

The use of Dispute Boards – what's there to dispute?

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On 28th April, I'll be taking part in a webinar hosted by the Royal Institution of Chartered Surveyors on "*Dispute Boards around the world - what we've learnt from global projects.*" Alongside Duncan Glaholt of Glaholt ADR Inc., and moderated by Yasmine Nashawati, Head of DRS International Development at the RICS, we'll have a conversational, experience-led look at how Dispute Boards function across different regions, what those experiences tell us about the value they can bring to projects, as well as some of the practical challenges that often arise once projects are underway. I think it's fair to say that Dispute Boards (DBs) continue to generate some debate across the construction sectors. Not because they are new or untested (the first DB was used over 50 years ago), but because, despite decades of evidence supporting their effectiveness, they remain underused and, as I'll come onto, often contractually excluded.

So, in preparation for the webinar, I wanted to take a step back and share a few initial thoughts (without giving too much away for those who are able to join) on what I've learned from the use of DBs including how they tend to add the most value and why they can struggle in practice.

What is a Dispute Board and why does it matter?

At its core, a Dispute Board is a panel of independent experts appointed at the outset of a project to help prevent and resolve disputes as they arise. They can be established on a standing basis, remaining involved throughout the duration of the project, or on an ad hoc basis, appointed only once a dispute has crystallised. Unlike traditional dispute resolution mechanisms which are often reactive and adversarial, DBs are often designed to be proactive. On a standing basis, they are embedded within the project lifecycle, attend site visits, understand the personalities involved and track issues before they escalate.

The 2024 Dispute Boards International Survey, published by the Centre of Construction Law and Dispute Resolution at King's College London defined a dispute board as any "*job site dispute avoidance or resolution mechanism, constituted by individual(s) that should operate independently from the parties to the contract(s) and with the purpose of addressing the disputes of a specific Project*". This broad definition captures commonly used industry terms such as dispute adjudication boards, dispute avoidance boards, conflicts avoidance panels, dispute review boards, dispute advisory boards, and dispute review panels. I won't repeat all the key findings here, but the Report has produced some interesting data on the use, performance, and impact of DBs from 2018 to 2023, so I would encourage you to take a look at the Report itself, as well as my previous blog from last year where I explored some of the data in more detail.

Whatever name the board goes by, their purpose is simple: to prevent disputes from escalating and, where necessary, to provide timely, informed decisions by individuals who understand the project. So, their value lies not only in resolving disputes, but in avoiding them altogether. By maintaining familiarity with the project, its stakeholders and its evolving challenges, DBs can intervene early and often before issues escalate into formal disputes. In theory, they represent one of the most effective tools we have for dispute avoidance. In practice, however, their adoption is a bit more nuanced.

When Dispute Boards work well

Across major infrastructure and energy projects worldwide, the adoption and effectiveness of DBs can differ. I won't speak to specific examples for the purposes of this blog, nor to specific jurisdictions, as we'll come on to that during the webinar. However, a consistent pattern emerges: where dispute boards are properly implemented, disputes are resolved earlier, relationships are preserved and projects are more likely to stay on track.

1. Early engagement is critical - The most effective DBs are involved from the outset and remain active throughout the project. Regular site visits, ongoing dialogue, and familiarity with project details allow the board to build credibility and provide informed input. Standing boards (those that remain involved throughout) develop a deep understanding of the technical and commercial context. This enables them to intervene informally and prevent disputes before they crystallise. Ad hoc boards, appointed only after a dispute has arisen, can lose much of this advantage.

2. The right people matter - The credibility of a dispute board rests on its members. Experience, independence, and the ability to command the respect of both parties are essential. On global projects, cultural awareness and jurisdictional understanding are equally important. A well-constituted board can shift the tone of a dispute simply by being involved.

3. Clear processes and expectations - Successful DBs operate within a well-defined framework. Roles, procedures, and timelines are understood by all parties, reducing uncertainty and ensuring that the process runs smoothly.

4. Informality is a strength, not a weakness - I think one of the perceptions about DBs is that they lack the procedural rigour of arbitration. However, in reality, their flexibility is a key strength. They can respond quickly, adapt processes to suit the issue at hand, and provide decisions within project timescales and that speed can be the difference between a manageable disagreement and a full-blown dispute.

5. Buy-in drives success - Finally, and perhaps the most important lesson, is that DBs only work when both parties genuinely support the process. If the mechanism is included reluctantly or undermined through contractual amendments, its effectiveness may be significantly reduced. Dispute avoidance is as much about mindset as it is about process, which includes a willingness to raise issues early, share information transparently and consider recommendations in good faith.

When these elements align, DBs can resolve issues quickly and informally, often avoiding the need for escalation altogether. In turn, they can help maintain project momentum, reduce costs associated with disputes, and preserve working relationships.

When things don't go as planned

Of course, DBs do not always deliver on their promise. There are instances where the process is underutilised, ignored or ultimately ineffective. Some of the common challenges can include:

1. Lack of engagement - In some projects, there's a reluctance to bring issues to the DB at all, whether that's down to mistrust, a concern about signalling weakness, or simply a preference for more formal routes. The result is that the board ends up sitting on the sidelines, rather than playing a

central role in managing issues as they arise.

2. Late involvement – If a DB is only brought in once a dispute has already escalated, much of its value has already been lost. By that point, positions are often entrenched and the opportunity for early, pragmatic resolution has passed.

3. Perceived lack of authority - There are also situations where DB recommendations or decisions aren't given much weight, particularly when they are non-binding. If the parties don't see the board as influential or worth engaging with, its ability to add real value is inevitably reduced.

4. Cultural and organisational barriers - Different working cultures can also play a big role in how DBs are used in practice. In some environments, people may be less comfortable raising issues openly, or there may be a tendency to keep decisions tightly controlled at senior levels. That can make it harder for a DB to engage early and informally and ultimately limiting how effective it can be.

I don't think these challenges necessarily reflect flaws in the concept of DBs, but rather in how they are implemented and supported.

Are Dispute Boards always the right solution?

While DBs can be highly effective, they are not universally suited to every project. Factors such as project size, complexity, stakeholder relationships. Cost is likely to always be one of the biggest factors and for smaller projects, or those with limited budgets, the cost and administrative effort of maintaining a DB may well outweigh the benefits.

As I alluded to above and discussed in last year's blog, the Global Use of FIDIC by Chinese Architecture, Engineering, and Construction (AEC) Firms report by the Tianjin University in China and London South Bank University found that striking through DAB provisions is the most common amendment in the FIDIC 1999 form and 2017 forms. Despite being a central feature of the suite, employers and, occasionally, contractors still choose to remove or dilute them. Why? Again, I won't relay again here in chapter and verse, but the reasons are familiar. Cost concerns, perceived complexity, a belief that "we won't need it" or a preference to retain tighter control over dispute resolution pathways. But this is perhaps where the paradox lies. Projects that exclude DBs are often the very projects that would benefit from them i.e. most large-scale, high-risk, multi-jurisdictional undertakings where the potential for disputes is significant. Removing the dispute board is arguably, in many cases, a false economy.

Join the conversation

As construction and infrastructure projects grow in scale, complexity and geographic spread, the mechanisms we use to manage risk and resolve disputes must evolve alongside them. The DB has become an increasingly prominent feature of major projects across the globe. Yet while the concept is widely recognised, its practical application varies significantly depending on context, culture and project dynamics. I think the challenge now is not to prove that dispute boards work, as the evidence already does that, but to ensure they are used properly, consistently and with the intent they were designed for. I think the key is also not to view DBs as a default solution, but as one option within a broader toolkit and understanding when and how to use them is critical.

We'll explore all these themes in more depth and draw on real-world examples from different regions and sectors in next month's webinar. The aim is not to present a one-size-fits-all answer, but to share insights and encourage an open discussion about what works, what doesn't and why. So, whether you are experienced in using Dispute Boards or considering them for the first time, please do register and join us: [Dispute Boards around the world – what we've learnt from global projects](#)

In the meantime, here's some light reading for the Bank Holiday weekend

Useful resources:

- King's College London 2024 Dispute Boards International Survey – A Study of the Worldwide Use of Dispute Boards over the Past Six Years
- Tianjin University/London South Bank University 2024 Report – the Global use of FIDIC by Chinese Architecture, Engineering, Construction Firms
- FIDIC Dispute Avoidance and Adjudication Forum – Practice Note II – Appointment of Dispute Boards - 2024
- UNCITRAL Model Clause on Adjudication – 2024
- Permanent Court of Arbitration – Optional Rules for Arbitration of Disputes relating to Outer Space Activities - 2011

Hope you all have a very enjoyable break over Easter!



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