Conflicts in Construction

The term ‘Built Environment’ describes the product of what is probably the most diverse industry in the world, ‘the Construction Industry’. Not only does the built environment cover a wide variety of end products from apartment blocks to oil refineries, but the people working within the construction and engineering industries are drawn from a broad range of trades and professions. With architecture and almost every branch of finance, engineering and surveying represented, there can be 20 or more professional disciplines involved in a moderately complex construction project.

The projects tackled by the industry are not only wide ranging and varied in their end use, but they also have significant variety within their types, for example; a power station can be fuelled by oil, gas, coal, bio fuel or nuclear products and each type of power station is very different in design, size, output and cost. The proposition that construction produces more variety than any other industry is supported by the premise that almost every major building project is unique, a prototype, a one-off.

So it is that for every complex project that stands to be constructed, a learning curve is inevitable. It is a rare industry indeed that produces so many varied prototypes without significant repetition.

The construction industry is further complicated by the presence of numerous parties with an interest in the completed structure. These include the end user, the funding parties, the developer, the planning authority, the construction regulators, the Health and Safety Executive and the public at large, whose built environment is important to them economically, environmentally and aesthetically. Add to these divergent interests the expectations of the Contractor who builds the asset, his sub-contractors and suppliers who contribute specialist plant, skills and materials, and there are relatively few people in our society without at least a small investment in the construction process.

It has been argued that it is the high number of interested parties within the construction process that provides the catalyst for conflict in the industry, and we know that disputes in construction are common. Construction conflicts
range from the very private two-party differences over the meaning of a contract clause, to the very public outcry over proposals for a development to be sited in countryside defined as being of outstanding natural beauty. Such conflicts can be addressed and managed only when we understand the true causes of the conflict. Whilst an understanding of how the industry is organised is necessary, on its own it is not enough.

From this point forward, any reference to the construction industry will encompass the civil engineering, heavy engineering, marine and offshore sectors too, as in my experience in these sectors all conflicts tend to sprout from the same roots.

1.1 Recent history

There have been many changes in the Built Asset industry over the last 40 years. Perhaps the most dramatic of these changes has been the sharp increase in the incidence of serious conflict between the parties to construction contracts. In 1960, some 250 writs were issued relating to construction disputes, yet within 30 years, this number increased five-fold. What happened within those intervening years to bring about such a transformation?

Perhaps it was due to the fact that during this period companies became more commercially aware. Increased numbers of quantity surveyors were employed by constructors to safeguard their contractual rights and the rights of sub-contractors. Since the 1980s, even sub-suppliers have recognised the need for sound commercial advice. Furthermore, new contract conditions have proliferated, ensuring that even experienced practitioners have become uncertain of the terms embodied in the standard form contracts.

In the late 1960s and early 1970s, we saw the emergence of claims consultants, who were established solely to promote the claims advanced by both sides of the industry. In the 1980s, there was a move away from significant public financing of construction by central and local government, and so the industry became reliant upon profit-oriented, speculative development. The early 1990s brought us the Private Finance Initiative (PFI) and other private funding routes for major projects. Since 1997, public expenditure has increased again and many more publicly funded assets were being constructed, or promised, until the General Election of 2010.

One of the most worrying aspects of the built environment for investors, practitioners and end users has been the tendency of the construction economy to react disproportionately in periods of boom and bust. Thus the cyclical nature of financial and political investment has disrupted the gradual and stable growth of the construction industry, which was a hallmark of post-war industrial and commercial development.

All of these factors have undoubtedly impacted on the quality of the relationships enjoyed between end users and their contractors (and sub-contractors). General informed opinion is that these uncertainties have also increased the incidence of conflict.
In addition to the problems within the construction industry itself, society as a whole has encountered other wide-ranging social changes that inevitably influence our attitudes to conflict. These cannot be ignored and they are addressed later in this book.

With conflicts wreaking havoc on the time and cost outcomes of major projects, onshore and offshore, we can no longer sit back and tinker with our contracts and our commercial arrangements, hoping that the resulting decline in conflict will be as rapid as was the growth. Intensive action is needed now to manage the conflicts that seem to arise inevitably from virtually every construction project.

1.2 Understanding conflict

Before we can take the radical measures that are needed to manage conflict successfully, we must be able to define the nature, identity and causes of conflict. The first step in this process will be to recognise that the difficulties the construction industry has faced over the past 40 years are not the real causes of construction conflict, but are merely symptoms. To examine the real causes fully, we need to address four major issues:

1. Can we avoid unnecessary conflict?
2. How do we control inevitable conflict?
3. How do we manage conflict, whilst awaiting a resolution?
4. How do we finally resolve construction conflicts?

We can all enhance our skills by seriously studying these vital issues. Our ability to answer these four questions will benefit not only ourselves, but also the whole industry, leading ultimately to substantial savings in unnecessary dispute costs and to better relationships, as more conflicts are avoided or are resolved amicably.

1.3 Addressing conflict

The key to successful conflict management is a fuller understanding of the various aspects of conflict, including how and why conflict arises. We must acknowledge that conflict is more than simple disagreement and we need to accept that throughout our lives we can expect to encounter conflict in one form or another.

For the purposes of classification, a strict definition of conflict will require us to decide whether we are defining *conflict* the noun or *conflict* the verb. It is my view that a *conflict* (noun) can itself be defined in three different ways.

1. Firstly, it is a state of opposition or hostilities, for example a war or a battle. It might also be described as a fight or more subjectively defined as a struggle for freedom.
2. A second definition considers a conflict to be a clashing of opposed principles; this may be more conveniently described as a conflict of beliefs.
3. The third definition is the opposition of incompatible wishes or needs within an individual and the stress or distress resulting from this. Psychologists describe this in their terms as internal conflict; or we might call it a conflict of values.

Unfortunately, in the construction industry, there has been a tendency to ignore these three definitions and to restrict our definition of conflict to its use as a verb, thus overlooking real opportunities to positively resolve conflicts in the most appropriate way. The verb to conflict is defined as:

- to struggle; or contend;
- to contradict.

Whilst the definitions of conflict as a verb or a noun appear to have only a negative aspect, positive results can emanate from conflict, both in the outside world and in a construction setting.

### 1.4 Positive aspects of a conflict

Our own individual personalities, fundamental as they are to our existence as human beings, will usually involve us in a struggle to achieve what we see as being worthwhile. The freedom to choose allows us to pursue what we consider to be worthy causes.

Most of the aspirational management books of the twentieth century sought to improve our behaviour as human beings by offering us success or by encouraging us to pursue loftier ideals or goals, goals which would benefit society as well as ourselves. The titles of these books were provocative, thoughtful and often challenging. Some of my favourites were:

- *Think and Grow Rich*; Napoleon Hill;
- *How to win friends and influence people*; Dale Carnegie;
- *The One Minute Manager*; Ken Blanchard;
- *The 7 Habits of Highly Effective People*; Stephen R Covey;
- *The Dilbert Principle*; Scott Adams.

Well, perhaps not so much the last one, although it contains at least as many truths as the others. So, what do we learn when we struggle to achieve our lofty aspirations? Generally, we learn something more about ourselves; we become stronger, we progress.

Even the most destructive conflicts can bring forward the greatest acts of courage and heroism, displaying the very best of human potential. Winston Churchill recognised this in his renowned war time speech where he said:

> Never in the field of human conflict was so much owed by so many to so few.
Recently in Egypt, conflict has also been the prime tool of the revolutionary in overthrowing oppressive governments. Positive conflict has enabled civil rights movements to remove inequitable laws. Conflict can also produce positive aesthetic results. Many of our great works of art have been created as a result of the internal conflicts raging within talented individuals. One such example could be Vincent Van Gogh. Creative individuals who challenged established thinking were often regarded as eccentric or even borderline insane. Why is it then that conflict, often so damaging, can sometimes produce such positive results?

There is within the human persona a natural tendency to fight for what we believe to be just or to defend that which we regard as being of value. This desire to seek justice and to defend our beliefs can develop those talents that were previously hidden. Conflict can also rebuild long lost community spirit. Communities can be brought together in a unique way when the people concerned have a common purpose. This purpose becomes the mortar that holds together a group of otherwise disparate individuals. Examples of this include local protection groups fighting to prevent – or bring about – a new development, such as a new road or bypass. Consider the long-running conflict fought by the people opposing the new development at Heathrow. In such a case, even if the cause is lost or the motion defeated, the benefits of working towards the common purpose can be seen to result in a closer-knit community.

Conflict also has a tendency to build teamwork and interdependency. When facing sublime opposition, we group together for comfort and for strength, we bond and create relationships that last. I have always been moved by the US Marines motto:

No man left behind

In recent conflicts in Afghanistan and Iraq, our own soldiers have followed this principle to bring badly injured or dead soldiers out of harm’s way. When we fight together for a common purpose, we cannot do it alone; we must become truly interdependent and thus, dependent. When we rely on someone or need someone, we instinctively become closer to them and even protective towards them. On the other hand, we can come to resent those upon whom we depend. Understanding these variable but instinctive human behaviours can help us better comprehend and thus avoid the causes of conflict.

If we were to make it our goal to actively seek to create a lasting relationship by pursuing a common purpose, rather than looking for areas of disagreement, we might transform our future negotiations at a stroke. Furthermore, if we entered into discussions with the objective of reaching an outcome that helped the other side as much as it benefited us, we might make better progress.

So, is it essential that conflict generally, and construction conflict in particular, is eliminated? Is it always the best policy to eliminate conflict?

Clearly, in many instances, conflict can and should be eliminated. In the construction industry, a great many destructive and costly conflicts have
arisen that could have been avoided, a recent example being the construction of the new Wembley Stadium completed in 2007, disputes still running in 2010.

If all deadlines were met, if all invoices were paid in full and on time, if all specifications were realised, if all claims were reasonable and honest, if all expectations were realistic, and if the people involved communicated with accuracy and complete understanding, with a willingness to be flexible and to seek solutions to problems that would benefit all concerned, conflict within the industry would be rare. Of course, with so many variables, and human nature being a factor, a degree of conflict is inevitable.

However, there are ways in which we can eliminate unnecessary conflict, and keep that conflict which is unavoidable, to the minimum. Our ability to manage a conflict successfully will depend largely upon our recognition of the real causes. Many of the perceived causes of conflict, as we have previously noted, are only symptomatic of a more fundamental underlying problem. To treat the symptoms of construction conflict is to give some temporary relief, whilst overlooking the need for a permanent cure.

1.5 The real causes of conflict

The true causes of conflict within the construction industry are wide ranging and varied, and these will need to be discussed in more detail later. However, we can highlight some of the more common problems here in summary form.

1.5.1 Misunderstandings

Conflicts often arise through misunderstanding. These misunderstandings usually involve some element of poor communication. For example, we probably all know that in order to achieve something worthwhile we must have a goal, a timescale and some standards or rules to which we must conform. Unfortunately, it is often the case that managers send their subordinates off to carry out a task without really explaining what they expect them to achieve; either that or the subordinates set off without having listened attentively to their instructions.

I have a son who, when he was younger, enjoyed helping me by doing simple tasks. On many occasions I would say, ‘Son, would you please just go upstairs and bring…’ By the time I reached the latter part of the sentence he was gone and could be heard searching around upstairs – for what, he had no way of knowing. Within a few minutes he would come back more slowly than he went and would ask sheepishly ‘What did you want from upstairs?’

Communication is a two-way mechanism. It needs a listener and a speaker. It also requires the listener and speaker to change places occasionally, becoming speaker and listener. Many attempted communications do not manage to communicate at all. So often, instead of the dialogue that is necessary, we are
confronted with two parties speaking monologues alternately, or worse, in unison. If you want a living example of this principle, listen to BBC Radio's *Today* Programme, when two opposing politicians are ‘conversing’. A wise man once said, ‘If you want to see eye to eye, try using your ears.’

As a young quantity surveyor, working on a new school building, I encountered this principle personally when I was faced with what could have become a serious problem. The floor tiling supplier ceased trading before the finishes were started, the specialist non-slip tiles specified by the Architect were only available from one other source and the delivery time for new orders was a minimum of 12 weeks. The new school term was only six weeks away. Delay was unthinkable. The Architect panicked and instructed the Contractor to quickly find, procure and install some alternative non-slip tiling for the entrance area. If possible the colour was to be black. A week later I found the Architect and Contractor locked in a bitter quarrel. The new tiling contractor had supplied grey quarry tiles with a non-slip surface. They met the non-slip requirement and the time requirement and, the Contractor explained, they were not available in black, but as this had seemed to be only a preference, he did not think it critical. Luckily, threats of claim and counter-claim quickly subsided when, during an inspection visit, the school’s head teacher expressed her delight at the new building and in particular the welcoming grey tiled foyer.

Once individuals are made cognisant of what they are expected to achieve in quantitative and qualitative terms, it is for their managers or supervisors to specify the rules and standards that are to apply in the execution of the task. A failure to specify rules and standards can also cause a conflict, because we may be left with an end product that meets our needs but which has left trouble in its wake. There is an anecdote that explains the principle better than I ever could:

The scene is England in the early Middle Ages and the King is trying to unify his country under one banner. As he sits awaiting news of progress, one of his trusted messengers enters his chamber. ‘Sire. We have secured the West Country. Our men cut a swathe through your enemies, pillaged their lands and took their young women.’ The king looked puzzled before replying, ‘I have no enemies in the West Country.’ The messenger paused and then answered with solemnity, ‘You have now.’

Having set goals, and clearly communicated the rules and standards to be observed, we have a duty to explain the resulting consequences of failure. Both legally and morally we should specify the outcome that can be expected if the goal is not achieved. The attempted imposition of some consequence for failure, not previously disclosed, will certainly cause unnecessary conflict and will, quite reasonably, engender a sense of injustice.

So, to avoid conflict through misunderstanding, we must communicate with precision. How this can best be achieved is discussed in detail in a later chapter.
1.5.2 Sensitivity

As with all of the readers of this book, I am a rational, sensible and well balanced individual, except for those occasions when I am none of these things. Later in the book, I discuss the events that can impact on our sense of balance, our rationality and our reasonableness.

There are days when an individual's mood will change with a rapidity that may scare partners, friends and co-workers. We are probably all aware from life experience that these mood swings can have an effect on an individual's demeanour, patience and tone of voice. It may also impact on their judgement when they are supposed to be considering the needs of others.

There are many truly wonderful individuals who are passive and genteel on most occasions, but whose life challenges have left them permanently sensitive to specific topics of conversation.

I was once in a heated site meeting when a colleague, concerned that the sub-contractor's representative was becoming angry, vocally expressed his view that there were no reasons for tempers to flare. The exact expression he used was: 'Keep your rug on, no-one has any intention of holding up your payments.' I am quite certain that the MD of the sub-contracting organisation did not hear the second part of that sentence. A rather obvious wearer of a toupee, the MD's hand involuntarily flew to his head at the words 'Keep your rug on,' moving his hairpiece left and right until it was back where it should have been. There are tragic moments in life where you know that laughter is not the best medicine, and yet even the most controlled individuals find it difficult to suppress a giggle of embarrassment. The sub-contractor's team walked out and my colleague threw his head into his hands and assured us that his colloquialism was nothing more than an unintended subliminal remark for which he would apologise promptly. Sensitivity can be found in almost every environment, even on testosterone fuelled building sites.

As a young QS, I worked with a 'Ganger', an expression probably not used today, but this labour supervisor was the toughest man I ever met. He often expressed the opinion that he regarded office employment as being reserved for the weak of mind and body. One of his great pastimes was to humiliate the new 17-year-old site QS (me) in front of as many operatives as possible, a pastime he undertook with relish and considerable success. After a few days away from work, I was sitting alone in the site office, which in those days was little more than a glorified garden shed, when he came in and began to tease me about my absence. Before he could embarrass himself further, I explained that my absence had been due to the fact that my Mother had just died, and I waited to see whether my obvious pain would temper his teasing. I was not expecting his reaction. I hoped that he would remain silent before expressing his condolences. He was, after all, a genuinely nice guy under the bravado, but what did happen shocked me. This strapping hulk of a man sat down on a chair and burst into tears. He sobbed uncontrollably for five minutes. His back story explained all. He had adored his widowed Mother and treated her like a queen. He had lived at home well into his thirties. Then one day he received a message to call head
office from the site telephone in an office much like mine, only to hear of his beloved Mother’s sudden demise. My story and sadness had resonated with him.

We should not become paranoid about upsetting others whose sensitivities may not be obvious, but we should be aware that conflict can arise if we happen to touch a raw nerve.

By pure coincidence, as I was writing this section, I had the need to make a significant purchase by first testing the market with a handful of suppliers. I have read and re-read my enquiry email many times in the light of what happened next and I still cannot see where my text was ill advised. Having stated that the product must be the same quality as the sample cited and must include the same support, I advised the suppliers of the limited budget that was available, asking if they could supply in accordance with my request. I would not have been offended had they declined to make an offer of supply. The first response I received was along these lines:

> Of course we can meet that quality, we have been in this business for years and we are somewhat surprised that you feel the need to ask if we support our products properly. We do. Anyway, we cannot meet your price, we are not here to subsidise your profits. If you wish to increase the budget let us know.

In line with usual policy I wrote to all parties explaining that one of them had indeed provided the goods as specified indicating the price range. My guess is that the errant supplier had experienced a frustrating day at the office and that by the time my email arrived he was ready for a fight.

Sensitivity runs in both directions and so we should always be careful to consider whether we too are being over sensitive in inferring insults where none are expressed or intended. A safe way to avoid over reacting in such cases is to maintain our values at all times, even when provoked.

### 1.5.3 Values

Many of the contributors to a successful construction or engineering project are professional men and women. These individuals will not only have high personal values, but they will also be expected to exercise a high standard of professional ethics.

Architects, quantity surveyors, engineers and PMs have codes of practice, which denote minimum standards of behaviour. Failure to meet these standards may result in discipline or expulsion from their professional body.

These values can, when a crisis occurs, cause internal conflict. An architect friend of mine worked consistently for a major developer. His style of architecture suited the developer and the developer remained loyal to my friend, despite strong fee competition from other practices. At the time of this story, he was engaged in work on a new retail park. The project suffered from a poor pre-letting rate and the developer, himself under pressure from his banks, asked his architect to undervalue the Contractor’s work, find reasons to withhold the completion certificate or do whatever was necessary to keep the developer solvent. The Architect faced an ethical crisis. He undoubtedly owed
the developer a great deal, yet his personal and professional values required him to be fair and impartial in certifying the value of work done. Which route would he choose? On this occasion, he wisely chose to ignore the needs of his client and certify honestly. He confided to me later, 'I lost a good client that day, but in fairness I would not have wanted to go on working for him if he expected me to betray my own values.'

Ethical choices, often with significant sums of money attached, are a part of the construction professional's life, and learning to manage internal conflict can improve our ability to make wise decisions. The methodology leading to that improvement will be explained later.

1.5.4 Interests

We can sometimes confuse our real interest in an outcome with an unrealistically high expectation, and thus introduce a conflict where none should exist. Whilst we all appreciate that we cannot have our cake and eat it, as human beings we do try to hedge our bets as far as possible.

A client may want a quick, quality building at a low price and a contractor may want to take more time, reduce quality and get as much as he can for it. In such extreme cases their interests diverge, but they need not do so. Both might well be satisfied with a quality building built reasonably quickly at a fair price. Unfortunately, we sometimes adopt the wrong solution to a problem, with the result that a conflict of interests arises unnecessarily.

There are ways of avoiding and reducing this type of conflict, and we will look at these methods in due course.

1.5.5 People

The personalities of the individuals involved in a project will often cause them to react to one another in a destructive way.

Some people become emotional and defensive when they lack information. Other individuals will make poor judgements under stress, rather than wait for a time when they can think more rationally. Managers often try to demonstrate dominance over their staff, when the real problem is a lack of self-esteem within themselves. Those involved in a conflict often adopt a hard adversarial stance, because they do not want to be perceived as weak for adopting a conciliatory approach.

The anthropology and psyche of the human race affects the type and quantity of conflict in the construction industry and so a fuller understanding of both is necessary to identify the real causes underlying the surface behaviour of the individual. I will examine these aspects of human behaviour in a later chapter.

In this overview, I have highlighted some of the more common problems that lead us into conflict, but much more needs to be said on each topic before we can avoid or manage conflict to create a more harmonious industry.