

COLLABORATIVE BUSINESS RELATIONSHIPS: A MEANS TO AN END OF CONSTRUCTION DISPUTES OR FUEL FOR THE FIRE?

A. Agapiou and Z. Chen

Department, of Architecture, University of Strathclyde, James Weir Building, Glasgow, G1 1XJ, Scotland

Email: andrew.agapiou@strath.ac.uk

Abstract: Collaboration under BS11000 provides an opportunity for clients, designers, contractors and other parties to construction projects to come together from a very early stage and form relationships in advance of any actual physical work being carried out on site. With the introduction of a standard for collaborative business relationships which defines the processes, this paper aims to investigate how contractual relationships can be supported by building a collaborative working relationship underpinned by BS11000 and, if, by building these relationships, disputes that would traditionally arise out of construction contracts can be resolved between the parties before they become a dispute or whether the parties to a construction contract are lulled into a false sense of security where they are more relaxed in the relationship, failing to take due cognisance of the terms and conditions of the contract until a dispute has crystallised and they find that the required supporting information is not available. The findings of the investigation indicate that for collaborative relationships to be successful under the BS11000 standard, the Relationship Management Plan (RMP) plays a significant role in the process of preventing issues crystallising into disputes if properly implemented.

Keywords: BS11000, Collaboration, Disputes, Review

1. INTRODUCTION

Since the publication of the Latham Report (1994) and the Egan Report (1996) collaborative working relationships have been in and out of vogue in the construction industry. In the period 2000 to 2005 there was a marked increase in the implementation of information and communication technologies (ICT). The introduction of ICT enabled collaborative working to form part of the construction industry's everyday practices. Collaboration was established as being key to improving the industry in the Latham Report. However, throughout the recent recession, the industry resorted to "jungle warfare" with suicidal tendering practices. Very quickly after the start of the recession in 2007, many organisations reverted back to their previous practices, setting aside all that they had learnt after from the Latham Report (Gardiner, 2014). The construction industry has a history steeped in disputes which often arise as a result of the parties interpreting matters contained in the contracts differently. Collaboration under BS11000 provides an opportunity for clients, designers, contractors and other parties to construction projects to come together from a very early stage and form relationships in advance of any actual physical work being carried out on site. Where disputes do arise, it is all too often the case that the relationships have become so broken down that the only hope of concluding a dispute is to enter into dispute resolution methods such as mediation, adjudication, arbitration or litigation. Each can be costly and it can take time to resolve the dispute and, although adjudication in particular is promoted as being a speedy method of dispute resolution, it has to be more beneficial for organisations to work together to try and prevent differences becoming a crystallised dispute. In order to establish the potential benefit of a collaborative working relationship it is critical to consider common construction disputes and how BS11000 could be adopted to reduce the number of differences reaching a dispute which two parties cannot resolve between them.

Consideration also needs to be given as to whether it is sufficient for parties to agree to work collaboratively or if it is essential that the contract underpins the basic principles of BS11000. The paper is divided into three sections: The first part provides a brief insight into collaborative business relationships; encompassing the basis, aims and objectives of BS11000. The second section focuses on whether it is the nature of the construction industry that leads to the industry being highly litigious or whether it is the mannerisms and attitudes of the key players in the industry that fuel the disputes. The final section draws together the most common disputes and the basic principles of BS11000 to consider whether the benefits of working collaboratively introduce the possibility of utilising BS11000 to help prevent differences becoming crystallised disputes.

2. COLLABORATIVE WORKING RELATIONSHIPS AND BS11000

There have been a great number of studies carried out over the years in relation to collaborative working. However, it is clear from the research that has been carried out that there is no one single agreed definition of collaboration. Some writers use the terms “partnering” and “alliance” as being synonymous with collaboration, often using the terms interchangeably. The collaborative process seeks to bring together parties to a construction project together at the earliest possible point in the process with a view to building an open and honest relationship as the works progress. BS11000 is the first standard to be produced for collaborative working and introduces itself as having the aim of providing a strategic framework to establish and improve collaborative relationships in organisations of all sizes, addressing the requirements for collaborative relationship to ensure they are effective, optimised and deliver enhanced benefit to the stakeholders.

2.1. Principles of BS11000

In essence, BS11000 creates an alternative business model that promotes the sharing of knowledge, skills and resources in order to meet mutually-defined objectives and helps bring new levels of value creation whilst aiming to help create an environment of trust that supports the delivery of joint improvements. BS11000 recognises that the spectrum of organisations that may choose to implement it is vast and it has not been written with the intention of establishing a “one-size fits all” solution to the building of collaborative relationships but instead it is intended to be a consistent framework that can be applied to organisations and collaborative relationships of all sizes. The standard is based on an eight stage framework. The eight stages are grouped into 3 phases: strategic, engagement and management.

Awareness

The first stage of the framework is awareness. During this stage organisations must review their overall strategic corporate policy and processes. By raising awareness of these policies and processes the organisation can establish how collaborative relationships will be able to add value to their business. In order to successfully implement collaborative business relationships, the BS11000 framework highlights the requirement to appoint a Senior Executive Responsible (SER) to have responsibility for the development and implementation of the organisation’s collaborative business relationships and the processes involved with this. Under the framework, the SER is responsible for the organisation’s collaborative business relationship policy and defining the scope of the organisation’s collaborative working management system.

Knowledge

Once the initiating organisation has created awareness of the benefits of collaborative relationships and how this can be implemented to add value to the organisation, the next stage of the framework is identified as the knowledge stage, during which the initiating organisation is required to develop their strategy and business approach for the collaborative opportunities that have been identified. The framework outlines the need for the development of a specific business strategy which can be used to evaluate and document each new collaborative opportunity, determining specific objectives and key drivers. During the knowledge phase, organisations should address competencies of their individuals and the roles that they perform, identifying their skills and training requirements. The final stage within the strategic phase is the Internal Assessment stage. This stage requires the organisation to assess their readiness to implement collaborative business relationships and gain an understanding of their internal capabilities in order that they can define their expectations of external parties. Once the first three stages have been undertaken the framework progresses to the engagement phase and stage 4 focuses on the partner selection stage. During stage 4 the initiating organisation sets out the process that they will undertake in order to identify and select their collaborative partners. Initiating organisations nominate their potential collaborative partners then evaluate each one using their defined process and their predetermined selection criteria. Once due process has been followed, collaborative partners can then be chosen and the Relationship Management Plan updated to reflect this. Once the collaborative partners have been identified the fifth stage of the process begins. During this stage the focus moves from purely the initiating organisation to a more joint approach between the initiating organisation and the collaborative partners putting onus on each of the parties to accept the collaborative responsibility for managing an integrated process. The final phase of the engagement stage is in relation to value creation, focusing the initiating organisation and their collaborative partners to ensure that the works or services have enhanced value through the implementation of the collaborative business relationship.

Management

The final two phases in the standard are grouped in to the management stage. This stage looks at how the parties work together to ensure that the relationship stays together and how the parties leave the relationship once the deliverables have been met. Staying together is considered in phase 7 while the exit strategy is governed by phase 8. Phase 7 looks at the ongoing management, monitoring and measurement of the collaborative relationship encouraging parties to be aware of the collaborative processes that are to be maintained while the works or services progress whilst looking for innovative ways to achieve the deliverables and create value within the relationship.

3. CONSTRUCTION DISPUTES – NATURE OR NURTURE?

It has been said that the adversarial nature of the construction industry has created a hostile and litigious environment (Bishop et al, 2010) where disputes are common place. There are numerous studies that support this assertion however; there is also a growing number of studies that promote more positive business relationships, highlighting an acceptance that there is a need for change within the industry. Over the last few years, Arcadis have undertaken an annual study of the types of disputes arising out of construction contracts to establish an understanding of the construction industry both geographically and globally. In their Global Construction Disputes Report 2015 (Arcadis, 2015) they conclude that, in 2014, the 5 most common causes of construction disputes in the UK were:

1. A failure to properly administer the contract
2. Employer, contractor or subcontractor failing to understand and/or comply with its contractual obligations
3. Poorly drafted or incomplete and unsubstantiated claims
4. Conflicting party interests (subcontractor / main contractor / employer or Joint Venture partner)
5. Incomplete design information or Employer Requirements (for Design and Build)

In order to establish if the implementation of collaborative business relationships can have a positive impact in preventing construction disputes, it is beneficial to have an understanding of why construction disputes arise, whether the nature of the industry means that disputes are always going to be there requiring input from third parties to resolve or whether differences of opinion crystallise into a dispute because that's historically the mind-set that develops in those working in the industry, passed down through the generations.

3.1 The nature argument

Akintan and Morledge (2013) brought together research to conclude that traditional procurement is the dominant procurement form in the UK construction industry and has been since the industrial revolution in the nineteenth century. The RICS draft guidance note advises that the traditional approach is perhaps still popular with those in the construction industry because it is something that they are familiar with as opposed to because it is fit for purpose, listing some advantages and disadvantages of its use (RICS, 2015). There is no shortage of case law covering all manner of disputes in relation to construction projects. That, coupled with the numerous research papers that refer to the construction industry as “fragmented”, give the impression that it is the nature of the industry that leads many contracts down the dispute route. In a study by Kale and Arditi (2001) it is suggested that it is the quality of the relationship between the contractor and the subcontractor that affects the contractor's ability to perform on projects. Akintan and Morledge (2013) also suggest that the current construction industry is so specialised that there is no one organisation that can provide all of the specialisms required therefore there is a dependence by the main contractor on the smaller, specialist subcontractors to deliver their contracted works. By taking these two facts together it can be concluded that it is essential for these two parties to form a strong working relationship for the project to be measured as a success. A similar view is taken by Batt and Purchase (2004). They suggest that performance is dependent on activities and performance of others and therefore the quality of the relationship impacts on this. Black *et al* (1999) report that there are 4 main perceived failings of traditional adversarial relationships: exploitation is common; specifications are rigid decisions are made with limited knowledge and; there is a focus on the short term. Part of the logic behind collaborative relationships is that there is a focus on building lasting relationships that are driven by the promise of a future workload. However, Cox and Thompson (1997) draw comparison to the collaborative models in the manufacturing industry and note their limited use in construction based on their opinion that, in the construction industry, repetition is rare and works are typically procured on a one-off basis. They also consider the fact that traditionally, relationships in the construction industry have been conducted from afar, where contracts are often awarded through competitive tender, procuring the lowest priced supplier, leading to adversarial relations and opportunistic behaviour. The construction industry is primarily driven by time and cost. All projects have a timeframe in which they are to be built and a budget that is determined often long before the project commences. Quite often it is the case that this focus on time and cost that can lead to disputes arising.

3.2 The nurture argument

The other argument is that it is not the nature of the industry that leads to disputes but more so the attitudes and expectations of those involved in the industry that lead to such a high number of disputes arising in the industry. It is possible that, as it is evident that there is a long history of disputes in the construction industry, the crystallising and defending of the dispute is passed down through the generations that often success is measured on one's ability to "win" in a claim situation. Barlow *et al* (1997) conclude that that partnering is not purely the implementation of a set of practices or techniques but its success is reliant on attitudes being changed along with behaviours. One of the key factors in preventing construction disputes is trust. Briscoe *et al* (2001) highlight that, in order for there to be significant improvements in the construction supply chain operation, there is a need for investment in new skills with an emphasis being placed on open relationships to reduce the distrust that is common within the industry. Interviews were undertaken during this study and the analysis of these interviews revealed that there were significant attitudinal barriers between the subcontractors and the main contractors. These barriers included a perception that main contractors took advantage of the weaker subcontractors and that these were unlikely to improve as "*the leopard could not change its spots*". Humphries *et al* (2003) draw on other research to conclude that, in the context of construction, working behaviour is often negatively affected by the fact that main contractors realised that by driving down the price of their subcontractors they are increasing their potential cost savings therefore it is common place for unfair practices to prevail with most relationships still being dominated by the perceived power of the participants. With this in mind, the atmosphere of suspicion that is founded on previous behaviour, has resulted in many companies being reluctant to work to build closer relationships with their adversaries (Moore *et al*, 1992). Another essential factor which can impact on the presence of disputes in the construction industry is co-operation. It is all very well when a company is vociferous in its support of working with the other players in a project and this process has support from senior management however, if there is a lack of willingness to co-operate at interpersonal or operational levels within the organisation then the entire process can be undermined (Bresnan and Marshall, 2002). Communication is also a key contributor to the crystallising of disputes. It is commonly understood that contractors are used to being secretive with their information (Wood *et al*, 2005).

3.3 The case law story

Where consultants are employed there is scope for disputes to arise. An example of this is in the case of *Costain v Charles Haswell* (*Costain v Charles Haswell & Partners* [2009] EWHC B25 (TCC)) whereby a claim was brought against Haswell in relation to damages for breach of contract and/or negligence, with Costain alleging that Haswell had produced a design that was defective and that they had incurred significant additional cost and delay to the works as a result. Although Costain came out of the case victorious, they were subject to criticism over an over-inflated claim and their conduct during the proceedings and both parties being criticised over their attitude to settling the dispute, both parties appear to have put self-interest before making a reasonable attempt to settle the dispute without litigation. Agreement of final account sums can result in dispute particularly where there are cost and time over-runs. These disputes often arise over the valuation and agreement of entitlement to variations. In the case of *St Austell v Dawnus* (*St. Austell Printing Co. Ltd v Dawnus Construction Holdings Ltd* [2015] EWHC 96 (TCC)) there were 115 variations disputed within the final account submission and the final account discussions were protracted and did not progress smoothly.

Matters were not helped by a change of contract administrator whose replacement was not openly accepted by the contractor. Issues also arise in agreeing entitlement to an Extension of Time when the works are completed after the agreed contract completion date. In construction, late delivery brings costs and it is often who bears the burden of these costs that lead to dispute, particularly where there are liquidated damages that can be applied. One of the major recent cases relating to this is *City Inn v Shepherd Construction* (*City Inn Ltd v Shepherd Construction Ltd* [2010] ScotCS CSIH_68) and the matter is also raised in the case of *Balfour Beatty v Shepherd Construction* (*Balfour Beatty Engineering Services (HY) Ltd v Shepherd Construction Ltd* [2009] EWHC 2218 TCC, 127 Con LR 110). Another factor that has the potential to impact on disputes is the complexity of the contractual arrangements. This is particularly so when contractors are passing on risk to the supply chain. There can be references made to main contract documents and provisions which can lead to disputes arising over the proper construction of the subcontract (*Bovis Lend Lease Ltd v Cofely Engineering Services* [2009] EWHC 1120). The complexity of the arrangement causing dispute is also highlighted in the case of *Hyder v Carillion* (*Hyder Consulting (UK) Ltd v Carillion Construction Ltd* [2011] EWHC 1810 (TCC)) where there was a mechanism in the contract for work being undertaken on a lump sum basis and time related charges for work not covered by the lump sum price. The main contract was based on a target cost and disputes arose over the build-up to the fee claimed by Hyder in relation to the target cost. Framework contracts are also not without their problems. In the case of *Amec v Thames Water* (*AMEC Group Ltd v Thames Water Utilities Ltd* [2010] EWHC 419 (TCC)) there was an encompassing framework agreement in place between the parties and a dispute arose over payment which resulted in a further dispute as to whether it was the terms of the works order or the framework agreement that were relevant to the payment issues.

4. COLLABORATIVE BUSINESS RELATIONSHIPS AND CONSTRUCTION DISPUTES

It has been widely discussed that the construction industry needs to move away from the fragmented process that is it historically renowned for, the fragmentation of the industry that is seen as the critical factor that results in its poor performance (Xue *et al*, 2010), and find a solution for reducing the amount of time and money that is expended through the crystallisation of disputes during the lifecycle of projects. Until the publication of BS11000, although there was much research carried out into collaborative working encompassing its various iterations, there was a gap in the knowledge base that may have prevented a more widespread acceptance of collaboration as a process in that the term collaboration was, in literary terms, used as an umbrella term (Hughes *et al*, 2012) and the actual collaborative process was not particularly well defined. Now that there is a British Standard in place to guide organisations through a defined process for implementing a collaborative business relationship, can collaboration be used as a tool to reduce construction disputes?

4.1 Common disputes and the collaborative solution

In an ideal world, collaboration would provide the mechanism to eradicate dispute altogether. However, in reality this is unlikely to ever be achieved. In a study undertaken by Ross (2009), it is concluded that conflicts will occur during a project and that a process that sets out conflict prevention and resolution is essential within the partnering process. By forming the Relationship Management Plan (RMP) as described in BS11000, organisations can agree at the

commencement of their relationship how these matters will be dealt with. BS11000 recommends that the RMP include a section that details the intervention process that includes issue resolution. This is further emphasised in Clause 9.7 which states that a defined procedure for issue resolution is to be implemented by the joint management team and that issues should be identified, addressed, and resolved at the earliest opportunity and at the optimum level with an escalation procedure that should only be invoked when it becomes absolutely necessary. In order for this to be successful, the senior management teams for the collaborative partners must give the necessary authority at the optimum level.

Dispute catalysis

In order to work to prevent disputes, or at least work to agree differences before they escalate into a full blown dispute, it is logical to first consider what circumstances are most likely to cause disputes. As stated by Hawkins (2013) there are 4 frequent basis of disputes: Market Changes; Processes; Communication and; the Breakdown of Trust.

Market changes

Hawkins defines market changes as a change to the demands of the market that the collaborative partners are working in. He suggests that changes in demand in the market may result in organisations reconsidering how they operate and redefining what is important to them. Following the recession that was prevalent through the late 2000's and into the early 2010's it was reported by Hughes *et al* (2012) that, due to the economic crisis, partnering saw diminishing support. This could have been the result of clients resorting to the traditional relationships that they were familiar and comfortable with, or it could have been the result of organisations either not having the resources to invest in the development of the process or that they were unwilling to invest the resources during the period of economic uncertainty. One of the major benefits of a collaborative relationship is that the relationships are built up over time and are strengthened by the promise of future work between the collaborative partners. Many projects in the construction industry are single in nature and it has been reported that partnering relationships can only form over the long term and therefore are unsuitable for single projects (Cox & Thomson, 1997). That is not to say that collaborative relationships cannot work on single projects. BS11000 advocates that effective collaboration will, over time, be able to create an environment that engenders trust between organisations. The inclusion of a joint exit strategy at the outset of the relationship which clearly defines how the relationship will be disengaged has the benefit of assisting in creating a culture of openness and honesty which recognises changing market dynamics over time. Clause 10 of BS11000 encourages the collaborative partners to consider future opportunities and be aware that the relationships that they build may be created, dissolved and rebuilt over time to their mutual benefit.

Processes

Every individual organisation will have its own policies and procedures which determine the ways in which tasks and processes are undertaken. Conflicts often arise in construction due to the different attitudes created as a result of the differing policies and procedures contracting organisations have. As has previously been discussed, stage 5 of BS11000 is where the collaborative partners establish the right environment to support their collaborative working environment. However, the need to implement a joint strategy for the relationships is not without its own set of problems. Conflicts can arise within a collaborative partnerships when individuals have a desire to continue working with the systems and processes with which they are familiar. Conflict can also arise when organisations have to implement processes that do not align with their internal procedures and they are put under pressure by their internal management to follow their own procedures as opposed to those of the collaborative

partnerships. In order for collaboration to provide a positive solution to the problem of conflicting processes, it is essential for the collaborative process to be supported by senior management. Support of senior management has been identified as being vital in making a collaborative approach both credible and legitimate (Bresnen & Marshall, 2000). In the study carried out by Bresnen and Marshall, it was concluded that in instances where collaborations received strong senior management support, it was often the case that there were considerable difficulties reported in the cascading of the concept down through the organisation and it then being translated into practice. This theory was supported by the research undertaken by Alderman and Ivory (2007). In order that collaborative working can facilitate a reduction in the number of disputes that arise over processes, it is required that parties agree a common vision and priorities for the collaboration (Shelbourn et al, 2007).

Communication

Communication is a key player in the success of any working relationship. However, if information is not passed on to the people or processes that need it or if it is shared in a restricted form, problems can occur (Hawkins 2013). There is a plethora of data which identifies that one of the key factors in disputes arising is a lack, or breakdown in, communication. A study carried out by Rahman, *et al* (2013) established that communication is one of the important facets of collaboration, as identified by the sample that they surveyed. Lambert and Cooper (2000) highlights that information sharing in the relationship between main contractors and sub-contractors will improve the performance of the project. It has been identified that, by effectively communicating throughout the supply chain, there can be a sharing of ideas and visions that can result in fewer misunderstandings (Cheng and Love, 2000). Furthermore, communication can be further enhanced by the implementation of 2-way communication as this can minimise misinterpretation (Chen and Chen, 2007). Not only is the sharing of information and the communication between the parties important but the timing of the communication is also important to the success of the collaboration. This requires direct lines of communication among all team members (Larson, 1995). Successful communication also relies on problems being highlighted as soon as they become apparent and solved by the relevant people at the lowest possible level. If only routine matters are communicated to all concerned and important issues are simply banded about between head office and site without proper interaction, partnering will fail (Moore *et al*, 2002).

Breakdown of trust

Another key factor that causes disputes in construction is trust. This can be either when one or both of the parties to the agreement fail to establish trust or where a trust that was once there is gone. It is often true that, once the trust in the relationship is gone, there is little that can be done to restore that faith between the parties and that, as a result of this, relationships become so fragmented that there is no going back. Trust is a multi-faceted, complex concept. Trust is opined as being dynamic in that it is either growing or diminishing (Hawke, 1994) and is set out by Hartman (2003) as having three bases within a construction context: competence trust; integrity trust and; intuitive trust. Historically, there is a lack of trust between parties in the construction industry. As a result of this fact it is little wonder that the implementation of collaborative working, where the emphasis is on trust and knowledge sharing, this new found desire to be open and honest is viewed by contractors with an air of scepticism. Trust is one of the main themes of BS11000 and the whole ethos of collaborative working is to be able to grow a long term relationship that is built on a mutual trust. BS11000 encourages its users to openly share information and work together to create a win-win solution to the problems that are encountered. It is important that the trust is cascaded down through all levels of the supply chain in order that the success of collaboration in preventing disputes can be maximised. The

success of collaborative relationships is based on trust from client level down through contractors to specialist contractor and subcontractor level.

4.2. Top 5 construction dispute areas and collaboration

Above, this research looked at the top 5 categories of construction disputes in 2014. It was noted that there has been little significant change in these categories over recent years and, generally, the UK construction industry's categories are comparable with the global construction market. It is accepted that there will always be differences of opinion throughout the life cycle of construction projects. How then do the principles of collaboration as defined by BS11000 seek to encourage a reduction in crystallised construction disputes?

Contract administration

The ethos of collaboration is not built on contractual provisions therefore BS11000 does not prescribe how to manage contractual relationships. Indeed, BS11000 leaves the decision on the requirement for a formal contractual agreement being implemented to be at the discretion of the collaborative partners. That said, by implementing the collaborative ethos within construction projects and openly and honestly sharing information and escalating issues as soon as they become apparent, there is scope for minimising dispute in this area. By making others aware of the issues, it is possible to resolve the matter constructively at the correct time and, by effectively communicating the issues, there is a clear communication trail and there are no nasty surprises for the other party. By adopting these principles, the administration of the contract should not be brought into question therefore reducing the number of disputes of this type.

Failure to understand contractual obligations

Part of the thinking towards collaborative relationships is that the consultants, contractors, subcontractors and specialist contractors are brought in to the discussion process much earlier than they would be under traditional construction contract. By implementing this process parties will become more aware of what is expected of them within the delivery process. By creating joint objectives and a joint relationship management plan, parties become familiar with their obligations much earlier than they would have traditionally. Part of the collaboration process under BS11000 focuses the attention of the organisations on the skills, competencies and abilities of their people. By establishing their requirements at an early stage in the partnering process, it is possible for the organisations to put the right people in the right positions within the relationship. Having the right people in the right positions allows the right questions to be asked at the right point in the process, resulting in more awareness of what is required of each party to the agreement. By working together to form joint goals and objectives, the collaborating organisations are building common understanding of their requirements which should potentially reduce the scope for uncertainty in contractual obligations.

Claims

Poorly drafted claims or claims that are unsubstantiated are frustrating for all parties. Often organisations will know that they have an entitlement for matters connected to their contract but often will not have the historical data in place to substantiate what they desire to obtain. In essence, the collaborative relationship framework seeks to minimise the number of differences culminating in a formal dispute. By encouraging good relationship management between the parties to the agreement and implementing a process for dispute resolution as early as possible in the process and at as low a level as is practical, collaboration seeks to have

differences resolved at the most practical level, minimising the impact and the costs associated with the process. Often, organisations identify the need to submit a claim much further down the line than is required of them under the contract conditions. The gathering of information and compilation of the facts is time-consuming and often costly. In order to maximise their return, organisations often introduce claim specific resources who have not been directly involved in the project as events occur and often have to search for the facts to make the argument that they want to present stack up. By implementing a collaborative relationship, endeavouring to resolve issues when they arise should address these matters long before the parties reach stalemate.

Conflicting party interests

Often, in a traditional contracting arrangement, there is suspicion and mistrust between organisations. Despite the parties ultimately working to reach a common goal, the mistrust between the organisations often results in them pulling in opposite directions, forcing them to work against each other. Implementing the principles of BS11000, organisations agree on a set of joint objectives and a clear set of objectives and goals it is hoped that any conflicting party interests can be removed. By continually managing the relationship, assessing its development and generally being aware of how the relationship is progressing, organisations have the opportunity to be aware if conflicting interests are developing and work to engineer a solution before the conflict takes over and the possibility of resolution dwindles. By building a working relationship between organisations and their people, the trust dynamic can be improved and parties will become less suspicious of the other parties intentions.

Incomplete design information

Arguably, one of the areas where collaboration could provide benefit in preventing construction disputes is in relation to incomplete design information. As has been previously discussed, collaborative relationships promote early contractor involvement. This involved bringing contractors and specialist contractors into the process at an early stage, often when the design development stage is in its infancy. By engendering this culture, organisations are able to knowledge share and this can result in specialists being able to introduce design solutions before the process is too far developed, encouraging innovation and value engineering. Also, by bringing the parties together early, the risks can be allocated to the partner best placed to deal with that risk. Instead of trying to pass all risk down the supply chain, the risk can then sit with the party who can manage that risk most effectively.

5. CONCLUSION

Collaborative working can have a positive impact on preventing disputes from crystallising in the construction industry. However, it is important that a clearly defined process is established and followed. By implementing a collaborative framework such as BS11000, there is the potential for improving relations and preventing issues that would traditionally crystallise into a dispute reaching this stage. It has been identified through studies that collaborative projects still encounter problems along the way, and not all are insignificant. However, the test of the procedure was the way in which the problems were addressed. In research undertaken by Bresnen and Marshall (2000) there was evidence that these significant problems were resolved without recourse to claims and litigation which is intimated that would have been the case under a traditional arrangement. There was however evidence in their study that contractors absorbed additional costs simply to maintain the relationship. When the parties to a collaborative working arrangement do not have a thorough understanding of the type of

relationship that they are expected to develop with those that they are working with, collaboration can be used as a method of trying to coerce one party into submitting to the demands of another, commercially bullying that party into giving up. By using collaboration in this way, it is likely that a high proportion of contracts adopting a collaborative working process will culminate in a dispute of some sort. However, if the parties fully embrace the collaborative working relationships and work in the true spirit of collaboration, with the intention of forming lasting relationships that are not simply in place for a single contract but are long term with the intention of working together in the future then collaborative working can have a positive effect of the number of construction disputes requiring third party involvement to resolve. In order for collaborative relationships to be successful, the Relationship Management Plan (RMP) plays a significant role in the process. By creating and maintaining the RMP, it becomes a dynamic document that is fit for purpose and is useful as a tool to assist with preventing the issues becoming disputes.

6. REFERENCES

Cases

- AMEC Group Ltd v Thames Water Utilities Ltd [2010] EWHC 419 (TCC)
 Bovis Lend Lease Ltd v Cofely Engineering Services [2009] EWHC 1120
 City Inn Ltd v Shepherd Construction Ltd [2010] ScotCS CSIH_68
 Costain v Charles Haswell & Partners [2009] EWHC B25 (TCC)
 Hyder Consulting (UK) Ltd v Carillion Construction Ltd [2011] EWHC 1810 (TCC)
 St. Austell Printing Co. Ltd v Dawnus Construction Holdings Ltd [2015] EWHC 96 (TCC)
- Alderman, N. and Ivory, C., (2007), Partnering in major contracts: Paradox and metaphor, *International Journal of Project Management* 25 (2007) 386-393
 Akintan, O.A. and Morledge, (2013), Improving the Collaboration between Main Contractors and Subcontractors within Traditional Construction Procurement, *Journal of Construction Engineering*, Volume 2013, article ID 261236
 Arcadis (2015) *Global Construction Disputes Report 2015 The Higher the Risks, The Bigger the Risk*, Arcadis.
 Batt, P.J. and Purchase, S (2004), Managing collaboration within networks and relationships, *Industrial Marketing Management* 33 (2004) 169-174
 Balfour Beatty Engineering Services (HY) Ltd v Shepherd Construction Ltd [2009] EWHC 2218 TCC, 127 Con LR 110
 Barlow, J., Cohen, M., Jashapara, A. and Simpson, Y, (1997) *Towards Positive Partnering*, The Policy Press, Bristol
 Black, C., Akintoye, A. and Fitzgerald, E (1999) An analysis of success factors and benefits of partnering in construction, *International Journal of Project Management* 18 (2000) 423-434
 Bresnen, M & Marshall, N (2000) Partnering in construction: a critical review of issues, problems and dilemmas, *Construction Management and Economics*, 18:2, 229-237, DOI: 10.1080/014461900370852.
 Bresnen, M. and Marshall, N., (2010), Building Partnerships: case studies of client-contractor collaboration in the UK construction industry, *Construction Management and Economics*, 18:7, 819-832.
 Briscoe, G., Dainty, A.R.J. and Millett, S, (2001), Construction supply chain partnerships: skills, knowledge and attitudinal requirements, *European Journal of Purchasing & Supply Management* 7 (2001) 243-255
 British Standards Institute (2010) *BS11000 Collaborative Business Relationship – Product Guide*, BSI Group
 Cox, A. and Thompson, I. (1997) ‘Fit for purpose’ contractual relations: determining a theoretical framework for construction projects, *European Journal of Purchasing and Supply Management*, Vol 3, No. 3 pp 127-135
 Egan, J (1998) *The Egan Report – rethinking construction; report of the construction industry task force to the deputy prime minister*, London, HMSO.
 Gardiner, J. (2014), *Latham’s Report: Did it change us?* Building, <http://www.building.co.uk/lathams-report-did-it-change-us/?/5069333.article> visited 25 May 2015
 Hawke, M. (1994), Mythology and reality – The perpetuation of mistrust in the building industry, *Construction Papers of the Chartered Institute of Building* Vol. 41, 1994 pp 3-6
 Hawkins, D.E. (2013) *Disputes: Conflict or Catalyst (Assessing the true impact of disputes in a business environment and the potential to harness constructive conflict in collaborative business models*. October.

- Humphries, P., Matthews, J. and Kumaraswamy, M. (2003) Pre-construction project partnering: from adversarial to collaborative relationships, *Supply Chain Management: An International Journal*, Vol. 8 Iss 2 pp 166-178
- Kale, S and Arditi, D (2001) General contractors' relationships with subcontractors: a strategic asset, *Construction Management and Economics*, Vol 19, No. 5 pp 541-549
- Lambert, D.M. and Cooper, M.C (2000), Issues in supply chain management. *Industrial Marketing Management*, Vol 11. No. 1 pp 65-83
- Latham, M. (1994) *Constructing the Team*, London: HMSO
- Moore, C., Mosley, D. and Slagle, M. (1992) Partnering: guidelines for win-win project management, *Project Management Journal*, Vol. 23 No. 1, pp 18-21
- Rahman, S.H.A, Endut, I.R., Faisal, N. and Paydar, S. (2013) The Importance of Collaboration in Construction Industry from Contractors' Perspective, *International Conference on Innovation, Management and Technology Research*, Malaysia, 22-23 September 2013, *Procedia – Social and Behavioural Sciences* 129 (2014) 414-421
- RICS Draft Guidance Note – Comparative construction and engineering contracts, <https://consultations.rics.org/consult/ti/comparative.construction/view?objectId=2425044> visited 12 September 2015
- Shelbourn, M. Bouchlaghem, C. and Carrillo, A.P. (2007), Planning and implementation of effective collaboration in construction projects, *Construction Innovation*, Vol 7 Iss 4 p 357-377
- Taylor (2012) BS11000 (the new standard for collaborative business relationships) – What is your motive? Posted November 13, 2012 by Bill Taylor www.thinksignam.co.uk/BS11000-the-new-standard-for-collaborative-business-relationships-what-is-your-motive/ Visited 01 September 2015
- Wood, G.D. and Ellis, R.C.T., (2005), Main contractor experiences of partnering relationships on UK construction projects, *Construction Management and Economics* 23 (3), pp 317-325
- Wu, S. Greenwood, D. and Steel, G. (2008) Exploring the Attributes of Collaborative Working in Construction Industry. *Northumbria Built Environment Working Paper Series*, Vol. 1 No. 2, 2008
- Xiaolong Xue, Qiping Shen and Zhaomin Ren, Critical Review of Collaborative Working in Construction Projects: Business Environment and Human Behaviours (2010), *Journal of Management in Engineering* 2010.26:196-208