

# Construction Journal

# Editor's choice

JUNE 2022 –  
AUGUST 2022

RICS JOURNALS

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# CITB-funded initiative tackles mental health epidemic

CONSTRUCTION JOURNAL

First published 30 August 2022



**The Building Mental Health project is successfully training first-aiders with the aim of reducing stigma and raising awareness of issues in the construction industry**

By Brian Ward

One in four individuals have suffered from poor mental health, and the crisis is particularly acute in construction.

Research by the Lighthouse Construction Industry Charity for their [Building Mental Health social value report](#) indicates that 25% of those in the industry have contemplated suicide, and more than 1,400 construction workers died this way between 2011 and 2015. Reasons given for poor mental health include lack of job security, long, unsociable hours, time away from family, and lack of employer support.

## Lighthouse Club initiates mental health action

The 2018–2021 Building Mental Health (BMH) project was organised by the Lighthouse Charity and funded by the CITB levy. It emerged in response to the desperate need to address this epidemic.

The project is designed to enable everyone in construction to access support, raise awareness of the issues, and provide training to mental health first-aiders.

BMH devised a training programme with the following aims:

- to train 288 mental health first-aid instructors
- to enable those instructors in turn to train 3,000 first-aiders in the industry
- to increase industry awareness of how severe the epidemic of poor mental health is
- to disseminate best practice and make it widely available and accessible
- to remove the stigma associated with mental health in the construction industry in particular, and society in general.

## Training and support cascaded through industry

Despite being disrupted by the pandemic, BMH successfully trained 284 instructors. These in turn trained a subsequent 4,596 mental health first-aiders, exceeding the original target by 65%. The geographical spread of instructors was managed to ensure there was as much coverage of England, Scotland and Wales as possible.

The courses to train instructors were delivered in three separate sessions. Most participants also found they required another three days to complete the coursework successfully.

The project  
trained 99% of  
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After this, instructors paired up to deliver two training courses. Feedback on these was assessed before the newly qualified instructors were allowed to deliver courses unaccompanied.

As well as training, the project has developed a free app through which workers can [access confidential support](#). This was made available in 2020 and has been downloaded more than 30,000 times since.

BMH has also run almost 3,000 awareness sessions for the construction industry, raising the profile of mental health issues and attempting to reduce the associated stigma.

### Findings endorse project's social value

Corporate social responsibility consultancy Collins McHugh spoke to a small group of instructors to get further feedback and insights. The instructors noted that it seemed easier to address mental health at larger contractors than smaller companies, and that SMEs still struggle to deal with the issue fully.

However, respondents felt the key to success at any company is the active and serious engagement of senior management.

The project received £1m in CITB funding and resulted in an estimated social value of £5.5m. Collins McHugh estimated the social value of the project from a combination of completed surveys, external research and the [National Themes, Outcomes and Measures](#) (TOMs) framework, which is widely used in the construction industry to assess the impact of projects.

The project trained 99% of the target number of instructors and 165% of the planned first-aiders. Instructors reported that almost all sessions were full or even oversubscribed, which may indicate significant unmet demand for mental health support.

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#### Defining social value in property projects

By James Bailey FRICS

BMH recommends five measures that every company can take to foster a successful mental health culture.

- Commit to making a difference by signing the [mental health charter](#).
- Introduce a [helpline](#) by ordering one through the Employee Assistance Programme and encourage staff to download the free app.
- Deliver a mental health tool-box talk to raise understanding of the issues, and illustrate the importance of starting a conversation.
- Run a mental health training day to provide a more in-depth understanding.
- Ensure you have enough mental health first-aiders for your place of work.

The [Lighthouse Construction Industry Charity](#) is a registered charity that offers support to construction workers and their families.

Contact Lighthouse: [Email](#) | [Training](#)

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# Why better infrastructure relies on shared data

**CONSTRUCTION JOURNAL**

First published 18 August 2022



**An integrated platform is using artificial intelligence to help share insights between infrastructure projects – but the industry needs to be more willing to transfer data to enable innovation**

By Charlie Davies

One of the core challenges facing the infrastructure sector is to ensure that projects are completed on time and on budget, while also limiting the impact on the environment.

To achieve those goals, a major cultural shift is required to understand what can be done and to put best practice in place. Digitisation is central to innovation that optimises existing infrastructure, new development and the UK's transition to net-zero carbon.



Historically, UK infrastructure only used around 30% of its project data, gathered from disparate sources, to support the day-to-day running of projects.

At Costain, we knew that the industry needed to expand the visibility and usage of data points to help make decisions in real time. This way, several project metrics could be made more efficient. However, to do this on a large scale required an integrated platform for information.

We set out to develop a data-sharing platform that would help the industry improve programme performance, while at the same time enabling us to meet carbon-reduction targets.

### Platform enables intelligent data sharing

Following a call from UK Research and Innovation and the government to build an integrated platform for infrastructure information, we were awarded a project to develop and establish the Intelligent Infrastructure Control Centre (IICC), with joint investment from Innovate UK.

Working with the consultancies SAP and Keytree, we used the former's technology to create a cloud-based virtual architecture that could take comprehensive operational data from UK national infrastructure projects and synthesise it into a common digital platform.

This enables the IICC to harmonise significant volumes of insight from projects, to inform better programme, portfolio and enterprise performance across the industry. The platform is designed to allow organisations to record, measure and use data across a variety of critical areas, including project and commercial performance, productivity, carbon emissions and social value, as well as collecting information from devices connected to the internet of things.

The technology enables comparison between all previous projects uploaded to the platform, teasing out patterns in productivity so we can reduce the risk of future projects overrunning or overspending.

We set out to develop a data-sharing platform that would help the industry improve programme performance

The platform can also be used to share innovations between companies, so that good ideas do not become siloed. This is especially valuable when it comes to carbon- and resource-saving measures.

For instance, using the data to identify innovations in machine control has saved 30% on the cost of earthworks for a UK road project. Through the IICC, this innovation could be applied to similar projects immediately. The right platform can also provide greater access to project information for decision-makers, to ensure their choices are better informed.

The use of such predictive analytics is especially important in reducing risk and cutting costs while increasing project efficiencies – for instance, when making routine processes less carbon-intensive and preparing accurate investment cases.

### Collaboration accelerates innovation take-up

One significant use of the IICC platform has been as part of the Transport Infrastructure Efficiency Strategy (TIES) Living Lab, a collaboration between 25 partner organisations across academia, government, arm's-length bodies and the private sector. This focuses on data research and digital demonstrator projects for infrastructure.

The lab aims, among other things, to tackle some of the systemic issues that obstruct the use, integration and adoption of ideas that could improve productivity and performance. The data collated by the IICC will make it easier for any organisation to understand and shape the business case for investing in and adopting such innovations elsewhere. This means it can be transferred seamlessly from one supply chain or sector to another, helping to scale up those savings more speedily.

By using IICC, we were able to develop a platform that automatically visualises and analyses data on major design and construction activity across projects for the Department

A cultural shift  
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data sharing



for Transport and TIES partners. In future, the data will also help test artificial intelligence processing to improve its value to end users.

## Cultural change can support technical progress

Ultimately, the goal is for data sharing to become the norm across the construction industry. This will encourage innovation, make projects more efficient, create greener IT infrastructure by reducing energy consumption, and save public funds. We see the IICC platform as central to this effort.

We continue to develop the platform, and the next phase will see advanced analytics being used to track progress against plans to determine whether a project is on track.

A cultural shift in the industry will be needed to encourage more data sharing, though. As we see it, better business decisions can be made when we have more information at our fingertips. We hope that the IICC platform offers the starting point for a more open and collaborative construction industry – which we will all benefit from.

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By various authors

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# Understanding the EU whistle-blowing directive

CONSTRUCTION JOURNAL  
First published 30 June 2022



**As implementation of the EU's 2019 whistle-blowing directive begins to pick up in member states, what will it require and how is it likely to affect the UK?**

By Sarah Hayes

On 16 December 2019, [Directive \(EU\) 2019/1937](#) on the protection of persons who report breaches of Union law entered into force. More than two years later, the deadline for implementation has passed – but the so-called whistle-blowing directive is still yet to be transposed into the law of most member states.

However, whether prompted by infringement procedures initiated by the European Commission in January or by the easing of the COVID-19 pandemic, meaningful progress now appears to be being made.

We expect to see increasing numbers of member states passing legislation implementing the directive in the months to come. But what will this mean for businesses operating across Europe?

### Aiming to protect whistle-blowers

When the draft directive was first announced by the European Commission in April 2018, only nine EU member states offered comprehensive legal protection for those who called out corporate lawbreakers.

Executive vice-president of the commission Frans Timmermans stated: 'If we better protect whistle-blowers, we can better detect and prevent harm to the public interest such as fraud, corruption, corporate tax avoidance or damage to people's health and the environment.'

The whistle-blowing directive aims to ensure a legal framework that will protect from retaliatory or recriminatory action those who speak up in the public interest about breaches of EU laws. It also provides common minimum standards of protection across the union to whistle-blowers who raise breaches of union law with their employer.

The importance of whistle-blowers in uncovering corruption and other wrongdoing has arguably become even more critical during the global pandemic, with remote working and lack of oversight leading to a higher risk of corporate governance failings.

Many public- and private-sector organisations want to create an environment in which workers who become aware of misconduct or wrongdoing speak up and are listened to. This would involve creating robust accountability mechanisms, and ensuring proper oversight of decision-making.

A number of member states are engaging in public consultations on draft whistle-blowing legislation, so businesses have an opportunity to contribute to the debate on and development of the new law.

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While the directive aims to harmonise minimum standards, some member states have already gone further than the directive requires, and there remains scope for further divergence across regimes.

### What does the directive require?

The directive applies to legal entities in the private sector that have more than 50 employees. It also applies to private companies regardless of their size if they operate in the financial services sector, or a field that is vulnerable to money laundering or terrorist financial threat.

It creates additional obligations and responsibilities for public and private companies, in particular a requirement to have safe reporting channels – in other words, whistle-blowing hotlines – that protect the identity of those raising concerns. Internal reporting arrangements must also acknowledge receipt of a whistle-blowing report within seven days, and designate an impartial person or department to follow it up.

Companies, public institutions and authorities that receive information on wrongdoing all have a duty to follow up on reports. Applicable companies must provide feedback within three months, while competent national authorities (designated to receive external reports) must respond to reports received through external channels within three months, or six months if the complexity of the case warrants it. Whistle-blowers also have the right to make an external disclosure to a competent national authority, whether or not they have used internal channels first.

Member states must take measures to ensure that whistle-blowers are protected against any form of retaliation from their employers; the list of prohibited retaliatory conduct is extensive and includes demotion or withholding of promotion, negative performance assessment or employment references, reputational harm through social media or loss of business and loss of income. In any associated litigation it will be presumed that any detriment was made in retaliation unless the employer can show

If an employee can show that they made a public disclosure and suffered a detriment, it shall be presumed that the detriment was made as a result of the public disclosure

otherwise – if an employee can show that they made a public disclosure and suffered a detriment it shall be presumed that the detriment was made as a result of the public disclosure. States must also ensure there is a competent national authority with specific responsibilities for dealing with whistle-blowing and external channels of reporting for those wanting to raise concerns.

The directive requires national legislation to implement specific means of protection in cases of whistle-blowing about breaches of EU law. However, it does not extend protection to whistle-blowing about breaches of domestic law, and this may lead to confusion in practice as to which procedures apply.

The directive requires that the whistle-blower had 'reasonable grounds' to believe that there were grounds for making a disclosure. There is no requirement for the disclosure to be made in the public interest (as is required in the UK) or for it to be made in good faith.

The definition of whistle-blower includes not just employees but a much wider range of individuals. Protection is given to workers – such as contractors and subcontractors in the construction industry – and to the self-employed. It includes shareholders, volunteers and trainees. The protection also extends to those who help whistle-blowers with the reporting process, such as colleagues.

## Transposition progressing across Europe

At the time of writing, new whistle-blowing laws have only been adopted in nine member states. However, in the past few months, others are initiating the legislative process.

A draft bill to transpose the directive into national law is being progressed in Germany, while a preliminary draft bill is at the parliamentary stage in Spain, and an enabling act is being approved in Italy.

Member states  
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On 16 February 2022, France definitively adopted legislation to transpose the directive. This is currently being examined by the French Constitutional Council and is expected to come into force on 1 August 2022. This was presented by the deputy Sylvain Waserman as being the ‘best protection for whistle-blowers in Europe’, and in some areas it goes beyond the protections envisaged in the directive.

Specifically, it extends protection to a whistle-blower’s entourage – that is, anyone who helps with a disclosure – and puts internal and external reporting channels on an equal footing. It also strengthens protections afforded to whistle-blowers in the directive, prohibits retaliation, and exempts whistle-blowers from civil and criminal liability.

### Does the directive affect the UK?

Following the UK’s departure from the EU, it is under no legal obligation to implement the directive, and it seems unlikely that it will do so directly.

Compared to most other European countries, however, the UK already has comprehensive protection for whistle-blowers making protected disclosures through the [Public Interest Disclosure Act 1998](#), as incorporated into the [Employment Rights Act 1996](#).

To date, the UK government has not made any specific announcement about taking further action in the light of the directive, save to confirm that it remains on the watch list of the EU Scrutiny Committee which assesses the legal and/or political importance of EU documents.

The [UK/EU and EAEC Trade and Cooperation Agreement 2021](#) contains far-reaching provisions, with the aim of ensuring a level playing field for trade and investment, and covers labour and social protections.

Once the directive has been implemented by most member states, therefore, the UK government will need to assess whether its whistle-blower protection could diverge

Compared to most other European countries ... the UK already has comprehensive protection for whistle-blowers



significantly from that in member states and have a material impact on that level playing field. If it does then the EU could trigger appropriate rebalancing measures.

### Parliament considers expanded protection

Even if the directive itself does not prompt changes to the UK regime of protection for whistle-blowers, we may still see its expansion. The [Public Interest Disclosure \(Protection\) Bill](#), which was presented to Parliament in February 2020 seeks to create a new, independent whistle-blowing commission to set, monitor and enforce standards.

Another private members' bill, the [Office of the Whistleblower Bill](#), seeks to establish just such an independent office. This bill's second reading took place in the House of Lords in June 2021.

Separately, there is an All-Party Parliamentary Group for Whistle-blowing looking at the effectiveness of UK legislation in this area, and how it might be improved.

Finally, charity [Protect](#) has launched a new campaign to fix UK whistle-blowing law, which calls for reform to the 1998 Act.

### How whistle-blowing regime affects SMEs

Whistle-blowing presents different challenges depending on the size of an organisation. In larger businesses, an individual may be discouraged from reporting a concern to a superior who seems far removed from them. The reverse is true in small and medium-sized companies, where a potential whistle-blower may be discouraged from reporting a concern because they know others in the organisation too well.

UK companies are not currently under any obligation to change their whistle-blowing practices, so far as they relate to breaches of domestic law. However, with the directive being implemented elsewhere in Europe, it is a good opportunity

UK companies are not currently under any obligation to change their whistle-blowing practices ... [but] it is a good opportunity to take stock of existing arrangements

to take stock of existing arrangements. UK companies that do not already have an anonymous whistle-blowing hotline would be well advised to consider establishing one.

Such a channel could be set up internally or by outsourcing its provision to an external provider. Although this may appear costly and time-consuming in the short term, in the long term fostering a positive and open culture of speaking up is likely to reap greater rewards.

### Prospects for protection

Whatever new legislation the UK implements, EU member states are clearly increasing support for whistle-blowers, establishing clearer processes and strengthening protections.

The directive itself will remain relevant, particularly for organisations that operate across Europe, and it may come to be regarded as best practice. We could see firms start to align UK procedures with those required by the directive in any event, to ensure a consistent global corporate policy.

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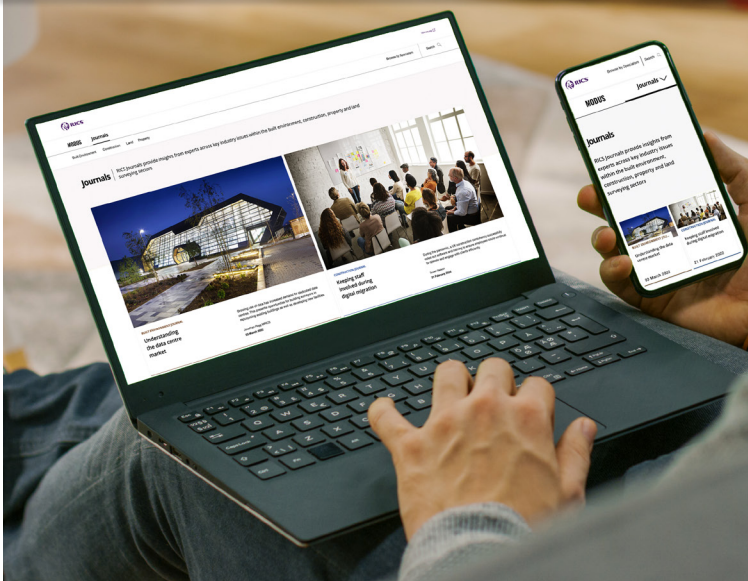
### How SMEs can ensure cyber security

By Brian Ward

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# How to develop an inclusive workplace

CONSTRUCTION JOURNAL

First published 6 July 2022



**In fostering and maintaining a diverse and inclusive working culture, one firm is listening to its employees as well as looking to leadership to set an example**

By Sarah Draper

In the past month I have been fortunate to take part in two industry panels on diversity, one at the UK Real Estate Infrastructure and Investment Forum and one as part of RICS' [Pride 2022](#) programme.

These were two very different events in terms of scale and audience, but both focused on having honest conversations on a subject I am passionate about – how can we as an industry advance and embed inclusivity?



What I found encouraging about both events is that conversations are now about actions and programmes that are in place or being rolled out, rather than just about statistics and problems. With six professional bodies, including RICS, having signed a [memorandum of understanding](#) to work together to advance diversity and inclusion (D&I) in the industry, this feels like significant progress.

It is imperative that, as employers, we create inclusive workplaces – the office, site, home or elsewhere – for our teams. But we also need to look at how we attract people to the industry in the first place, whether that involves more active engagement with schoolchildren, or people returning to work after parental leave, a career break, refugees, or ex-service personnel. We need to create a welcoming and inclusive workplace for all.

It's with this in mind, for instance, that I am involved with the Construction Leadership Council's [People and Culture work stream](#). We are working with the Construction Industry Training Board to provide businesses with information and guidance to support taster sessions and work experience, as well as other routes of entry.

We must open our industry so it is accessible and welcoming to the communities in which we work, so they can see themselves represented in the workforce. We need to demonstrate that inclusivity remains firmly at the top of our agenda as an industry.

## Changing culture in the short and long term

Like many employers, at Rider Levett Bucknall (RLB) we strive to foster an inclusive workplace culture where diversity is not only accepted but valued and built in, creating opportunities for all.

One of the key lessons for me as part of our own D&I activity is that we need to change things one step at a time and be mindful that it may take several years.

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Although we need to look at the bigger picture and long-term goals, we need to be responsive as well. As a business, we try to comment or act quickly when issues arise or events require prompt responses rather than waiting until a quarterly update or board meeting.

The racism during the Euro 2020 tournament and the murder of Sarah Everard were two recent instances where we knew our people would benefit if our chief executive spoke immediately with colleagues to condemn such behaviours, and remind employees of the support available should they require it.

It is important that D&I is about making genuine changes – doing the right thing rather than carrying out a tick-box exercise. While we may start initiatives to mark a particular day or month, such as International Women’s Day or Black History Month, these initiatives and changes should inform everyday life in the business. For example, although June is the official Pride month, our activities and awareness campaigns run throughout the year.

### Benchmarking progress to inclusive community

It is also important to recognise that D&I, well-being and employee engagement are all aligned when it comes to creating opportunities for employees to be brilliant. Many initiatives cover all three areas; for example, our carer’s policy that provides paid time off was introduced based on feedback that 6% of our employees identify as carers.

This helps increase productivity, while a clear vision and purpose enables a level playing field for all; we know that people are happier, more motivated and perform better when they can bring their whole selves to work.

At RLB, we have been working on a programme to bring inclusion to life in our business. Data is key. It’s an obvious point, but we all need to know where we are starting from to monitor progress and see whether we are making a difference.

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We sent out an employee survey to collate all our D&I information yearly then set benchmarks based on this. We can now see whether our initiatives are having a positive effect on the diversity and inclusion in our business.

We initially established a D&I steering group, comprising senior employees who were interested in the issue. This then evolved into our D&I community, which includes employees from all locations and levels, and represents eight of the nine characteristics protected under the [Equality Act 2010](#).

I chair this community alongside our chief executive Andy Reynolds. It was important that all employees could see that it represents the whole business, and that it has the backing of the most senior people in RLB.

### Employees educate from their experiences

The community has been a great forum for us to understand the challenges employees face on a day-to-day basis, inside and outside work. Their stories have helped us educate the business.

They have talked about first-hand experience of a range of subjects, from the Euro 2020 racism to Diwali and other religious festivals. We have held lunch and learn sessions, where colleagues have shared personal stories on issues from women's health to hidden disabilities.

Providing the business with training and development – from e-learning at induction to ongoing inclusive behaviour workshops – is also fundamental in helping colleagues improve self-awareness about their beliefs and behaviours and how these manifests at work. This has helped increase understanding of unconscious bias across our business.

If you have a business across a number of sites, the culture should be the same in every workplace location



## Range of initiatives supports inclusion

As part of our inclusion programme, we have also introduced a number of initiatives.

Hybrid working, core hours and flexible working from Day 1 of employment with us to provide employees with continued freedom around where and how they worked.

All employees who have requested flexible working from day 1 have been accepted. One of our new starters commented, 'If I hadn't been able to have a flexible working arrangement from day one, I would not have been able to move jobs and progress my career.'

We have created a dedicated email address and an external anonymous whistleblowing line to ensure colleagues have a safe way to raise issues and concerns.

All our partners are involved with a reverse mentoring scheme, which now has 128 participants, and senior leaders have a mentor from our D&I community.

We have introduced enhanced family-friendly and maternity and paternity policies, as well as a new menopause policy and manager toolkit and a menopause workplace pledge.

D&I and well-being learning is included in our induction process.

We continue to benchmark our progress, with our achievements including an 8% reduction to in our gender pay gap, and we are also introducing ethnicity pay reporting.

## Learning lessons on engagement and consistency

We have also learned a number of lessons since the formulation of the D&I community.

- In a male-dominated industry, it is important not to alienate white men – many of whom are the biggest allies we can have.

//

If I hadn't been able to have a flexible working arrangement from day one, I would not have been able to move jobs and progress my career."

RLB new starter

- Employees will see through anything that is tokenism or tick-box. Everything needs to be genuine and result in a long-term enhancement of inclusion.
- We shouldn't be scared to ask questions: people would rather you ask and learn than be too scared to discuss something with them. For instance, we had a great discussion in the D&I community about whether we should stop using the term BAME, and where it was appropriate to use it.
- The employee voice is far more powerful than external voices. It is easy to pay a speaker to talk about their experiences, but it is far more engaging and powerful if your employees share their own. All our employees have had very positive responses from their colleagues when they have told their stories.

But perhaps my ultimate mantra is that consistency is key. If you have a business across a number of sites, the culture should be the same in every workplace location. Lack of consistency in opportunities given to employees can mean the playing field is not level.

This applies equally across the construction sector. In our bid to build a more inclusive industry where everyone can thrive, our greatest challenge may lie in providing consistent opportunities and positive experiences. It's clear we are making progress – but it is up to all of us to play our part in creating the future industry we want to be part of.

## Related articles

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### How can employers attract more women to construction?

By Stuart Watson

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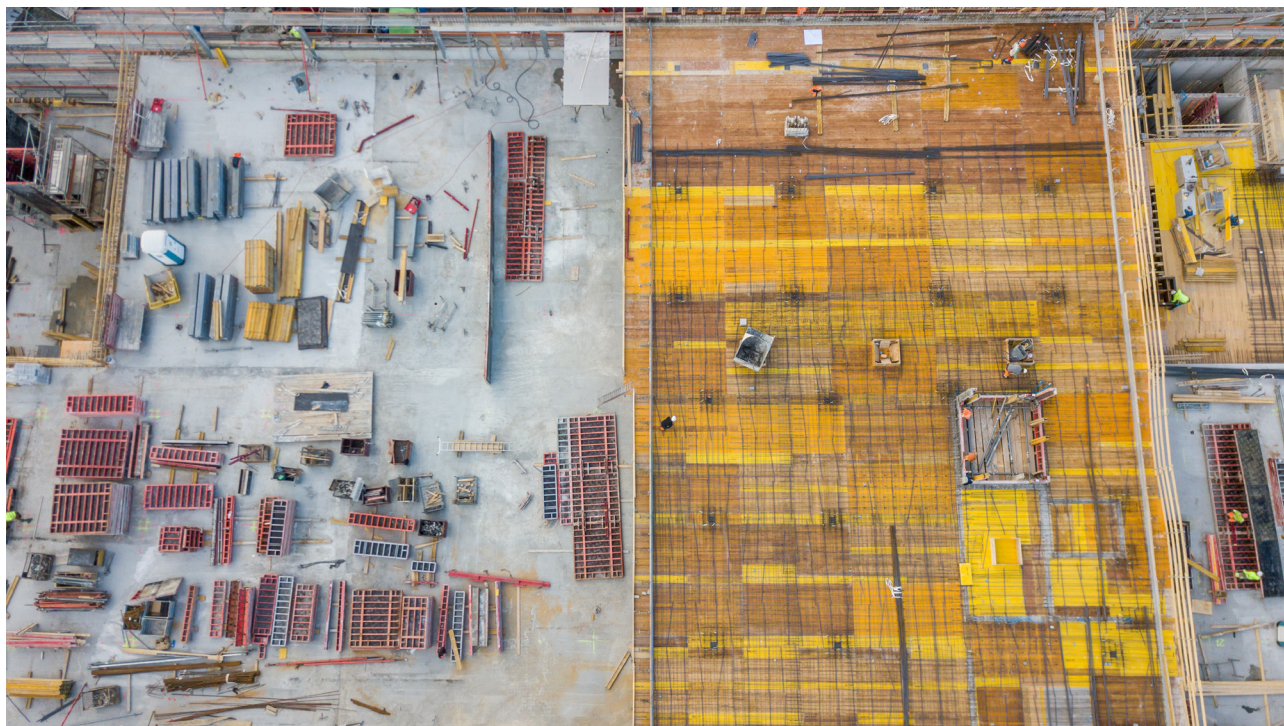
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# Law project promotes climate-aligned contracts

CONSTRUCTION JOURNAL

First published 9 August 2022



**A legal initiative is drafting open-access clauses to make progress towards net-zero carbon at the contractual level**

By Josh van den Dries

Organisations worldwide have set net-zero targets and climate commitments. However, there is often a disconnect between net-zero mandates and guidance for procurement and construction.

Achieving net zero will require a collaborative and strategic approach, with early engagement and a whole-life-cycle perspective – and contract clauses can help.

## Clauses set contracts up for climate

The [Chancery Lane Project](#) (TCLP) is a rapidly expanding initiative of lawyers, construction industry experts and sustainability professionals working to rewire contracts to combat the climate crisis. It envisages a world where every contract helps to tackle climate change.

With the support of 2,500 participants from more than 320 organisations, including many of the leading global law firms, TCLP has drafted more than 115 free, open-access clauses that can be inserted into contracts immediately.

These clauses, along with TCLP's glossary of climate-related terms and net-zero toolkit, give construction professionals and their lawyers practical tools to contribute to meeting net-zero and emissions reductions targets.

TCLP has more than 30 [buildings and land clauses](#) covering property, construction, environment and planning practice areas. It also has more than 25 [supply chain](#) clauses and ten [universal clauses](#) relevant to the construction industry.

These clauses can be added directly to a contract or tailored to meet your specific requirements. Each of the clauses is given a child's name, to remind users of the generation who will be most affected by the climate crisis.

Foot Anstey construction team managing associate Suriya Edwards says: 'As I was the lead coordinator on Madhavi's Clause, which focuses on off-site construction, I got to use my daughter's middle name, which means "Earth". I am looking forward to seeing practitioners use this clause and many others in the future.'

Tables 1–3 detail some of TCLP's most popular construction clauses.

Achieving net zero will require a collaborative and strategic approach, with early engagement and a whole-life-cycle perspective



**Table 1: Tristan's clause**

<b>What it does</b>	Creating a formal carbon budget for construction projects, <a href="#">Tristan's Clause</a> encourages decarbonisation through procurement of more sustainable materials. A liquidated damages provision, whereby contractors pay for every tonne by which the project exceeds the carbon budget agreed by the contractor and employer, gives an incentive to contractors to stick to that budget.
<b>Associated contract</b>	JCT Design and Build Contract (Schedules of Amendments or Special Conditions).
<b>How it works</b>	Typical construction contracts offer incentives to developers and contractors to procure the most cost-effective construction materials, regardless of the associated levels of embodied carbon. By encouraging more sustainable procurement practices in design and build contracts, Tristan's Clause cuts down on these emissions. For an explanation of the clause and tips for getting it into your contracts, listen to series one, episode two of TCLP's podcast <a href="#">Contracts for the Climate</a> .

**Table 2: Rose's clause**

<b>What it does</b>	<a href="#">Rose's Clause</a> builds climate change mitigation into the environmental and social standards for transactions conducted by development finance institutions (DFIs) and export credit agencies (ECAs). It makes public or private finance conditional on project companies or borrowers developing and adopting whole-life decarbonisation management plans, which are split into two phases: a greenhouse gas (GHG) emissions management plan for the construction phase, and another for the operations phase.
<b>Associated contract</b>	DFI or ECA finance transaction documents.
<b>How it works</b>	While standard DFI and ECA transaction documents commit to promoting environmental and social standards, they and the projects they support can lag when it comes to decarbonisation or climate change safeguards. Rose's Clause creates a market-standard framework for including decarbonisation provisions in such standard documentation, addressing climate change risks and giving incentives for whole-life decarbonisation of assets. <a href="#">Series one, episode three</a> of the Contracts for the Climate podcast gives an explanation of the clause and advice for integrating it into contracts.

**Table 3: Izzy's clause**

<b>What it does</b>	<a href="#">Izzy's Clause</a> provides a benchmarking mechanism so employers can assess the climate footprint of contractors or suppliers and compare it with the market. This mechanism is only triggered if the contractors or suppliers do not meet the forecast assessment of emissions submitted as part of their tenders.
<b>Associated contract</b>	Supply agreements in a competitive tender process.
<b>How it works</b>	Existing clauses in the market may require prospective contractors or suppliers to report on and improve their climate impact. However, these rarely if ever include a mechanism for the employer to consider contractors' or suppliers' footprints against the market, which would improve the ambition and competitiveness of such clauses in terms of reducing emissions. Izzy's Clause does provide such a mechanism, enabling employers to select the contractor or supplier with the lowest climate impact. Listen to <a href="#">series one, episode five</a> of Contracts for the Climate for an explanation of the clause and tips for including it in contracts.

## Climate clauses offer speed and flexibility

In contrast to legislation, contracts can be changed quickly, implemented immediately and enforced using standard tools. Many of the contractual mechanisms commonly used in the construction industry today to ensure the right pricing, specifications and standards can be repurposed to meet ambitious sustainability targets as well.

The flexibility of contract clauses means they can be used to ratchet ambition up over time, allow improvements in line with market innovations, and prevent parties from being locked into highly emitting long-term relationships.

TCLP's clauses include a range of drafting options to enable the parties' climate ambition to be increased over time. The bespoke nature of contracts means that companies can encourage their stakeholders to help realise their climate goals by making them part of their specific contractual relationship.

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When it is time to refinance, organisations able to show that they have such requirements written into their contracts will be in a better position to secure green projects or corporate financing, and mitigate the risks of climate litigation.

Jamie Olsen Ferreira, a knowledge lawyer in construction at TLT, comments: 'Climate-aligned contract clauses can help businesses to ensure they are playing their part in the collective effort to address climate change and meet the UK's net-zero target. They can also help businesses achieve their own sustainability goals; and might even be necessary to secure project funding from certain debt or equity funders as a condition of a loan or investment.'

'There are various examples of how this can work in practice in the construction industry – for example, requiring parties to use sustainable materials, or ensuring that the contractor uses energy-efficient or low-emission working practices on a project. This could be by way of a specific clause or, perhaps more suitably, in the work specification or employer's requirements.'

'This may result in an increase in the overall cost of the project, particularly if the chosen contractor does not yet adopt these methods as a matter of course. But it's important to look at the whole picture, including the potential for long-term savings and other benefits.'

### Programme contracts follow TCLP precedent

The Environment Agency (EA) [Thames Estuary Asset Management 2100 programme](#) (TEAM2100) is an integrated flood risk management team, and the agency has looked to TCLP for precedents for its sustainability clauses.

Due to the use of heavy construction materials, flood management accounts for more than 50% of the EA's carbon footprint, and more than 75% of this comes from its supply chain.

The bespoke nature of contracts means that companies can encourage their stakeholders to help realise their climate goals by making them part of their specific contractual relationship



Inspired by circular economic precedents such as [Alex's](#) and [Aatmay's](#) clauses, TEAM2100 now requires that its contractors use a certain amount of materials certified as sustainable, using standards such as Cradle to Cradle, and meet wider sustainability objectives, including carbon reduction.

TEAM2100's intent was to use clauses that demonstrated adoption of ambitious sustainability targets, including among other things its carbon footprint. Achieving these targets means bringing its supply chain along with it.

The EA proposed the use of sustainability clauses when renewing a long-term contract, and by engaging early with the other parties it was able to have constructive dialogue about the need for such clauses, which were then smoothly adopted.

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## New project urges climate clause adoption

In January, TCLP and the philanthropic [Laudes Foundation](#) launched an initiative to promote adoption of climate clauses at scale across the UK and Europe's construction industry.

As part of this project, it has formed a multidisciplinary advisory committee that brings together practitioner experience in project and property financing, construction, property management, risk assessment and technical design. The committee advises TCLP's built environment team on strategic decisions, technical law and commercial practice.

The committee includes representatives from Arup, BRE Group, Fenwick Elliot LLP, Field Energy, Foot Anstey LLP, Gowling WLG, JLL, Landmark Information Group, Mason Hayes & Curran LLP, Thomson Reuters' Practical Law and TLT LLP.

These representatives have collected feedback on how their organisations have used climate clauses, and advised on the potential for effective climate contracting.

To enable and support practical climate contracting, the team has run events for construction companies and their lawyers to explore the risks and opportunities of

using climate clauses in the built environment. TCLP has presented such opportunities to a number of initiatives, including the UK government's Construction Community, the British Council for Offices and the World Green Building Council.

With the EA, TCLP recently submitted a detailed, joint response to NEC's consultation on its new [X29 secondary option](#) to encourage carbon reduction, which has been drafted for use with construction and engineering projects worldwide. TCLP is contributing to further guidance to ensure that drafters include or address climate-aligned metrics in their contracts.

In the coming months, TCLP will also publish dedicated built environment resources, including a dedicated web page, clause use guidance and case studies, so that construction practitioners can quickly access the content most relevant to them.

## What can construction lawyers do?

- Sign up to TCLP's [newsletter](#) for fortnightly updates on the project.
- Watch TCLP [video](#) Introducing Climate Clauses to find out more about the project.
- Explore the clauses on TCLP's [website](#). You can search for key terms and sort by practice area and industry sector to find those most relevant.
- If you are using or negotiating climate provisions in your construction contracts, [get in touch](#) with me to provide feedback and inspire others in your industry to use the clauses.
- Ask your legal teams and contract managers to review TCLP's free resources for ready-made decarbonisation measures in your construction contracts. For guidance, they can attend TCLP events and one-to-one clinics.

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By Catriona Bradyn

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## Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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