development sectors will be approaching this year's holiday season breathing a sigh of relief and hoping for a well-earned break. A year of modest growth, construction price inflation and robust lending requirements meant 2023 was not without its challenges. That commercial backdrop was reflected in the types of disputes that came before the courts over the past year. Three main themes come to mind:

1. New work falling in the UK by 1.9% in 2023 saw an increase in final account disputes. Parties needed to maximise returns from existing projects rather than looking to make a profit on the next job.
2. Record contractor insolvencies highlighted tight cashflow in a challenging market. That resulted in a number of court cases arising from adjudication claims and enforcement proceedings.
3. Finally, if the commercial backdrop wasn't challenging enough in 2023, the industry continued to grapple with legacy defects issues, including the ongoing fire safety scandal and defective RAAC concrete issues. Legacy defects resulted in a series of cases before the courts covering latent defects issues and the timescales for bringing claims.

We're all hoping the outlook for 2024 will be better. Developers are reported to have reached a "tipping point" on building costs due to slowing construction and easing energy prices. Funders continue to look for the right investment opportunities. The introduction in the UK of the Building Safety Pledge has forced housebuilders to take responsibility for legacy defects, with a number of schemes finally commencing long overdue remedial works to make homes safe and habitable.

"Scheme for Construction Contracts was implied to the required extent, overriding the agreed mechanism for determining the final date for payment."

Our lawyers have followed these legal developments closely and we are delighted to present a series of our insights and views on the most relevant construction related issues from the past year. Whatever 2024 brings, we continue to be here to support with our insightful and commercial advice and cradle to grave service.

Wishing all our readers a wonderful Christmas and a happy 2024.

- Account resolution
- Adjudication
- Building safety

- Defects
- Legal updates
- Limitation period
- Procedure
- News

ACCOUNT RESOLUTION

What's the correlation with inflation? Everything!

This article by Ryland Ash and Stephanie Geesink, republished by the Chartered Institution of Civil Engineering Surveyors, outlines the main challenges facing the construction sector in the current economic climate and shares some helpful tips for building professionals on how best to prepare for the challenges ahead.

[Click here to access the article.](#)

Payment mechanisms and construction contracts: a clarification

In this article, Rebecca Williams and Jack Moulder analyse a recent decision dealing with payment mechanisms in construction contracts and how they are affected by the requirements of the Housing Grants, Construction and Regeneration Act 1996.

[Click here to access the article.](#)

Construction ruling clarifies key payment mechanism issue

In an article for Law360, Rebecca Williams and Jack Moulder explore the recent judgment in Lidl Great Britain Ltd. v. Closed Circuit Cooling Ltd., in which the English Technology and Construction Court clarified a key issue in relation to contractual payment mechanisms under the Housing Grants, Construction and Regeneration Act 1996.

[Click here to access the article.](#)

"Construction contracts that fix the final date for payment otherwise than by reference to a period of time following the due date do not comply with the 1996 act."

ADJUDICATION

Fast-track construction adjudication in Thailand: An important update on the draft Security of Payment Act

Steve Burkill, Lyle Andrews, Gerard Rhodes and Anna Clarke summarise new details in relation to Thailand's draft Security of Payment Act and consider potential "teething problems", along with some broader analysis on what the draft bill means for employers, contractors and subcontractors in Thailand.

[Click here to access the article.](#)

Adjudicator took too narrow a view of jurisdiction

In an article for Construction Law, Stephanie Geesink and Dom Turner-Harriss examine a case where the court decided that the adjudicator had taken too narrow a view of their own jurisdiction. Natural justice had also been breached.

[Click here to access the article.](#)

Assessing the odds when adjudicating with an insolvent party

In the decision of JA Ball Ltd (in administration) v St Philips Homes (Courthaulds) Ltd, the Technology and Construction Court examined the primary issue of enforcing an adjudicator's decision when a party is insolvent. The court eventually refused to enforce the adjudicator's decision on the basis that the adjudicator had breached the rules of natural justice. It regarded the adjudicator's determination on issues that neither party had advanced as a step too far and a flagrant breach of the court's rules. Written by Stephanie Geesink for Construction News.

[Click here to access the article.](#)

Appeal Court backs adjudicator's decision

In an article for Construction Law, Stephanie Geesink and Dom Turner-Harriss take a detailed look at a successful appeal against a Technology and Construction Court decision reported on earlier this year. No breach of natural justice was created when an adjudicator decided he was bound by an earlier adjudication decision, the appeal court ruled.

[Click here to access the article.](#)



BUILDING SAFETY

Building Safety Pledge deadline fast approaching: What you need to know

In an article for LexisNexis, Barry Hembling and Jamie Bell look at the key terms of the building safety pledge to repair fire safety defects in high rise residential buildings and examine what it means for developers.

[Click here to access the article.](#)

Contractor's attempt to pass on liability for fire safety defects fails

In this article, Theresa Mohammed, Jonathan Clarke and Villem Diederichs discuss a recent decision of the Technology and Construction Court rejecting the attempt by Lendlease to pass its liability for fire safety defects to its mechanical and electrical consultant, Aecom.

[Click here to access the article.](#)

Fire safety regulations in England come into force

The Fire Safety (England) Regulations come into force on 23 January. Written for Construction Management, Stephanie Geesink and Dom Turner-Harriss explain what is expected from building owners.

[Click here to access the article.](#)

Cladding fire safety claims – loss too remote?

In an article for Construction Law, Laura Lintott and Sam Goodwill analyse a case that highlights the hesitancy of the courts to allow parties to collateral warranties to evade liability easily on the basis that the loss was too remote. Given the current focus on fire safety and cladding more cases like this are to be expected.

[Click here to access the article.](#)

Who will foot the bill for the government's plan to fix faulty buildings?

In an opinion article for The Times, Theresa Mohammed examines the UK government's recent admission on building safety and the new questions raised (subscription required).

[Click here to access the article.](#)

"Article 9 of the FSO deals with the risk assessment that the Responsible Person must make for the purpose of identifying the general fire precautions needed to comply with the requirements under the FSO as a whole."

Defective Premises Act 1972 – a new dawn for historic claims

The Building Safety Act has extended limitation periods for claims under the Defective Premises Act. In an article for Construction Law, Stephanie Geesink and Dom Turner-Harriss examine the attitude of the courts to parties attempting to tack onto ongoing proceedings new claims that were previously time barred.

[Click here to access the article.](#)

Building safety regime: what has changed in the fire safety legislation?

Written for Construction Management, Stephanie Geesink and Dom Turner-Harriss examine the amendments introduced to the fire safety regulations under the new Building Safety Act.

[Click here to access the article.](#)

Golden thread: what is the latest advice from government?

In an article for Construction Management, Stephanie Geesink, Dom Turner-Harriss and Jamie Bell digest the latest recommendations published by the Department for Levelling Up, Housing and Communities on the golden thread.

[Click here to access the article.](#)

New focus on building safety as industry faces tough regime

Theresa Mohammed is quoted in a Property Week article that explores the increasing focus on building safety as a result of the new regime.

[Click here to access the article.](#)

DEFECTS

Defects and the desire for fitness for purpose – A Thai law perspective

Lyle Andrews, Gerard Rhodes and Sirirat Rinsiri discuss the uncertainty surrounding design obligations in the Thai construction/engineering sector following the UK Supreme Court's judgment in MT Højgaard v E.ON. The article also considers the related concepts of fitness for purpose and reasonable skill/care and offer practical suggestions for contractors and employers in Thailand seeking contractual clarity.

[Click here to access the article.](#)

Collapse-risk buildings present liability challenges

The UK government has recently taken various policy decisions to tackle the risk posed by deteriorating building structures. In an article for Law360, Theresa Mohammed, Jonathan Clarke and Villem Diederichs explore who may be liable for any necessary remediation costs, finding that while several actors could, in theory, be held responsible, viable legal claims may be challenging (subscription required).

[Click here to access the article.](#)

Resi buildings remediation code of practice: key points

Featured in Construction Management, Theresa Mohammed provides a snapshot into the new guidance on the remediation of residential buildings – and what it means for the industry.

[Click here to access the article.](#)

Contractors, consultants or surveyors: who will pay for RAAC?

In Construction News, Barry Hembling and Jamie Bell explore who should pay for the repair costs of replacing a potentially dangerous type of concrete that has been used in buildings over many years (subscription required).

[Click here to access the article.](#)

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[Click here to access the article.](#)

Outcome of Willmott Dixon cladding battle could trigger similar suits, say lawyers

Theresa Mohammed is quoted in a Building Magazine article that examines how the outcome of the Willmott Dixon cladding battle could trigger similar suits.

[Click here to access the article.](#)

Developing a sense of trust: What could warranty reform mean for scheme viability?

Theresa Mohammed is quoted in Building Magazine regarding the likely effects for housebuilders and developers of the mandating of increased warranty periods for new homes in the UK following the full implementation of the Building Safety Act. She discusses the effects of these changes from a legal standpoint, how these reforms are pushing for improved quality, and how the reform is likely to lead to clients looking for greater clarity over the specifications and technical details of projects.

[Click here to access the article.](#)



"Public interest considerations may be relevant to the question of remedy, but not to the question of liability."

LEGAL UPDATES

How to dodge a dispute

Construction disputes have notoriously emerged from delays to a project or disagreements over time extensions. One cause of those delays and extensions is supply chains being unable to produce and deliver building materials on time. The situation will only worsen as global inflation, armed conflict and rising oil prices have all contributed to the instability in the UK construction industry with sourcing

materials. In the Civil Engineering Surveyor February 2023 Issue, Theresa Mohammed discusses how to dodge a construction dispute amid this instability.

[Click here to access the article.](#)

Germany's new corporate due diligence obligations for the prevention of human rights violations in supply chains act — key challenges and risks for the construction sector

Annekathrin Hoffmann and Tetiana Arkhipova review the key risks and challenges in Germany's new Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains Act for the construction sectors. This requirement arises under both existing and new contracts as the Act also covers ongoing construction projects.

[Click here to access the article.](#)

A Modern View from Above

With the public commotion having died down since the ruling of the Supreme Court Tate Modern case, Dev Desai, Nick Walker and Rupri Chandla reflect a little deeper on its implications for the wider laws of tort and planning. This will be of particular interest to property developers and landowners.

[Click here to access the article.](#)

Dissecting the Clean Air legislation

In part one of a two-part series in the July/August 2023 issue of the Chartered Institution of Civil Engineering Surveyors (CICES) dissecting the clean air legislation, Stephanie Geesink shares how to mitigate air pollution throughout the life cycle of a construction project.

[Click here to access the article.](#)

Construction Law in the GCC – Key takeaways from a recent DIFC Court of Appeal ruling

In this article, members of our Dubai Dispute Resolution team, Charlotte Bijlani and Soraya Corm-Bakhos, examine a recent DIFC Court of Appeal judgment concerning a FIDIC Red Book construction claim. The judgment provides useful guidance on the DIFC Courts' approach to common issues in construction disputes in the region, as well as a reminder of the importance to comply with notice provisions.

[Click here to access the article.](#)

New Buildings Energy Act – Promoting Germany's heating transition

Dr. Torsten Wielsch, Inès Stefen and Martha Maniura provide an overview of the new German Buildings Energy Act and how it will impact municipal heating planning (article is in German only).

[Click here to access the article.](#)

Some key features of Saudi Arabia's new Civil Transactions Law

Soraya Corm-Bakhos and Charlotte Bijlani examine how construction contracts will be understood and interpreted under the Kingdom of Saudi Arabia's new Civil Transactions Law.

[Click here to access the article.](#)

How to set up a GmbH in Germany (fast)

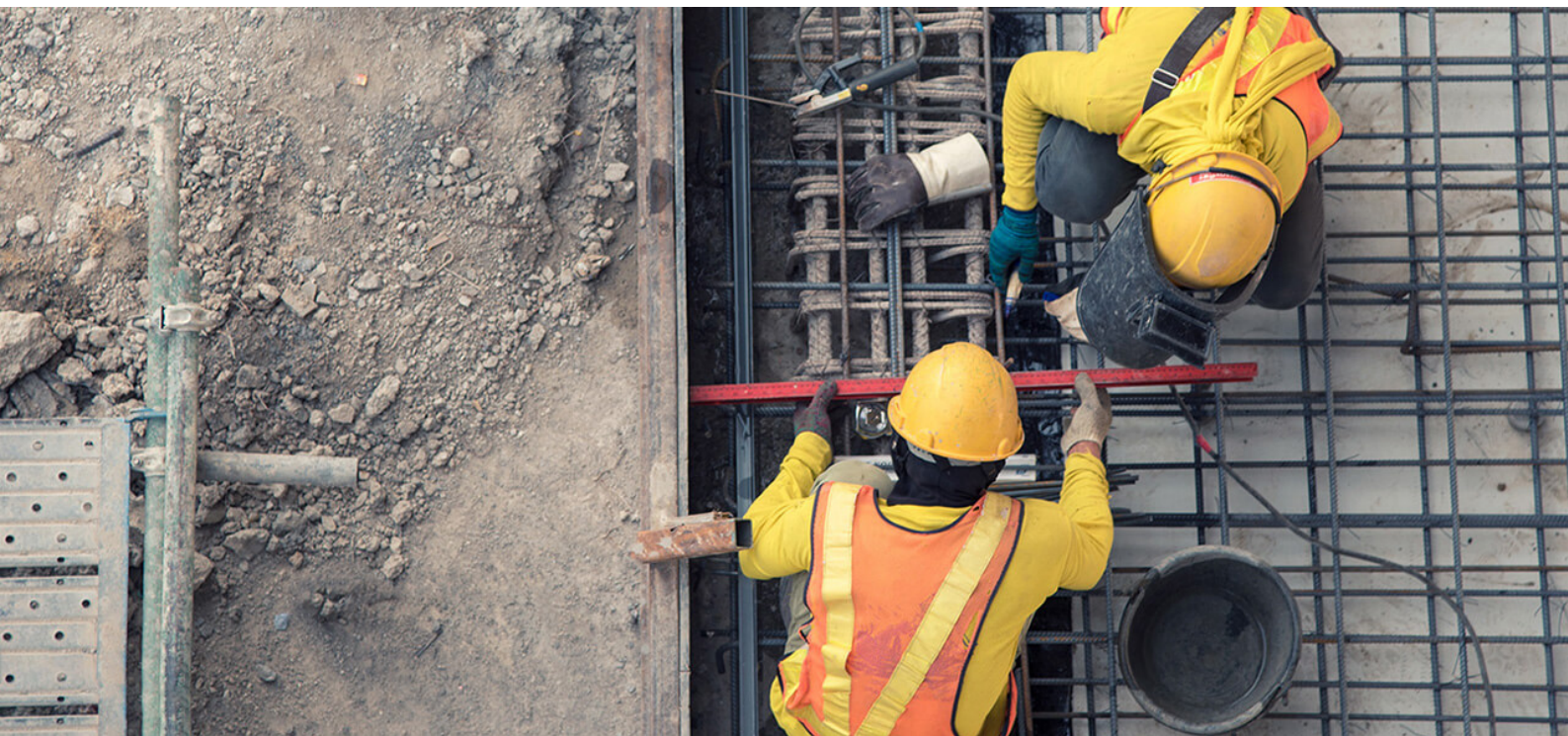
Muteber Yalcin guides you through all material administrative steps required under German law when setting up a company in Germany. For the purpose of this guide, Muteber focusses on the incorporation of a (private) limited liability company governed by German law.

[Click here to access the article.](#)

Hotel and leisure construction boom is not without risk

As the hotel and leisure industry bounces back after years of travel disruption, with a projected £2.5bn development pipeline, construction projects are taking place against a challenging backdrop of increased prices, workforce shortages and new legislation. In an article for Construction News, Barry Hembling and Laura Lintott highlight current risks with construction work on hotel and leisure projects and explain how best to manage them (subscription required).

[Click here to access the article.](#)



LIMITATION PERIODS

BDW v Aecom: extending limitation

What are the practical implications of extending limitation periods under the Defective Premises Act 1972? Stephanie Geesink and Dom Turner-Harriss explain for Construction Management.

[Click here to access the article.](#)

Only a Matter of Time

Featured in Construction Law, Theresa Mohammed and Jack Moulder examine a Technology and Construction Court decision that settles a longstanding question concerning the applicability of limitation defences to adjudication. A foothold may have been created for parties seeking to raise such a defence, they argue (subscription required).

[Click here to access the article.](#)

PROCEDURE

The importance of good service when deciding jurisdiction

What to watch out for around service of notices under construction contracts – Laura Lintott and Sam Goodwill feature in Construction News, discussing the judgment in *AM Construction v The Darul Amaan Trust* [2022] EWHC 1478 (TCC). The case involved a payment dispute between contractor AM Construction and charitable trust the Darul Amaan Trust about the construction of a three-storey mosque.

[Click here to access the article.](#)

Keeping proceedings just and fair

In an article for Construction Law, Stephanie Geesink and Dom Turner-Harriss examine a recent judgment that supports the argument that once a privileged document is disclosed, any privilege attached is waived. The court was motivated to keep the proceedings just and fair between the parties, they conclude (subscription required).

[Click here to access the article.](#)

Defining 'without prejudice' in construction contract

For Building Magazine, Theresa Mohammed examines the case of *AZ vs BY* which casts light on the principle of without-prejudice privilege and its importance (subscription required).

[Click here to access the article.](#)

NEWS

"Whilst the CA's findings may appear harsh on contractors, they are in line with common law principles and serve as an acute reminder of the importance to comply with notice provisions."

WATSON FARLEY & WILLIAMS

The origin of the TCC and its impact today

Why do we have the TCC? What amazing innovations did it introduce? How did it emerge? Laura Lintott looks at the dynamic story of The Technology and Construction Court for Construction News. (Subscription required)

[Click here to access the article.](#)

The Wolseley Restaurant opening

The Global Legal Chronicle reports on the role played by Barry Hembling and Bell on the construction aspects of The Wolsley Hospitality Group's two major new openings.

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