

# CMS Insurance Sector Group webinar programme

## Construction | Building Safety & Construction Insurance

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# Your speakers today



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# What we will cover

**01** Overview

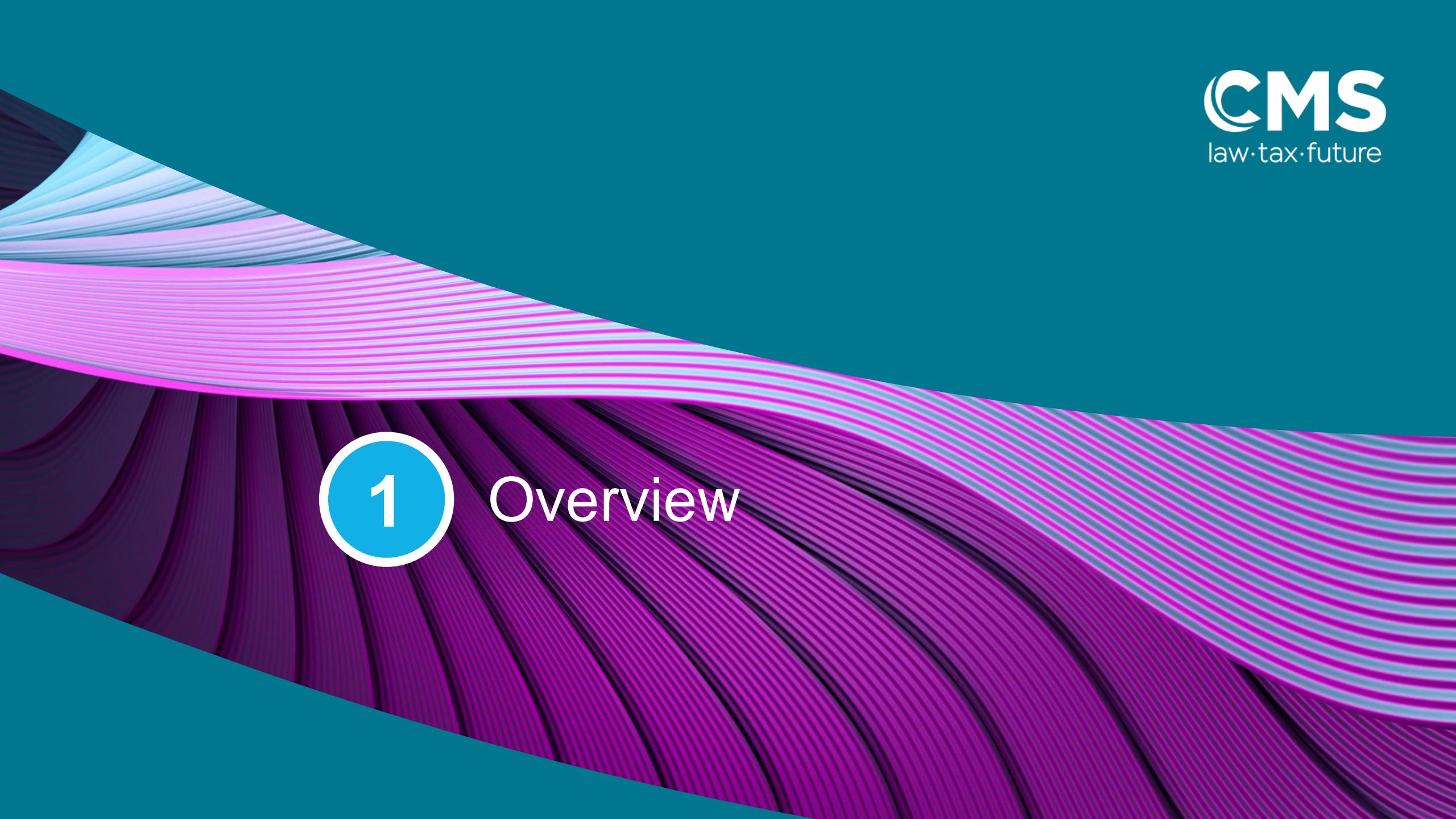
**02** UK

**03** Italy

**04** The Netherlands

**05** Spain

**06** Take away points



# 1 Overview

# Overview

- **UK:** Grenfell Tower and its impact in England & Wales
- **Italy:** The impact of Grenfell on Italian construction law
- **The Netherlands:** Industry impacts following the gallery collapse
- **Spain:** A legal framework for construction projects that works

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UK

# UK: Grenfell Tower Fire & wider discoveries

- Investigations revealed a systemic problem with competency, understanding and practices across the construction industry
  - Inconsistencies in interpreting/understanding Building Regulations
  - Inadequate processes – design changes not verified, designs “adopted” from other projects, overlapping obligations
  - Limited input from fire engineers
  - Workmanship errors
  - Poor records issues (inaccurate drawings, no record of products used)
- Wider issues than external cladding

# UK: Regulation - Wholesale industry change

## The Building Safety Act 2022

- New Building Safety Regulator and Construction Products Regulator
- Two-tier system; heightened requirements for higher-risk buildings
- Oversight and criminal offences
- Competency and procurement
- Records and documentation
- Product information
- Retrospective changes to limitation periods and new rights of action

## The 5-year journey

- Panel of expert independent advisors/testing regime
- Independent review of building regulation and fire safety
- Building Regulation/statutory guidance changes
- Technical guidance notes for building owners
- Housing market intervention
- Government Building Safety Funds
- Private sector interaction

# UK: The insurance + claims impact

## Grenfell Tower and wider discoveries

- PI Claims
  - Broadening of parties, issues, buildings
  - Insolvencies
  - Expert availability
  - Slow progress of remedial schemes
- PI Coverage
  - Expanding exclusions
  - Rising premia
  - Larger excess/deductibles

## Changing regulatory landscape

- Changes to market participants
- Unknown exposure to new causes of action/forms of loss
- Close attention to legislative development/preparation by Insureds

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Italy

# Italy: The impact of the Grenfell Tower fire on Italian regulation

- The Technical Guide on fire safety requirements for facades in civil buildings over 12 meters in height
- The Fire Prevention Technical Rule for Facades of Civil Buildings after the Moro Tower fire
- The Vertical Fire Prevention Technical Rule for civil buildings higher than 24 meters
- Insufficiency of Italian regulations compared with UK regulations

# Italy: The impact of the Morandi bridge collapse and earthquakes on Italian regulation

- The so-called Genoa Decree introduced new monitoring systems to ensure the safety of road, highway and rail infrastructure
- The "Guidelines for Risk Classification and Management, Safety Assessment and Monitoring of Existing Bridges" defined for the first time in a unified manner how to monitor the structural condition of bridges and viaducts, overpasses and similar works
- The "Technical Standards for Construction" (NTC) improved provisions related to earthquake damage prevention

# Italy: Insurance and claims impact

- the increase of litigation in building contracts, both public and private, has also had an impact on insurance aspects
  - CAR policy both for public and private building contracts
  - Obligation for the constructor to take out the ten-year policy pursuant to Art. 1669 of the Civil Code
  - Obligation for the constructor to take out the Construction Bond



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# The Netherlands

# NL: Friesland gallery flat & wider discoveries

- Collapse gallery ‘Antillenflat’ on 23 May 2011
  - Part of the 9<sup>th</sup> floor gallery broke down and fell through floors below
  - Flat built in 1965
- Media coverage, several investigations
- Combination of construction error, workmanship and corrosion
- But also: systemic problem with certain gallery flats, mainly built in 1950-1970

# NL: Protocols, rules and regulation

## First protocol – 2012

- 5 Step plan
- Measures
  - Remedial works
  - Reduction of load
  - Closed
- Many galleries closed

## Second protocol – 2014

- Clarifications, amendments and additions

## Duty to investigate – Jan 2016

- New powers Minister in Dutch Housing Act 2015
- Request municipalities to Minister
- Duty to investigate for building owners of certain gallery flats
- Deadline: 1 July 2017
- Not for all gallery flats and buildings with cantilevered floors

# NL: The insurance + claims impact

## Legal impact

- Controlling bodies: municipalities
- Responsibility Building owner
  - Housing associations
  - Natural persons
  - Significant investigation and remedial costs
- Balconies? Collapse 2021
- Periodic test of building safety?

## Insurance

- PI
- CAR
- Building insurance

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Spain

# Spain: Regulation - Law 38/1999 dated 5 November 1999, on building regulations (“LOE”)

- Before LOE, Spanish civil Code regulated architect and contractor liability
- LOE introduces exhaustive definitions for building agents:
  - Promoter
  - Project designer
  - Developer
  - Project manager
  - Development manager
  - Building quality control entities and laboratories
  - Product providers
  - Owners
  - Users

# Spain: Regulation - Law 38/1999 dated 5 November 1999, on building regulations (“LOE”)

- New liability regimes for building agents (apart from contractual obligations)
- Owners and buyers may claim
  - During 10 years, material damages for faults or defects that may affect structural elements and those that may compromise the mechanical strength and stability of the building.
  - During 3 years, material damages for faults or defects that may affect construction elements or installations resulting in non-compliance with the habitability requirements.
  - During 1 year, the developer for material damages for faults or defects that may completion materials or work finish.

# Spain: Regulation - Law 38/1999 dated 5 November 1999, on building regulations (“LOE”)

Insurance policies to cover the liability regime of construction agents

- Damages or surety insurance policy to cover 1 year liability (completion materials or work finish).
- Damages or surety insurance policy to cover 3 years liability (construction elements)
- Damages or surety insurance policy to cover 10 years liability (structural elements).  
“*Seguro decenal*” – Compulsory.

# Spain: Regulation – Damages vs professional liability

- Who is the policyholder?
- Who can claim?
- Coverages?
- Temporal Coverage
- Other differences.

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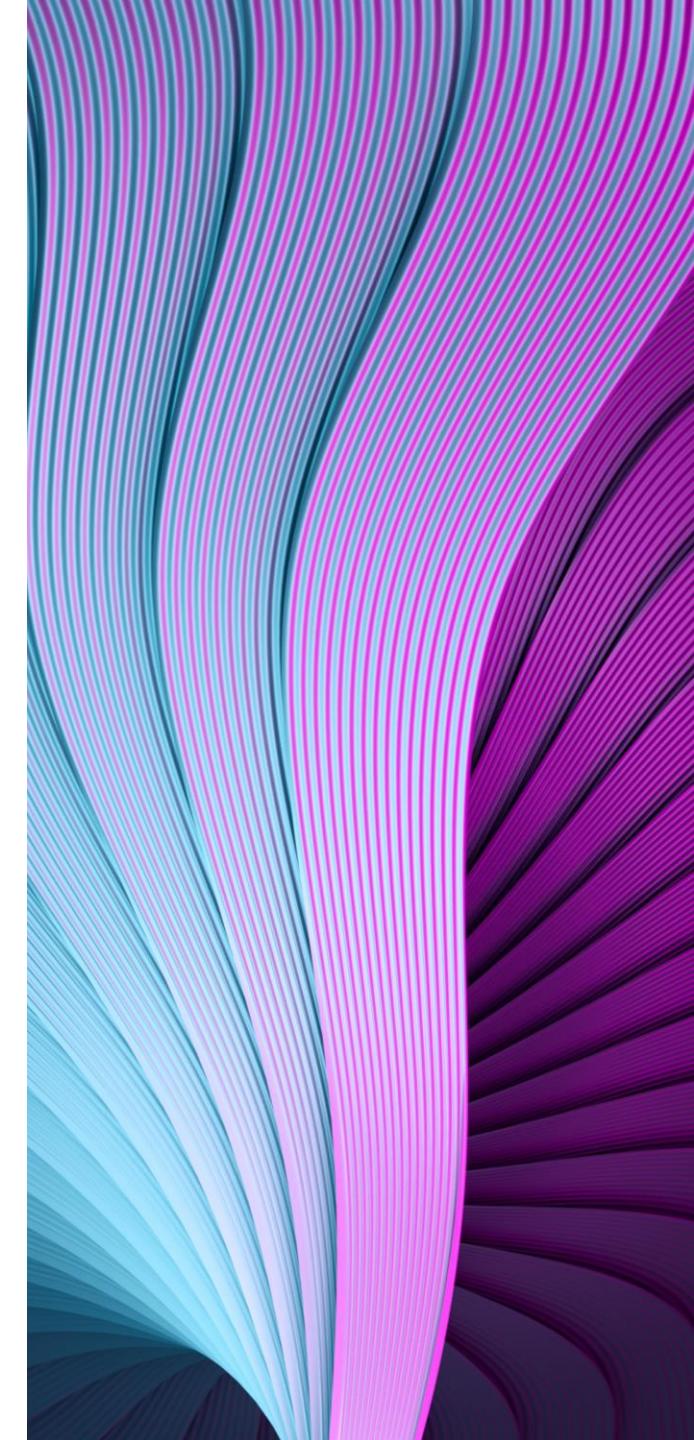
Take away points

# Take away points

- Design error or workmanship?
- Interpretation of Building Regulations
- Who pays for the remedial works?
- Direct right of action against Insurers
- Contracts and (compulsory) insurance policies

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