

# DISPUTE AVOIDANCE MECHANISM IN PARTNERING ARRANGEMENTS

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Numerous innovative approaches to managing and resolving disputes have been developed for the construction industry in the previous few years. Partnering is an increasingly popular approach to procurement that includes a proactive dispute avoidance mechanism to speedily resolve problems within the project team before they become too contentious. A pilot study form part of a broader research framework was conducted to explore practice employed in the industry and to test the suitability of the research instrument. The results of a pilot study indicate the extent to which problem resolution processes are being formally developed and implemented in partnering projects in practice. In particular, an understanding of how problems are being resolved in partnering before they escalate to disputes is emerging.

Keywords: partnering, dispute resolution, problem resolution mechanism

## INTRODUCTION

As part of an ongoing doctoral research project, a pilot study has been conducted to gain a better understanding of the type of problem resolution processes being adopted, and the extent to which they are being practiced, in partnered construction projects. The purpose of the pilot, in addition to refining the main questionnaire, was to help determine the procedures being adopted and the experiences of those who have been involved in the problem resolution processes in practice. The ultimate aim is to develop conceptual model(s) which reflect the problem resolution mechanism practices being applied in various types of partnering project. A brief discussion of current thinking on partnering is followed by an explanation on theoretical aspects of problem resolution mechanisms. The main focus of the paper is a discussion on the results of the pilot study, highlighting the practices employed in the industry with respect to problem resolution.

### **Current thinking in Partnering**

The main philosophy that underlies partnering is to reduce the adversarial and litigious culture that exists in construction, and to resolve problems jointly and informally through more effective forms of inter-firm collaboration (Latham, 1994). Lazar (1998) distinguishes partnering from other dispute resolution method by suggesting that partnering is a dispute prevention method that is proactive. It prevents issues or problems in a project from escalating into costly disputes, rather than trying to resolve them after they have become contentious. It has been proposed as a mode to reeducate the construction industry by ‘...changing traditional adversarial attitudes and

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achieving a cultural environment that accepts trust as the pre-requisite to success' (Partnering for Productivity, 1994). Project partnering and strategic partnering are the two types of partnering that predominate in the literature (Love et al, 2002). Many features are common to both types, with the dividing line between the two being the time span and number of projects governing the agreement. Project partnering is adopted on a short term basis while strategic partnering is long term.

### **Problem resolution mechanism in partnering**

Dispute avoidance or early problem resolution of contentious issues is one of the key objective measures of the success in any partnering arrangement (RCF, 1995; ECI, 1997). The method of non-adversarial dispute avoidance in partnering involves bringing the individuals concerned face to face through the problem resolution escalation ladder.

Problems endemic in construction do not disappear automatically simply because a partnering charter, the main symbol of the agreement, has been signed by all the relevant parties (Brown, 1994). Sanders and Moore (1992) and Li et al (2001) contend that problem solving techniques, to address the almost inevitable disagreements that arise, are essential elements of partnering success. Therefore, it is important for partnering participants to identify, confront and resolve any problems that arise in any partnering arrangements (Albanese, 1994). Partnering promotes problem solving where the focus is on preserving the jointly defined project goals common to all (Crowley and Karim, 1995)

Problem resolution in partnering is three tiered in its approach to dealing with problems. The partners anticipate problems and devise action plans to address how these problems are jointly identified and resolved (Cowan et al, 1992). Quick resolution at the lowest possible level is its prime concern so as to avoid it getting in the way of productive work. In resolving disputes, partners need to separate the people, personalities and turf differences from the people and focus on project goals, facts and objective measurements (Fisher, Roger and Ury, 1981). The focus must be on resolving disputes in a cooperative, open fashion which results in mutually, acceptable, timely solutions. The recommended levels of problem resolution are technical, management and political level. (Bennett and Jayes, 1995)

Open communication and improved working relationships also reduce the problems of disputes, claims and litigation (Cook and Hancher, 1990; CII, 1991; Abudayyeh, 1994). leading to a lower number of disputes and claims in partnering (Gransberg et al, 1999; Li et al, 2001; Ruff et al, 1996)

### **Partnering and dispute avoidance**

One of the defining features of a successful partnering arrangement is a mechanism for problem resolution (Naoum, 2000). Guidelines for resolving problems must be in place before the project is under way. Escalation is the control and resolution mechanism for dealing with problems. The basic principle of escalation is that problems are solved at the lowest level within a time limit or they are escalated to the next management level of the partner organisations. Escalation needs to keep ahead of the project cycle and problems resolved before they seriously affect the project. Inaction is definitely not an option.

The partnering process empowers all the project personnel to accept responsibility by delegating decision making and problem solving to the lowest possible of authority (Dunston and Reed, 2000). This is in line with Wayne's (1994) view which states that individuals closest to the problem are best equipped to make related decision. Those employees who are empowered rise to the challenge and make sound decision.

Partnering is based on the principles of hybrids, where elements of several forms of ADR are combined in an informal process to try and eliminate problems in the construction industry before they have a chance to become entrenched disputes (Keill, 1999) Even though the partnering process is not a legal process, the combination of facilitation, mediation and negotiation is meant to improve communication and to provide a platform for the interdisciplinary management of project risk. Partnering is widely regarded as the solution to a rational, non-adversarial and cost effective approach to resolving construction disputes (Pinnell, 1999).

## **THE PILOT STUDY**

A pilot study in the form of a postal questionnaire has been conducted as part of the ongoing research framework, to precedes the main survey phase of the project. It is deemed necessary for this investigation in order to test the research instrument that has been put forward. The questionnaire survey was close-ended in nature and could be divided into three main sections. The questions in Part One of the questionnaire was on the types of problems in a partnering project. The Second Part was on the problem resolution procedure. General information about the respondents was asked on the last part of the questionnaire. The questionnaire was prioritised in such a way to ensure that the respondents would answer the most important questions first.

Before the questionnaire was distributed to potential respondents, drafts of the question were tested internally in the School, and amended according to feedback on its clarity. The time taken by them to complete the questionnaire was noted too.

Two sets of questionnaires were delivered to potential respondents. The first set of 30 were distributed by hand to a group of partnering workshop participants organised by National Productivity Network in the first week of February 2004. After about three weeks of distribution, only two responses had been received. This response was disappointing, even given the poor postal questionnaire response rates typical in construction management research. There was no obvious explanation for this as the questionnaire, whilst comprehensive, was not considered unduly long by the researchers. Because of the low response rate from this batch, another set of 11 questionnaires were posted to potential respondents consisting of contractors and clients whose details had been obtained from Movement for Innovation (M4I) partnering demonstration projects website and CN+ Construction News. In order to improve the response rate for the second batch of questionnaire, the respondents were contacted initially by electronic means and telephone to seek their consent to the questionnaires. The questionnaires were sent to client and contractors who have been involved in partnering before to ensure that objectives (i) and (ii) of the pilot study would be achieved.

As a follow-up, reminders by telephone and email were made, however, only 7 questionnaires from the second set were returned. These nine respondents made up a total response rate of 21.9 percent. Experience in other construction management research suggests that a response rate for postal questionnaires is typically only 20-

30 percent Dulami et al (2003). The response was disappointing given that a completed research report would be provided as an incentive for all respondents.

## **PILOT STUDY RESULTS ANALYSIS**

### **General background of the respondents**

The majority of the respondents (89%) were from the private sector, with annual turnover of most being more than £5m. In terms of the number of year of establishment, the majority of them were more than fifteen years old.

All of the organisations have been involved in between six to ten partnering projects, suggesting considerable experience. In terms of the types of partnering projects they have been involved in, five out nine organizations have been involved in project partnering and the rest of them have been involved in both types of partnering arrangements. Most of the organisations have been involved in commercial and education types of partnering projects ranging between £2.5M to £10 million. Partnering was not applied in projects with in the value of £100,000 to £500,00. Sanders et al (1992) suggested that partnering should be implemented in large projects that would involve a large construction firm. Most of the partnering projects are of moderate technical and design complexity.

Partnering is mostly initiated by the client (56%) and the common range of number of parties to a partnering arrangement is between two to three parties.

### **Application of partnering tools**

The many benefits associated with partnering are widely reported in the literature (Bennett and Jayes,1994; Bresnen and Marshall,2000) and the respondents were asked why partnering was adopted for their projects. From the results, it was discovered that high client satisfaction (33 percent) was ranked as the first reason as to why partnering was adopted. Other reasons such as client demand, high safety level and value engineering were ranked from two to four. Interestingly, joint problem resolution was ranked at number seven. Reasons such as increased integration and free exchange of information were ranked down the line. Further investigation needs to be made why problem resolution is listed down the line even though the ability of partnering to resolve problem has been laid down extensively in literature (Black 2000; Larson 1995;Bennett and Jayes, 1995 ; Barlow, 1997; Weston and Gibson, 1993, Cowan,1992).

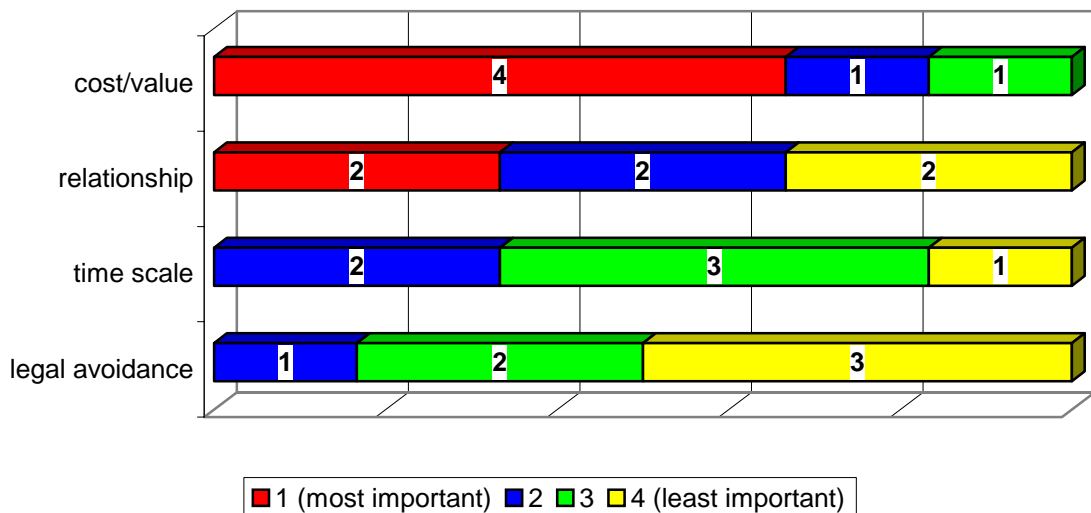
The questionnaire required the respondents to choose from a list of procedures which their organisations carried out in preparation for partnering. All of the respondents answered that the top management level of their organisation gave their commitment before they embarked on partnering projects. Cheng et al (2000) states that top level management is one of the critical success factors of partnering. Another procedure commonly adopted by the respondents' organisation was organizing the executive partnering workshop among team members (89 percent). Other procedures adopted bearing a frequency of 67 percent each were staff training, identification of the personnel to be the partnering champion, empowerment of the staff and contract administration adjustment. Procedures which were least adopted were track costs and savings associated with partnering and joint evaluation process even though joint evaluation of process is one of the critical success factor of partnering (Cheng et al, 2000;Quick 1994).

**Application of problem resolution mechanism**

Much guidance and advice on best practice for partnering has been published on partnering (ECI,1997;Achieving Excellence in Construction, 2003; CIOB,2002; CIB 1998; Housing Forum, 1996). According to Bresnen and Marshall (2000, p 232), ‘companies interested in partnering will seek naturally to develop applications that reflect their own circumstances and requirement...bowdlerizing complete ‘packages’ by selecting only preferred elements, adjust to suit their existing system of operation.’ (Bresnen and Marshall, 2000 p 232). With respect to partnering problem resolution, a majority of the respondents’ organisations (78%) have a defined problem resolution procedure in a partnering arrangement. This suggests that in the context of partnering problem resolution, the companies follow the guidance and advice given by these proponents instead of selecting the preferred partnering elements which suit them best.

Six out of the nine respondents have had experience of operating a defined problem resolution procedure .Of these six, four were involved in the defined problem resolution procedure at the management level, with one involved at senior management or CEO level. The involvement of CEO level may suggest that the person at the lower level may not have the authority to deal with the problem or the two individuals at the particular lower level cannot agree on a resolution to a problem (Wayne, 1994). The results also shows that majority of the organisations adopted the procedure of sending out a notice to the other partnering team when a problem is highlighted.

The respondents were also asked on the type of criteria adopted by their organisation in evaluating possible solutions to problems. Interestingly, cost (67%) has been regarded as the most important criteria followed by time taken to resolve the problem, and relationship maintenance. Avoidance of further legal recourse is the least important criteria, although this is inevitably linked with time and cost implications.



**Figure 3 :Criteria in evaluating possible solutions**

The respondents were also asked on their opinions about certain theoretical principles of problem resolution mechanisms. The majority of them agreed, naturally enough, that if an issue cannot be resolved at the lowest level, the higher level should take over the responsibility to resolve it. All respondents disagreed with the statement that in order to avoid project delay and incurred cost, problems should only be resolved at the higher level of authority. This is entirely consistent with the theoretical principles of problem resolution.

Three of the respondents strongly agreed that each issue was attended to and investigated before a decision was made whilst the rest just agreed with the statement. The results reflect that, in practice, investigation is actually conducted before any decision is made and it is being conducted by those who are directly involved with the problem

It is important that a time frame should be imposed for any problem to be resolved because time is money in construction. This is why terms such as ‘timely resolution’ are attached to effective problem resolution (Hellard, 1995, Warne, 1994). Only one respondent strongly agreed that there should be a time frame for problem resolution whilst three ‘agree’ to the statement. The response given suggest that time limitation is important to expedite a problem resolution, but does not reflect that it is being imposed in the respondents’ organisations.

In limiting the number of mistakes made by an employee (Hellard, 1995), a variety of responses were given. Two were indifferent to the statement. One respondent disagreed, two agreed and one strongly agreed to the statement. This seems to convey that the respondents who are the employee of the organisations do not really favour limitation being imposed on the number of mistakes made by them.

Eighty eight percent of the respondents agreed that empowerment will boost the staff confidence in making a decision when an issue or problem arises. The same number of respondents also agreed that poor communication skills of the staff may prevent an issue or problem being resolved.

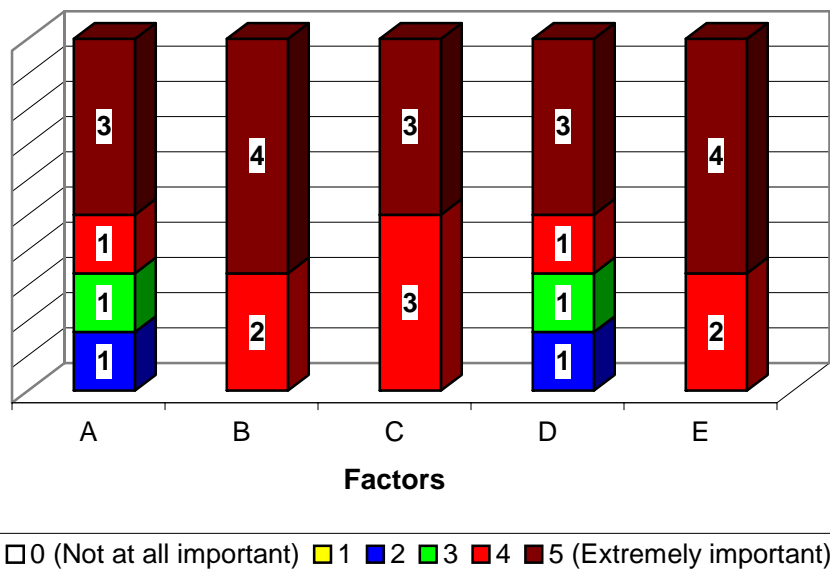


Figure 4 : Organisational policy in relation to problem resolution

Aspects of problem resolution procedures associated with people (parties/partners) were identified in the questionnaire and the respondents asked to evaluate their importance. Figure 4 above summarised the results. Gaining agreement from all parties involved (Factor B) and actually having the skills such as communication skill and skills to resolve problems (Factor E) have been identified by the respondents as important in reaching the most satisfactory solution for all parties concerned. Other aspects such as establishing contact with all parties (Factor A), gaining confirmation that all parties involved (Factor C) have the authority to sign for any agreement established and gaining commitment (Factor D) was not given a strong weighting by the respondents.

In terms of procedures adopted by the parties for problem resolution, Figure 5 below shows that proposed solutions offered by the other parties involved (Factor K) was the factor regarded as most important, followed by information gathering (Factor N) and time taken to resolve the problems (Factor L). Other factors asked are open channels of communication (Factor F), set up preliminary meetings (Factor G), additional or reduction to the costs of the projects (M).

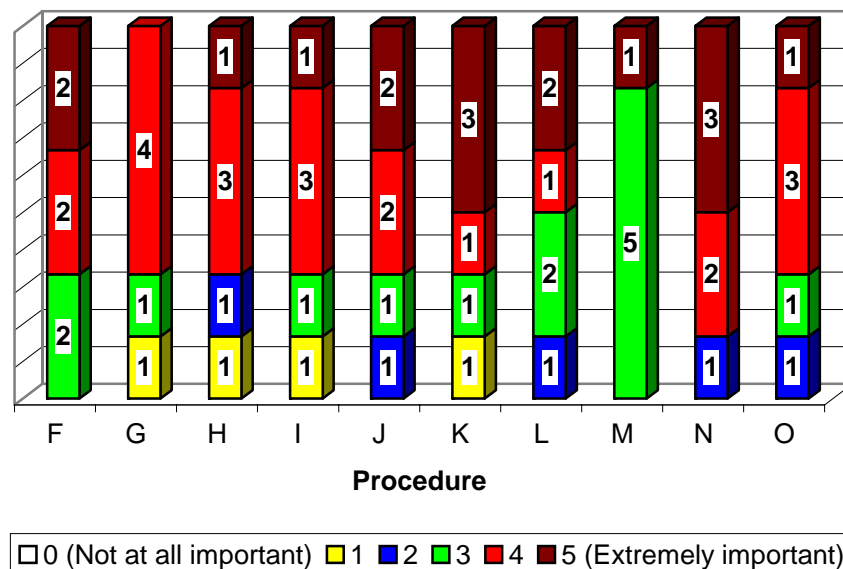


Figure 5 : The importance of specific procedure in a problem resolution

### CONCLUSION

In the words of Nael G. Bunni (2003), partnering offers a solution into ‘how to stop a simple problem spiraling from a breeze into a whirlwind’. The literature on partnering widely contends that it should reduce the adversity and extent of litigation prevalent in the industry. One of the defining features of partnering is the requirement to establish a structured but informal problem resolution mechanism. The results of this pilot study show that most organisations engaged in partnering have developed some problem resolution mechanism in their projects by adopting the guidelines offered by published partnering toolkits and guides. The most important aspects of successful problem resolution are in gathering the relevant information gathering and the time taken to resolve the problem. It is imperative that the agreement has the consensus of the parties involved and skills to resolve problem has been identified as the important aspects in reaching a satisfactory solution to the problem.

Based on the pilot study experience, a number of amendments will be made to the questionnaire in preparation for the full survey. With regard to the understanding on how problem resolution mechanisms have been successfully applied in practice, it is proposed that a qualitative method able to provide a rich description and detailed analysis will be employed. It is considered that a large sample employing quantitative analysis is not an appropriate strategy.

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