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HOW DO WE SOLVE THE INSOLVENCY CRISIS IN THE CONSTRUCTION INDUSTRY?

Key players in construction gathered for an important debate, sponsored by The Save Construction Initiative and Begbies Traynor Group and hosted by Watson Farley & Williams, exploring what can be done to tackle the industry's mounting insolvency crisis and to disrupt the payment culture at the heart of it

INDUSTRY GUESTS:

Darya Bahram, vice-chair, Radcliffe Housing Society, and research associate, Centre of Construction Law

Zoe Brooke, chief executive, The Save Construction Initiative

Caroline Compton-Jones, deputy chief executive, SCAPE

Paul De Croos, head of originations, property development, UTB

Rob Driscoll, director of legal and business, ECA

Giles Heather, director UK and Europe, Linesight

Dr Barbara Marino, strategic development and compliance director, built environment, Keltbray

Iain McIlwee, chief executive, FIS

Theresa Mohammed, partner, Watson Farley & Williams

Jarvey Moss, founder, Saible

Julie Palmer, regional managing partner, Begbies Traynor Group

Paul Ruddick, founder and chief executive, Reds10

Roni Savage, chief executive, JOMA

Justin Sullivan, chief executive, Adair, and RICS president elect

Eddie Tuttle, director, policy, research and public affairs, CIOB

Mark Wakeford, chairman of the exec board, EvoEnergy

Tim Whitehill, chief executive, The Save Construction Initiative

Liz Hamson, editor-in-chief, *BE News* (chair)

The past 12 months have been tough for the construction industry. In the year to June, a record 4,690 construction companies fell into insolvency, according to the Insolvency Service – a 2.1% increase on the previous year and a huge leap of 53.3% on the same period in 2020. The most high-profile example was the collapse of ISG, with more than 2,000 jobs lost and projects stalled across the country.

There had been glimmers of hope on the output front, with levels rising early in 2024. But figures from the Office for National Statistics released in September showed the recent burst in construction output had ended in July, as work volumes fell 0.4%, primarily because of a slump in private housing repair and maintenance work and new development. The outlook remains challenging at best.

Added to the mix is the culture of late payments, contributing to a significant rise in insolvencies in the sector. Large companies can take 30% longer than small firms to pay invoices, with just over 80% of overdue invoices representing monies owed to subcontractors by tier-one main contractors.

With leading industry voices in attendance, the *BE News* roundtable discussion focused on what could be done to address the sector's mounting insolvency crisis and how the industry should disrupt the payment culture at the heart of the crisis.

To kick off the debate, *BE News* editor-in-chief Liz Hamson called for a show of hands to the question: what impact – positive, neutral or negative – will the change in government have in addressing the construction industry insolvency crisis?


Zoe Brooke and Mark Wakeford


Giles Heather

Insolvency not on the agenda

Of the 18 participants, only one person agreed with the statement 'Labour knows there is a problem and will do what it can to resolve it'. Six were neutral and eight voted negative, agreeing with the statement 'Labour does not understand how serious the situation is or what the ramifications are if it does not address it'.

"The insolvency crisis is not on Labour's agenda per se," said SCAPE's Caroline Compton-Jones. But she added that if it was a broader question of do we know there are some things we need to do structurally and differently: "That is probably where I see more optimism. Hopefully then the reductions in insolvencies will be a positive outcome of that."

When probed about what policy changes are needed from the government to address the insolvency crisis, EvoEnergy's Mark Wakeford gave a blunt answer: "I have a problem with the premise that we want government to do something. Fundamentally I am successful despite government, not because of government."

He said always looking to those in power and saying "please solve our problems for us", when it is a collective industry, "is just completely the wrong starting point".

Wakeford added: "If you are not bothered about it, if you are not doing anything to solve the problems, why would I be bothered to solve them? We've got to work out strategically what the right answers are. We have got to go to the industry and say 'where is the value-add?' I do not want government intervention. They are the wrong people doing the wrong things."

According to Linesight's Giles Heather, there has been some industry reform in terms of partnering around alliances to get early contractor engagement. "The industry is trying to strategise and find out ways in which it can bring contractors, clients and designers together to mitigate risk and balance those risks out," he said.

> ***I do not want government intervention. They are the wrong people doing the wrong things***
>
> *Mark Wakeford*

"We are not there yet because of the current crisis we are in, and there is still a long way to go. But the industry is trying to figure out ways of dealing with it."

The stringent regimes the industry needs to follow were highlighted by Zoe Brooke of The Save Construction Initiative: "There are now so many we are forgetting our work – just pay the price and do the job well. Bring the right teams in early for engagement."

Reds10's Paul Ruddick brought up the issue with how tier-ones operate. "The ⊳

Eddie Tuttle


Julie Palmer


Justin Sullivan

problem with their model is they go to the bottom every single time when re-tendering," he said. "I do not know how you break that because the government is still giving them all the work, and they are not currently willing to change their business models.

"I cannot see how the government can contract with tier-two and tier-three suppliers who need the pipeline of work, who have two to three years' work in the future, because the big tier-ones get the huge contracts."

The business model has been affecting the industry for decades, and it will need to adapt and innovate, said Eddie Tuttle of CIOB, adding: "The question you might ask is: in whose interest is the business model working and how do we create the right structure that allows SMEs to both function and help address what the industry is expected to deliver?"

Tuttle said an added complication is that construction is a series of sectors under one banner and so it is not always easy to manage in the way that some other sectors are.

Culture change

Talk then shifted to what's wrong with the current payment culture, how to improve it and how to get rid of the pyramid structure.

Adair's Justin Sullivan, RICS president elect for 2025, said the culture of the tier-ones must change. By way of an example, he highlighted that in the 1990s, RICS was part of the government's payment charter, but one party that refused to sign up initially was Carillion as it made more money from late payment. The company collapsed in 2018 due to dire financial issues.

"Carillion had this so-called 'early payment facility'," Sullivan said. "Standard terms for payment were 120 days. You could get your money quicker but only if you took a discount. Tier-ones made money from interest on the millions in their bank accounts. If some tier-ones still have this culture, people in this room are not going to change that. It must come from legislation."

These late payments are often caused by the people at the top, according to Julie Palmer of Begbies Traynor Group. When times are tough, they manage their own cashflow by delaying the payments and they know they will very quickly put the people without deep pockets out of business. "Then, if there's a

> ***Tier-ones made money from interest on the millions in their bank accounts***
>
> *Justin Sullivan*


Caroline Compton-Jones and Theresa Mohammed


Paul De Croos


Jarvey Moss

contractual bridge position, they sit on fairly solid ground," she added.

Watson Farley & Williams' Theresa Mohammed said: "The losses most of the industry are posting in relation to historic building safety remediation schemes are far too low as there is potentially millions of pounds worth of remediation costs to meet and a large proportion of this may be attributed to contractors. If you then add in profit margins of 2% to 3%, it doesn't take a lot – a series of late or disputed applications for payment, any dispute over costs on a job, fluctuations of costs of materials or labour – to easily push that job into a loss-making position."

Saible's Jarvey Moss offered up a solution: the project bank account. First developed by the World Bank in the 1970s, the model was to lend to regimes with less-than-ideal governance. "The bank wanted to know that the money was, hopefully, going to where it was supposed to, hence the idea of a segregated account dedicated to that project," said Moss.

The UK government adopted the concept in the early 2010s, including it in the Construction Playbook. It has been and is still used by some government agencies, including National Highways. "The basic concept is that you take the money for a project, ringfence it to use it only for that project and then you distribute it to the supply chain on an ongoing basis as the project is delivered," said Moss.

He added that project bank accounts suffered shortcomings that prevented their wider adoption, but these could now be overcome through technology. "At Saible, we've taken the concept of the project bank account and applied the technology that powered the fintech and neobank revolution to that concept to deliver something specifically designed for the construction industry, which can change the way that money moves through the supply chain," Moss explained.

Just like a project bank account, a trust agreement is in place to which the whole supply chain is party, regardless of when they join that project. "Then you know the money to pay you is coming to you directly from the project and nobody in the supply chain above you can sit on it," he added.

Disincentivising deviant behaviours

According to Brooke, the hope is that this will stop incentivising, or help to disincentivise, deviant behaviours that are, he said, commonplace but barely even noticed.

Lenders and banks do not need convincing to make use of project bank accounts, said UTB's Paul De Croos. "It takes risk out for us," he explained. "It creates more control, more visibility and more transparency, which, from a lender's perspective just ticks boxes."

But De Croos said the challenge is that "we cannot dictate to a borrower, certainly ⊳


Left to right: Roni Savage, Iain McIlwee, Darya Bahram and Tim Whitehill

> ***The issue with the payment system to date is it is analogue***
>
> *Rob Driscoll*


Rob Driscoll

not to a contractor, that they must go down this route".

He added: "We can certainly suggest to a borrower that this might be a route to go down for all the positive reasons, but it's that contractor buy-in that they must find for this to work as it is the contractor who potentially has the most to lose through this process."

Conflict of interest

According to ECA's Rob Driscoll, if you do divorce money from contractual chains, you start divorcing vested interests. Problems arise where the custodian of the money is also a claimant, in which case a conflict of interest is baked into the system. Divorcing the money from the contractual chain gives you impartiality and a focus on value delivery, said Driscoll.

He added: "The issue with the payment system to date is it is analogue. There was historically no visibility or transparency. Technology has now caught up with our expectations digitising each relationship within a project, but the next step is to deliver through entire project-based digital wallets.

"This would prevent client procurement being so far removed from project delivery and would stabilise the commercial delivery models fortifying the industry from the domino impact of insolvencies."

Moss agreed: "The problem with project bank accounts in analogue form is they just became like a slightly irritating piggy bank."

Some large tier-one contractors already have a few of their order books in project bank accounts, said Tim Whitehill from The Save Construction Initiative: "They know about this, and they can start to understand it more and begin to adopt and adapt their business model incrementally, not so disruptively.

"With Jarvey's idea, or others, their tech will not fail at the first hurdle. It will incrementally evolve across the system. If we do that, we may be sitting here in 10 years' time with more positive outcomes, and at Save Construction that is our hope. But we are confident it is going in the right direction."

Iain McIlwee of FIS said he has sympathy for the traditional tier-one contractor because "they are squeezed by bad decisions of the past that have boxed them into a corner". He ⊳


Paul Ruddick


Dr Barbara Marino

added: "I do not think most of them want to operate in the way they do."

McIlwee said that when it comes to confusion about duty, "some tier-ones and housebuilders seem to believe their fiduciary responsibility to shareholders is more important than responsibility to the delivery of the project, which is the problem".

Positive outcomes

While agreeing there have been some poor behaviours exhibited by tier-ones, SCAPE's Compton-Jones said there have also been some "positive behaviours that drive positive outcomes and we see that in collaboration".

She added: "We need to reflect the balance to the conversation. Things need to change, but it is about our behaviours and about how we set projects up for success. As leaders and decision-makers, it is up to us to collaborate with people who want to work the way we want to work."

JOMA's Roni Savage agreed in terms of the industry's behaviour and mindset: "It is just how we get to that point and maybe we need some sort of accountability across the industry to change the dial, but I'm not entirely sure that we are there just yet. Some companies are obviously doing it well, but there are those that are not."

Echoing the point about collaboration, Darya Bahram from the Centre for Construction Law said examples of successful collaborative procurement and contracting practices that have driven the right behaviour and that have delivered better, faster, greener and safer outcomes over the past decade do exist. "The notion is not purely theoretical and the industry should not assume the approach assumes their embarking on unchartered waters," she said. "I acknowledge that the adopters of a collaborative approach should better make known their success outcomes."

Concluding the debate, Keltbray's Dr Barbara Marino pointed out that the construction industry today is vastly different to the construction industry of 10, 20 or 30 years ago, although "there are still too many people in the construction industry today that are hoping for those times to come back".

She added: "They are not coming back because margins are not coming back and thank god the [poor] health and safety [standards of the past] are not coming back. It is only improving and if we start to have what I call the 2024 mindset, a lot of the challenges [including insolvencies] can be resolved because the past is not coming back." □

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Dr Barbara Marino