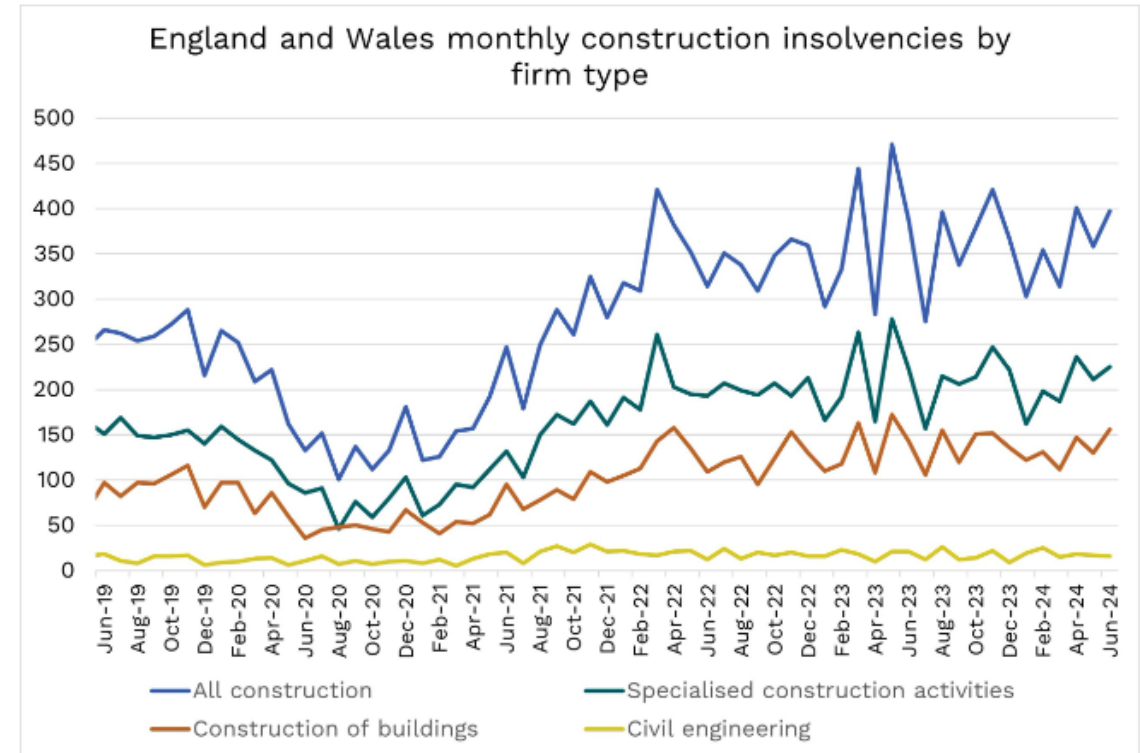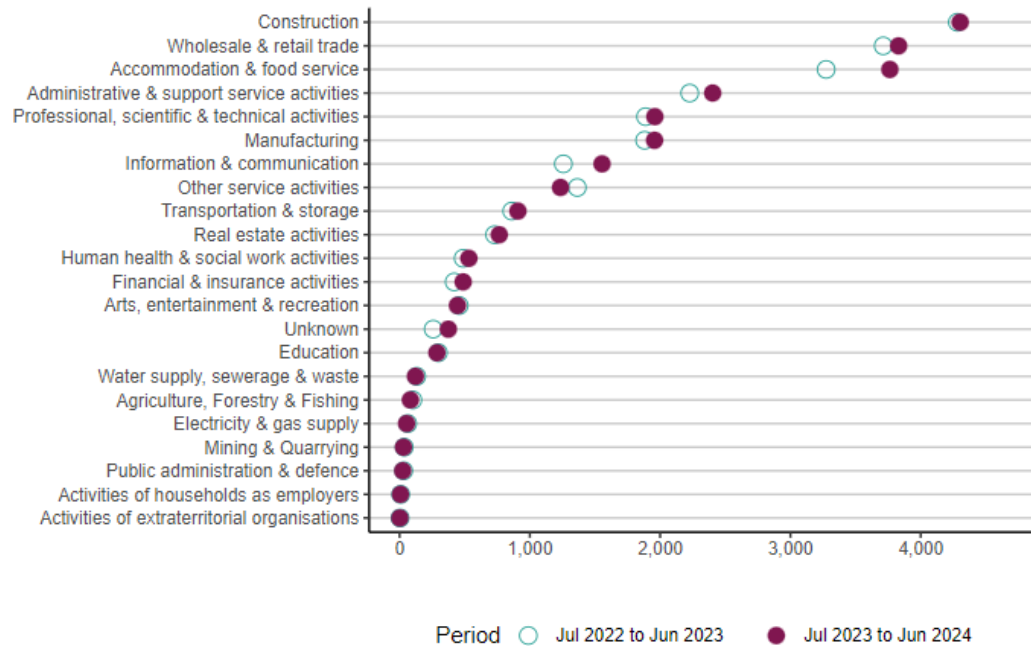# PANEL 2: INSOLVENCY – CONSTRUCTION IS EXPERIENCING THE HIGHEST NUMBER OF INSOLVENCIES IN YEARS; HOW CAN THE RISKS AND CHALLENGES BE NAVIGATED?

STATISTICS OF INSOLVENCIES INVOLVING CONSTRUCTION

Company insolvency by industry, England and Wales, July 2023 to June 2024 compared with July 2022 to June 2023
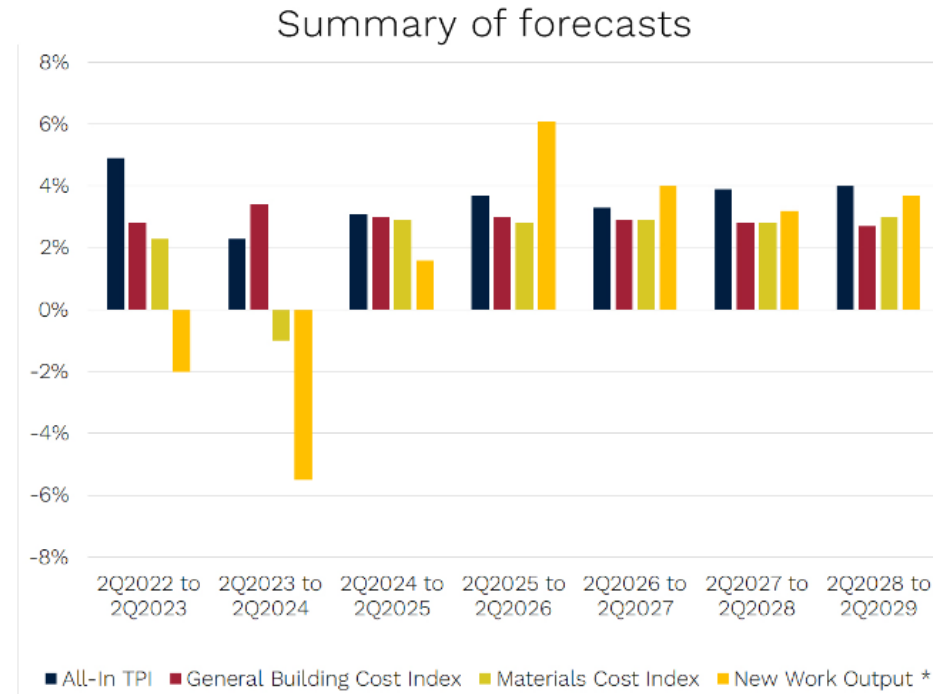

Period ○ Jul 2022 to Jun 2023 ● Jul 2023 to Jun 2024

Sources: Insolvency Service (compulsory liquidations only); Companies House (all other insolvency procedures)

Source: The Insolvency Service

BROADER INDUSTRY OUTLOOK FOR CONSTRUCTION COMPANIES

Summary of forecasts

Summary of forecasts

Source: BCIS, ONS

* BCIS forecast of new work output at constant 2019 prices

WARNING SIGNS OF INSOLVENCY

- <u>Red flags</u>: Qualitative. About credit intelligence. A judgment call.

- <u>A key red flag</u>: Delayed payment or non-payment. Renegotiation of terms.

- <u>Other red flags</u>: Invoicing issues, supplier issues, direct requests from 3rd parties.

- <u>Other red flags</u>: Internal turmoil, external turmoil.

- <u>Red flags</u>: Always fact-specific. Keep communication lines open.

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TOOLS TO MANAGE RISKS AND CHALLENGES

- Due Diligence

- Contractual Rights

- Termination

- Corporate and Insolvency Governance Act 2020 - *26 June 2020*

INSOLVENCY AND CONTRACTUAL RIGHTS IN CONSTRUCTION CONTRACTS – JCT

- Updated Insolvency Definition – Clause 8.1

- Practical effect for Employers and Contractors – Clause 8.5 and 8.10

POST−INSOLVENCY RISK TO DIRECTORS OF CONSTRUCTION COMPANIES

- Common causes of action against directors post-insolvency:
  - Section 212 IA 1986 (Misfeasance)
  - Section 213 IA 1986 (Fraudulent trading)
  - Section 214 IA 1986 (Wrongful trading)
  - Section 238 IA 1986 (Transactions at an undervalue)
  - Section 239 IA 1986 (Preferences)
  - CDDA 1986 (Director disqualification)

- <u>Spotlight</u>: Fraudulent trading
- <u>Spotlight</u>: Wrongful trading
- <u>Spotlight</u>: Preferences

CASE LAW UPDATE

- *Peabody Trust v National Housing-Building Council* [2024] EWHC 2063 (TCC)