

SOURCES OF CONFLICT AND DISPUTE AS IMPEDIMENTS TO SUSTAINABILITY OF CONSTRUCTION RELATIONSHIPS

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ABSTRACT

Relationships are practically perceived as new forms of assets within the construction industry. Many relational approaches such as partnering and alliancing have been promoted advocating a more sustainable procurement culture. However maintaining and sustaining good quality relationships as the essence of these relational approaches has been marginalized by the notion of standardization and methodologies such as partnering and alliancing. The key issue is how to achieve sustainable relationships in construction, consequently understanding impediments to sustainability of construction relationships becomes increasingly essential. Conflicts and disputes are normally associated with negative impacts on relationships which may last momentarily or for longer periods of time, making their sources possible impediments to relationships sustainment. In this study these sources are identified and classified in three broad groups of project uncertainty, contract and process, and people and behavioural related issues. It is argued that although the aforementioned sources may be the prime triggers for conflict or claims, yet conflict escalation into dispute and finally impeding relationship sustainability is more associated with conflict and claim handling approaches. A framework is introduced to identify and analyse the sources of conflict and dispute in order to both decide on the most appropriate handling method and also to identify possible sources inhibiting sustainability of relationships. This framework is based on the argument that in order for a claim to be accepted in good spirit evidence, reasoning and contract provisions are required.

Keywords: Sustainable Procurement, Relationship quality, Conflict, Dispute

INTRODUCTION

There is great emphasis on benefits of good quality relationships and sustainability of working relationships in construction activities. Sustainability in the built environment by and large incorporates practices such as extraction of materials, manufacturing of products, assembly of products into buildings, maintenance and replacement of systems, the ultimate disposition of waste, building systems and the building structure (Blismas, et al. 2005; Jelodar, et al. 2013). However sustainability should be assured for all construction processes, for instance sustainability of procurements and working relationships. In general the emphasis should be on sustainability of all construction aspects which may help avoiding major problems. Specially problems such as fragmentation, adversarial nature, knowledge and information flow as well as other mainstream issues related to construction (Jelodar, Yiu, & Wilkinson, 2013).

Sustainability of a relationship could be the ability of a relationship in being retained positively over a longer periods of time and during the course of different construction projects. Sustainable relationship can help the parties involved set up a continuous connection allowing for better cognition of each other in addition to a more smooth and efficient flow of information. The fact that a party is in a sustainable relationship with the other party indicates that there is perhaps more collaboration, trust and commitment which could be extremely valuable to the outcome of the project at hand or future projects. Good quality relationships are perceived as assets, reducing a lot of problems and even costs associated directly and indirectly to these problems. In fact the preservation of existing relationships if performed appropriately will produce value in terms of quality, time and even cost implications of projects.

BACKGROUND OF RELATIONSHIP QUALITY IN CONSTRUCTION

Relationship quality to some extent has been conceptualized and classified by Jelodar & Yiu (2012b). They have argued relationship quality as a high order construct can be introduced to construction projects in order to provide an assessment ground for the working relationship status. For this purpose a framework was suggested that defined the notion relationship quality interwoven with different triggering, antecedent and moderation layers. Jelodar, et al. (2013) suggested that conflict and dispute events can be systematically related to relationship quality, in addition conflict and dispute triggers and management can all play the role of subsystems for relationship quality. This perspective helps the comprehension that relationships are process related, and may strengthen or deteriorate over time through the evolution of certain elements, processes or subsystems involved. It is highly important to understand how relationships deteriorate, fail, or improve in this systematic outlook. Therefore this systematic approach was used to determine the failure modes and fault tree of relationship quality as part of systems reliability assessment ultimately identifying the most probable

causes for failure in relationships (Jelodar, et al. 2013). Most of the causes for relationship deterioration are seen within the root causes of conflict and dispute which evolves through a consequent turn of events and influence the relationship quality of parties involved in construction projects. Based on this idea a monitoring tool was suggested that entails a timeline of simple events that trigger conflict and dispute in construction (Jelodar & Yiu, 2012a). It is vital to understand the nature of these causes which can negatively influence the quality of relationships and ultimately serve as an obstacle to sustainability of construction relationships.

CONFLICT AND DISPUTE ESCALATION AND MANAGEMENT

Conflict has a negative burden and may have antagonistic effects on relationships, when one talks about conflicts the mind will immediately associate negative outcomes and aspects to it. Manifested conflict being the outward behaviour exhibited by individuals (Pondy, 1967) is perceived to affect the quality of relationships between the parties involved in a conflict incident and even Chaudhuri (1997, 1998) suggests that conflict is a negative indicator of relationship quality as greater risks are the consequence of greater negative effects. It is stated that in every relationship certain levels of conflict exists (Mallen, 1963). Conflict can be functional and dysfunctional, therefore managing conflict in both forms is of extreme importance because it can support the development of sustainable long term relationships (Toms, 2004).

In construction research all claims are not considered to be just negative events, some claims are even thought to be necessary for better evolution of design and construction processes, accordingly conflict shift to conceptual design and early phases of the construction is thought to be beneficial which can contribute to a better well-structured design and conceptualization of work procedures (Kumaraswamy, 1997b); suggesting the timing associated with conflict and the manifestation of conflict triggers is extremely important to the relationship outcome. The actual problem is escalation of conflicts which can turn into disputes provoking irrational behaviour sourcing form personalization of conflict and high emotional engagement. This irrationality and high emotional state between the parties may negatively influence their working relationships (Harmon, 2001). Bristow & Vasilopoulos (1995) stated ignoring or delaying the resolution of conflicts can have serious implications for present and future relationships. In line with the current perception Cheung, et al. (2004) state that If a dispute is not resolved promptly, then it may escalate, and ultimately require litigation proceedings, which can be extremely costly for the parties concerned. Yiu and Cheung (2004) also confirmed the idea that if conflict and disputes occur, they can lead to the disruption of construction schedules, increased project costs, and even adversely influence relationships between project participants. This conceptualisation can portray simple outcomes and implications of conflict and dispute events on construction relationships, demonstrating dependency of relationship on the timing, nature and

handling of conflict and dispute events as illustrated in Figure1. Handling and management of conflict and dispute events involve a wide spectrum of actions and measures ranging from simple direct negotiations to mediation, arbitration, litigation, etc..., all of these approaches have certain and distinct effects on the outcomes of the projects and the on-going and future relationship of the parties involved.

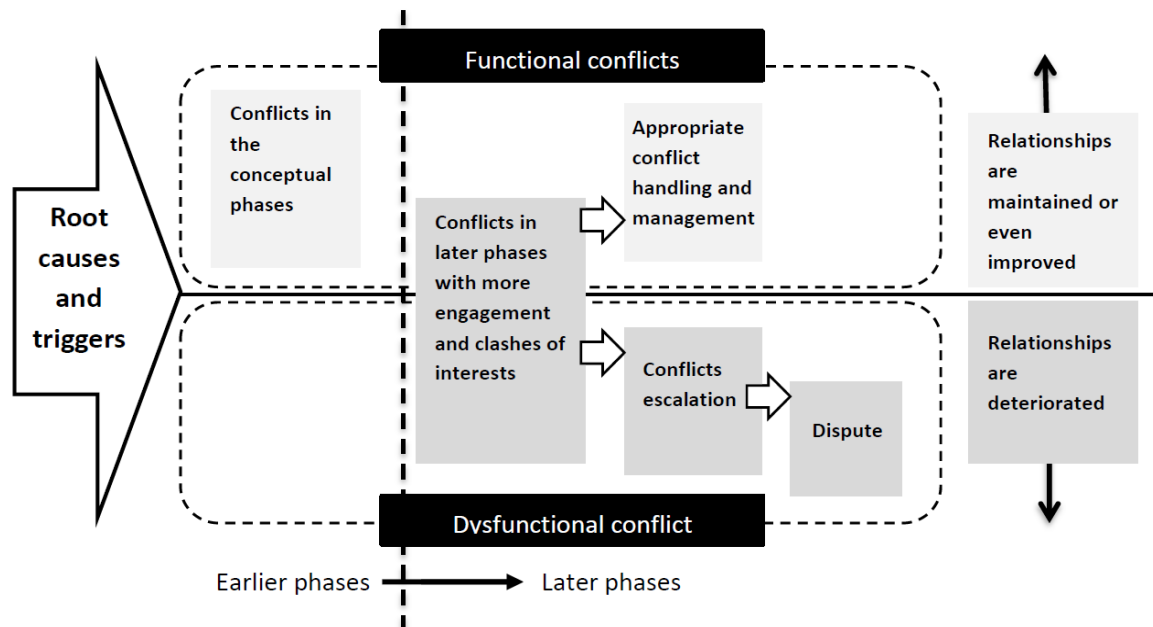


Figure1: conflict and dispute events and their implication on relationships

As illustrated in Figure 1 If the conflict of interest among different participants is escalated, it can be proven costly in specially cases were ultimately heavy litigation is employed as a result imposing disastrous effects on the overall project outcomes. It has to be mentioned that the construction industry is quite vulnerable to adversarial conflict and dispute handling methods, in consolidation with this the Litigation Trends Survey Findings (Fulbright & Jaworski, 2006) states that construction firms worldwide spend close to 31 million US dollars annually on litigation: the second highest expenditure by type of industry. Nevertheless effective management and control of construction conflict and dispute can be beneficial and in many cases have positive effect on relationship quality of the parties involved.

Seemingly the emergence of conflict and dispute could be also regarded as a subproject system which may have direct effects on the outcome of the main project such as party's performance and also attributes which may go beyond the project life cycle for example trust, satisfaction and commitment of the project participants. Ultimately the effected attributes will define and record the changes of relationship quality between construction participants. Although the handling and management of conflict and dispute is highly important and extremely influential to the final outcome and sustaining relationships, they should only be employed in full cognition of conflict and disputes events, their nature and perhaps

most importantly their sources. The identification and classifications of sources and root-causes which can directly or indirectly trigger conflicts or disputes is key, because ultimately they can influence the relationship status of construction parties. The current study is dedicated to investigate the nature and constructs of sources for conflict and dispute because of their profound influence on of construction relationships quality and sustainability.

COMMON TRIGGERS OF CONFLICT AND DISPUTE

Detection and categorizing the root causes will enable the identification of avoidable root causes of claims and disputes assisting the mitigation of dispute causes (Kumaraswamy, 1997b) reducing the damage, time and cost needed for correction. The sources of conflict and disputes have been assessed by a number of researchers each proposing different classifications however a close look at their classification will bring patterns of similarities and shared concepts to light. A lot of studies have considered disputes as the consequence of unresolved conflicts and claims, therefore these research works have suggested that conflicts, claims and disputes arise from common sources and causes (Diekmann & Nelson, 1985; Heath, Hills, & Berry, 1994; Hewitt, Ernst, & Young, 1991; Kumaraswamy, 1997a; Semple, Hartman, & Jergeas, 1994; Watts & Scrivener, 1993). However based on these studies three main classes certain trends and identified which are elaborated as follows:

Project uncertainty; are the general causes of change beyond the expectation of the parties involved in construction projects (CII, 1995; Diekmann & Nelson, 1985). Williamson (1979) has regarded uncertainty as one of the main contributing factors to contractual problems and disputes. Yate (Yates, 1998) considered inclement weather conditions and Waldron (2006) was concerned that site conditions and availability of resources which are associated with different levels of uncertainty as the possible causes of disputes.

Process and contractual problems, which includes imperfect contracts and unrealistic performance expectations, this could also encompass design errors which can lead to complexity ambiguities and malfunctions in documentations and processes. Due to extensive, elongated and complex documentation of construction contracts disagreements or dispute seems highly probable regarding contracting obligations and expectations, in addition when a contracting party's perception is that the other party is not meeting contractual obligations or expectations they will claim for their losses in terms of time and cost which may also trigger disputes (Semple et al., 1994). Yate (1998) pinpointed that the main types of construction dispute arising from the contract document. Totterdill (1991) perceives that technical, legal, and managerial dispute issues must have a contractual reference. It is believed that bounded rationality or contract incompleteness will assist opportunistic behaviour which can develop into disputes (Williamson, 1975).

People and behavioural issues; are generally due to poor communication, poor interpersonal skills, opportunistic behaviour and cognitive dissonance. Bristow & Vasilopoulos (1995) and Sykes (1996) have also stressed concerned over personality issues and advised that disputes are due to unrealistic expectation, lack of team spirit and misunderstandings.

Other management literature and theories also strengthen the same perception. A close look at Williamson’s (1979) framework of market failure about the combination “environmental” and “behavioural” factors and their association with contractual problems is shown in Figure 2 this framework was first elaborated and applied in construction by (Mitropoulos & Howell, 2001). The visualisation and connection of such framework with construction is relatively straightforward. Construction projects are normally associated with high levels of uncertainty and complexity which is almost impossible to foresee every contingency (bounded rationality). Consequently problems that are not clearly conditioned in the contract may ascend (contractual problems). After the start of a construction project it is that owners and contractors ability to change to other contractors or owners respectively is very limited and highly unlikely (small numbers), this limitation and inability to change the contracting party’s can trigger opportunistic behaviours in a party to take advantage of the other party’s limitations. Therefore it can be said that the combination of project uncertainty, contractual problems and opportunistic behaviour can cause problems and disputes in construction projects and activities (Mitropoulos & Howell, 2001).



Figure 2: Williamson’s (1979) framework of market failure(Mitropoulos & Howell, 2001)

As evident a combination of different causes will probably result in conflict or dispute incidents in other words in a case of conflict and dispute it is hard to say just one factor has caused such a problem it is most probable that dispute causes are interwoven and could not be isolated or controlled (Kumaraswamy, 1997a). Mitropoulos & Howell (2001)also advocated that there was not one overriding factor as the critical cause of the dispute, but a combination of key factors, a combination of causes will probably justify most conflict or dispute.

CAUSES OF CONFLICTS AND POSSIBLE CLAIMS

Rarely research has been directed to study the implications of triggers and causes of conflict from the working relationship perspective. There is

a strong consensus that when conflicts emerge to the surface and claims are launched, it is the claim process that defines the fate of the conflict (Kumaraswamy, 1997b), suggesting if claims are accepted based on strong, reasoning and contractual provisions then the potential future dispute could be avoided, basically all disputes must have some sort of contractual reference for recognition (Totterdill, 1991). However an important question is that; how does the elements of; evidence, reasoning and contractual provisions available for each claim or conflict situation effect relationships in the construction projects?

THE GENERAL ANALYSIS OF CONFLICT AND CLAIMS SOURCES

Claims if not handled appropriately may be triggers to adverse dispute resolution methods which by all means can affect the relationship quality of the parties. It becomes apparent that management and strategies in dealing with claims has a profound impact on the sustainability of relationships and the whole procurement endeavour. A step before applying certain management tactic or strategy would probably be to identify the actual sources of conflict and the following claim made, this key information is required for analysing the claim status, reasoning and evidence which are accomplished by some sort of provision in the contract. Three general sources for conflicts, claims and disputes have been identified. These sources will not often occur on their own, the claim maybe a mixture of these sources and it is important to understand where each claim will stand in terms of its root cause formation and source structure. It can be hypothesised that each claim initially has proportions of all the three general source domains of project uncertainties, contract and processes, and people and behaviour issues. In addition each two causes can be compared consecutively and analysed to provide a better understanding of the claim causation structure. Figure 3 shows the interaction of all elements needed for determination of relationship quality status.

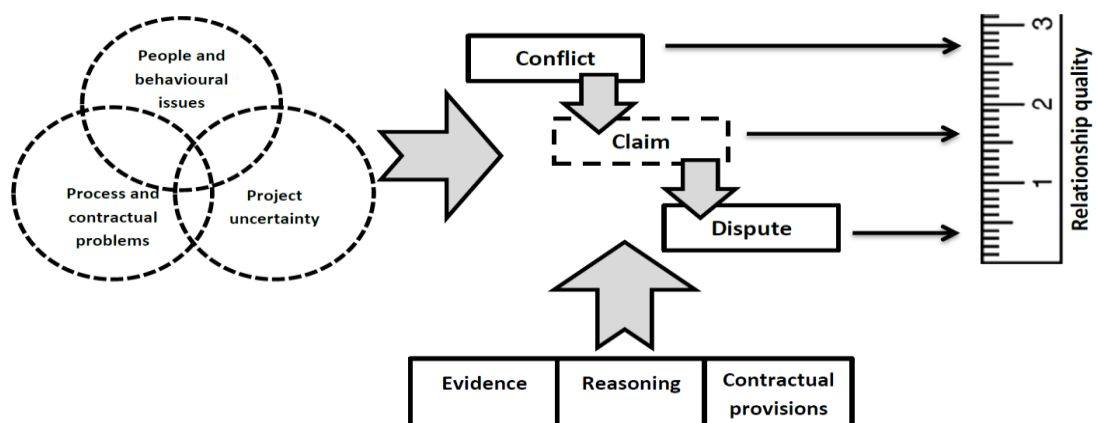


Figure 3: relationship quality status in a conflict situation

For instance a manifested conflict is tested to determine if it is originating in the general source groups of project uncertainties or contract and processes. If the dominant cause is project uncertainty related with

contract and process related issues having very little impact on the formation of the claim, then a separate analysis between project uncertainty related causes and people and behaviour issues should be made. There is always another possibility in the absence of the aforementioned sources implying that the cause of claim could be people and behaviour issues. This seems to be an unlikely cause of claims in a lot of construction conflicts and disputes since there are not enough provisions seen in the construction contracts for these sources. On the other hand people and behaviour issues can be extremely problematic, deriving the existing conflicts into elevated levels and possibly further infuriating disputes and deteriorating the relationships involved.

Project uncertainty related sources need to be assessed against people and behaviour related issues in some stage as well, especially if project uncertainty sources are identified as one of the key sources of conflict or claim in the previous stage. The dominant source of conflict and claim is either project uncertainty or people and behaviour or even both which in this case makes the situation more complex. There is a strong chance that provisions exist for project uncertainty related issues but on the other hand the presence of provisions for people and behaviour issues seems to be unclear considering if they exist in the first place. If the contractual provisions for people and behaviour issues are weak then there is a chance of opportunistic behaviour to take advantage of the other causes of conflict and dispute. In this case project uncertainty related causes can be taken advantage of because of this opportunistic environment leading to relationship malfunction. When none of the above mentioned causes are the reason behind the conflict or claim then there is a chance that contract and processes related sources are the prime cause of claims. In these circumstances if a good case is built with proper evidence, reasoning and the likely availability of contract provisions there is the claim is expected to be accepted in good spirit, thus the future relationship of the parties is retained in an appropriate manner. If the dominant cause is found to be people and behaviour issues, the possibility of more adverse relationships seems to be stronger. This is basically because contract provisions are unlikely to be sufficient for these causes and even if provisions are available they are most probably very unclear in correspondence with behavioural issues. Similar to comparing project uncertainty sources, the contract and processes related sources can also be compared with the people and behaviour causes of conflict and dispute.

CONCLUSION

There are vast amounts of literature available on the causation of conflict and dispute; these causes have either been quoted individually or categorised based on their logical relevance to one another. The current study has identified three categories of project uncertainty, contract and process related and also people and behaviour issues for common sources or root-causes of conflicts, claims and disputes. It is important to

understand that although these identified root-causes may be the early triggers to conflict and dispute, they are not the ultimate triggers of adverse dispute resolution approaches such as litigation or arbitration which can affect relationships in construction projects. What perhaps can be regarded as the ultimate triggers of these drastic measures are the opportunism and initial handling of the conflict or dispute situations. In fact often what causes decline in relationship quality is the mismanagement and mishandling of conflict and claims when they emerge. On the other hand contract provisions and contingencies are also a vital determinant of conflict and dispute management thus their implication, availability, or unavailability can act either as a mean of relationship retention or even as impediments to sustainable relationships.

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