

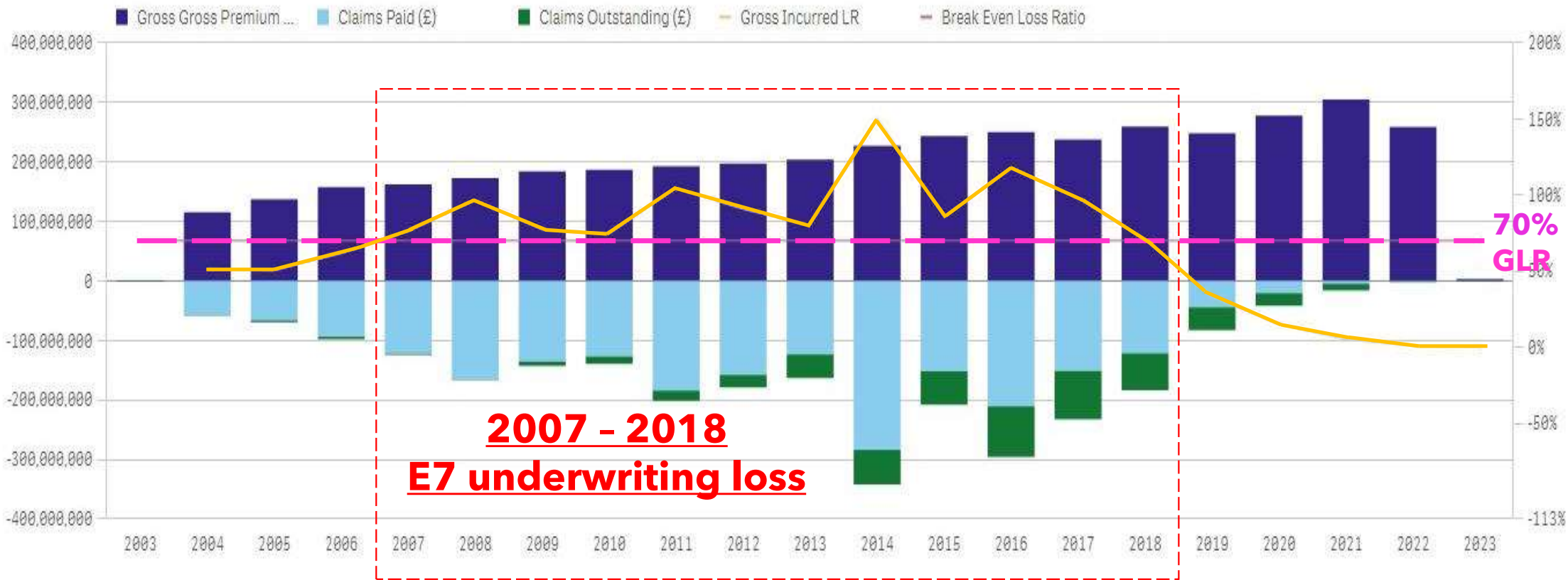
# An IUA PIF Construction Journey

99 problems and...cladding and fire safety is more than one



# The cost of poor construction quality to the Lloyd's market

*"We won't tolerate loss-making syndicates," states Lloyd's chief Patrick Tiernan*



# The cost of poor construction quality and errors to the industry

*The million-dollar question is in fact a £21bn problem*

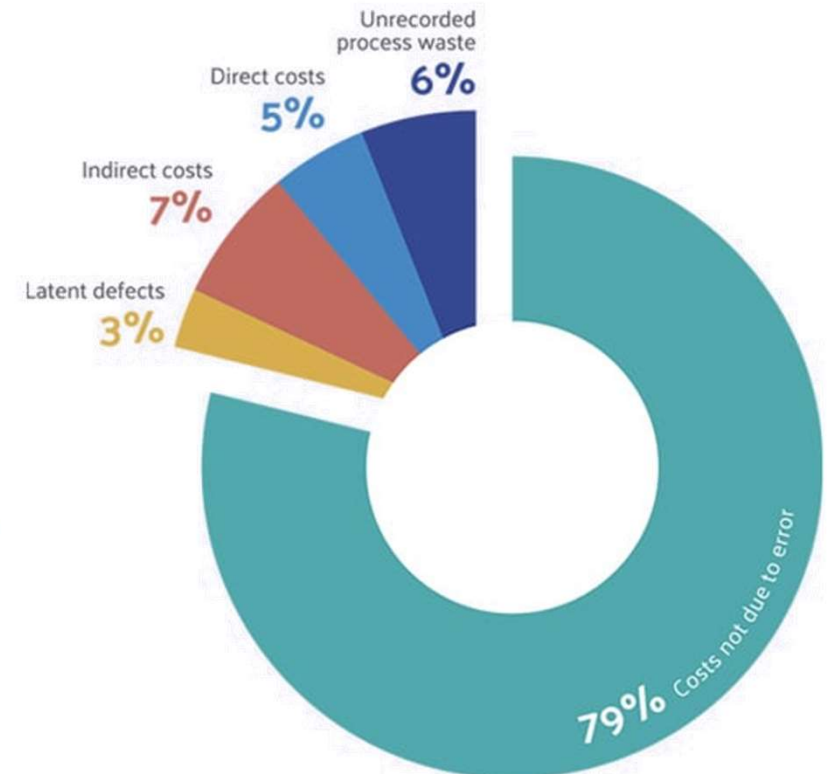
- UK construction: £100bn construction output in the UK. 7% of UK GDP. Employs 2.1m people
- Construction rework is the industry's *single biggest client*; 21% of all output.

• Cost of error is made up of four elements:

1. *Direct costs - the extra costs to put it right*
2. *Indirect costs - costs associated with investigating the error*
3. *Unrecorded process waste - unrecorded and concealed errors*
4. *Latent defects - errors that only arise post completion*



- Average construction industry profit margins are ~3%.
- Annual spend on error is ~7 times the total industry profits.



## Construction suffering more insolvencies than any other sector

# IUA Construction Model Underwriting Tools

*Maintaining the market with a proportionate approach*

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- ❑ Cladding and Fire Safety Exclusion Clause (IUA 04-22)
  
- ❑ Cladding and Fire Safety Limited Exclusion and Aggregation Clause (IUA 04-023)
  
- ❑ BS Fund Cladding & Fire Safety Limited Exclusion and Aggregation clause (IUA 04-024)
  
- ❑ Model Design and Construction PII Proposal Form
  
- ❑ Working on a question set with Surety Group to consider Financial Resilience

## IUA Cladding and Fire Safety clauses

*IUA 04-022 (exclusion) and IUA 04-023 (limited exclusion & aggregation)*

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- Published November 2021 (slightly amending initial September 2021 versions)
- Derived from feedback from members and clients to develop a common approach to cladding and fire safety terminology and coverage
- Reflects the drive to improve standards via regulatory reform
- Exclusion reflects that some insurers remain unwilling to provide FS and cladding related cover
- Limited exclusion provides FS&C cover:
  - limited to direct losses arising from FS and cladding
  - aggregated
  - consequential losses excluded

# Building Safety Fund clause

## BS Fund Cladding & Fire Safety Limited Exclusion and Aggregation clause (IUA 04-024)

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- Developed with DLUHC and insurers to provide a framework for remediation work completed through the BS Fund
- Uses the broad framework of the previous IUA FS&C clauses – continuity and certainty
- Includes specific risk management provisions to improve insurer confidence in providing cover

*e.g. appointment of a clerk of works; design inspections; use of specified materials; use of a recognised Quality Management System in place such as ISO9001; use of good practice loss prevention works; site specific Risk Assessments and Method Statements (RAMS)*

- Required amendments to the BS Fund rules
- Discussed with stakeholders in advance (e.g. brokers / RICS)
- Feedback has been broadly positive – presented to CLC
- Not a panacea – it provides a framework only – a bad risk is still a bad risk!

### Building Safety Fund Cladding and Fire Safety Limited Exclusion and Aggregation Clause

Notwithstanding anything contained in this policy to the contrary, the following terms shall apply to **Cladding Claims** and **Fire Safety Claims** arising from all works fully funded by the Building Safety Fund.

1. Insurers' liability in respect of **Cladding Claims** and **Fire Safety Claims** arising from all works fully funded by the Building Safety Fund is limited to any actual direct loss, cost, expense or defence costs incurred by the Insured in rectifying any part of the works where such losses, costs, expenses or defence costs are incurred as a direct result of any negligent act, negligent error or negligent omission in the conduct by or on behalf of the Insured in the provision of professional services as defined in the policy. All other losses, costs, expenses or defence costs directly or indirectly caused by, contributed to by, or arising out of **Cladding Claims** and **Fire Safety Claims** are excluded.
2. The Insured must, as a condition to any right to indemnity or payment under this policy, be able to demonstrate all of the following:
  - a) The appointment of a clerk of works, who are a chartered member of the Royal Institution of Chartered Surveyors (RICS) or a member of the Institute of Clerk of Works and Construction Inspectorate (ICWCI) with experience of fire safety in high-rise residential buildings, by the employer but independent of the employer's design team to oversee all work funded by the Building Safety Fund.
  - b) The delivery inspections of the project at key milestones as defined within the Grant Funding Agreement have been undertaken by a chartered member of the Royal Institute of British

*"Our priority is making sure people's homes are safe and that industry standards are high. Alongside our tough new regulatory regime, this new clause will help us do just that. **We welcome the work of the IUA and the underwriters who are taking a proportionate approach to fire safety cover**"*

Private & Confidential

*(Greg Clarke, Levelling Up Secretary)*

# The Building Safety Act 2022 – IUA member views

## Cause for optimism?

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- Strongly supported in principle but the devil will be implementation
- Ongoing concern over 30-year liability applied retrospectively (DPA 1972 amendment), Developer Pledge and other retrospective remedies
- Secondary legislation – understandable but slows the pace of change.
- Medium / long-term effect – no quick fix for insurers

Medium-Term 3-5 years – new legislative and regulatory framework; clarity on standards & competence; encourage industry culture change

Long-Term 5-10 years – embedded regulatory framework, evidenced industry approach of quality over costs

- Legacy issues for insurers remain and continue to unravel (and become more complex)
- Focus on ACM cladding and HRRBs but industry ambition beyond and proportionality are key
- BSR: A welcome development, assuming it is suitably staffed, funded and empowered...

**Insurers cannot effectively police or regulate the industry through policy terms – uncertainty and lax oversight inhibits commercial appetite**



# Changing Construction Industry Culture and Insurance Industry collaboration

**Dame Judith Hackitt** (10 January 2022)

*"...it is disappointing that we still cannot report a critical mass or groundswell of action across industry to suggest there is significant momentum on culture change. We still see an industry that, at best, is in compliance mode rather than a leadership mode."*

- **Industry Initiatives - Building a Safer Future, Get It Right Initiative etc.**
- **Competence - complex and needs to filter through to day-to-day practice**



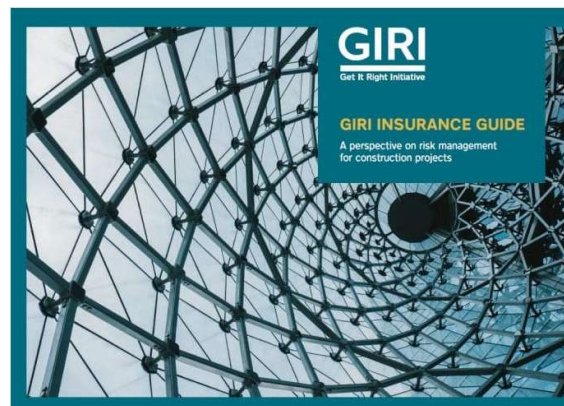
**IUA**  
INDEPENDENT UNDERWRITING ASSOCIATION LONDON

**31 January 2024**

Time: 3PM TO 5PM

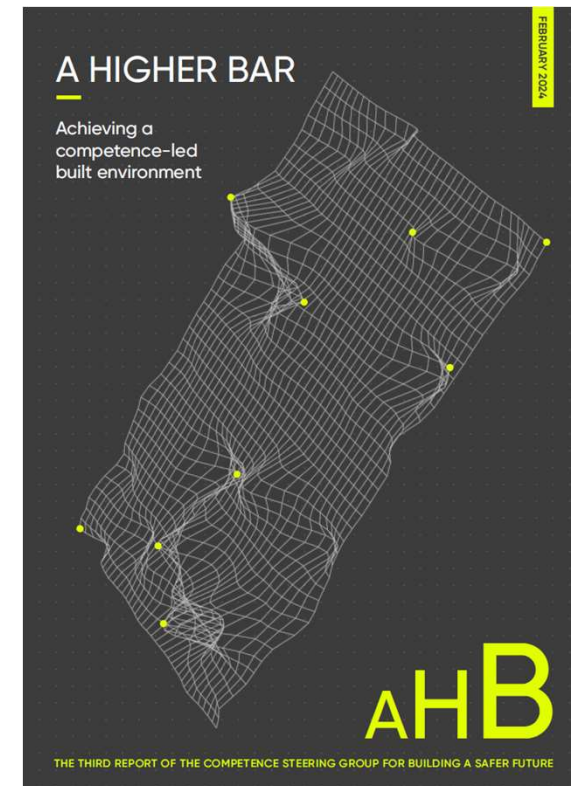
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@IUAofLONDON

**IUA In-Person Event**  
An IUA PIF Construction Working Group,  
PIF, PLCC and PLUG  
**"Competence in the Construction Sector"**  
with guest speakers  
**Graham Watts**  
(Chief Executive, Construction Industry Council)  
**Colin Coxon**  
(Fire Safety Unit, Home Office)  
**Daniel Barrowcliffe**  
(Policy Lead, Industry Competence, Building Safety Programme, HSE)  
**Steven Kaye**  
(Simmons & Simmons)  
Event Moderated by: **Chris Jones**  
(Director of Legal & Market Services, IUA)



**GIRI**  
Get It Right Initiative

**GIRI INSURANCE GUIDE**  
A perspective on risk management  
for construction projects



**A HIGHER BAR**

Achieving a competence-led built environment

FEBRUARY 2024

**AHB**

THE THIRD REPORT OF THE COMPETENCE STEERING GROUP FOR BUILDING A SAFER FUTURE



# Does poor quality construction need to be an inevitability?

*No, but it's hard to achieve in the current system*

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## Construction is complex and unpredictable

- Every project is specifically designed and produced to suit its environment
- Huge number of physical and relationship interfaces
- Low profit and economic uncertainty leads to radical steps to survive, i.e. inferior products or techniques
- Times of low demand = incessant erosion of profit margin
- Times of high demand = further disorganisation and reduction in control

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## Construction is a fragmented system

- A huge and diverse range of consultants and tradesmen
- There is too much separation between the client, designers and the contractor
- Fragmentation can lead to non-standardised processes and undesirable outcomes
- Competence is patchy; professional and non-professional
- Fragmentation is more difficult to control
- A fragmented system will always be more adversarial

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## Culture and building regulations

- Passing the buck, assigning blame and passing risks associated with quality down the supply chain
- Responsibilities unclear
- Government strategic plans are making it worse: faster development; lower costs etc.
- Building regulations have been unclear and subject to gamesmanship
- Lack of independent supervision and inspection
- Value engineering out project costs to make money results in an industry that is cost not value focussed

**Construction is a complex system but the opportunity to get it right begins with the client and procurement**

## For sleepless nights, some bedtime reading

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