



Making an Effective and Persuasive Case to a Dispute Board

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MAKING AN EFFECTIVE AND PERSUASIVE CASE TO A DISPUTE BOARD

This paper is based on my involvement with some 100 referrals made to dispute adjudication boards under the FIDIC forms of Contract and to an adjudicator under the NEC forms of contract. Although dispute adjudication has been around for many years, with the Dispute Resolution Board Foundation (DRBF) and FIDIC being the earliest and strongest advocates of this form of alternative dispute resolution (as opposed to arbitration or litigation), it still surprises me how contracting parties often have little apparent understanding of the intents behind dispute boards and contract adjudication, or how these processes can be used to resolve disputes effectively, quickly and inexpensively. As examples, I have come across situations where:

- A contractor has effectively accepted a dispute board panel entirely nominated by an Employer;
- Referrals have been made where the wrong 'dispute' was referred to the dispute board;

- A contractor has simply issued to a dispute board all the correspondence and documents relating to a matter and left it to the dispute board to try and find out from that pile of documents what the dispute was about and what issues needed to be decided;
- A party presented a wholly new and different case to a dispute board from that which had previously been presented to, and rejected by, the other party; and
- Parties have engaged legal counsel to 'run' their disputes, which then perhaps inevitably resulted in the dispute proceedings morphing into quasi-arbitrations, with all the attendant additional time and cost that entailed.

The message I want to convey in this paper is that, used properly and in accordance with designed intents, dispute boards and contract adjudication are very effective and economical means of resolving even the most complex of construction disputes quickly and efficiently, and usually without recourse to arbitration.

The secrets to success, if that is the appropriate expression, rest with the contracting parties:

1. Recognising the significant benefits dispute boards and contract adjudication can provide; and
2. Engaging specialist construction dispute practitioners to lead, administer and draft/ advocate party positions.

These secrets form the back-bone of this paper, and are encapsulated in its title "Making an Effective and Persuasive Case to a Dispute Board". My use of the term dispute board in this paper is to be interpreted to refer to contract adjudication as well.

The first matter to consider is what is meant by the terms 'effective' and 'persuasive'. Are they the same thing? In my view, the two terms have different meanings and objectives, but which must nevertheless co-exist if a party is to maximise its chances of succeeding with its case before a dispute board.

An effective case is one in which the following criteria are satisfied:

1. The submission allows the dispute board to decide the dispute as easily as possible, and within the prescribed time frame of the relevant contract provision. This means providing a clear, concise and complete submission that identifies and addresses each of the issues in dispute with argument and evidence. A failure to comply will likely compromise the dispute board's ability to understand or decide the dispute, resulting in requests for clarification and/or further information, which in turn will likely delay the time for issue of the decision.
2. The referral, including all submissions and hearings (if required), is fully compliant with the applicable dispute adjudication procedure and timescales. Any failure to comply will likely lead to jurisdictional challenges and/or requests for directions. In either event, that party's position will likely be compromised and proceedings delayed.
3. The referral clearly identifies and preferably limits the number of issues in dispute. The more issues there are in dispute, the more arguments, evidence and documents that need to be advanced by the parties and considered by the dispute board. This increases the risks of complexity, confusion and mistakes, as well as likely causing delay to the process.
4. The referral must clearly but succinctly identify and address relevant facts, arguments and issues, preferably in a separate and well-drafted statement of case.
5. An effective dispute referral will be evidenced by the avoidance of multiple party submissions, jurisdictional challenges, requests for directions, and dispute board requests for clarification or further information.

A case can be effective, in that the above criteria are satisfied and a decision is issued within required timescales, but if that decision does not support the outcome the party was seeking under the referral, then that party's case cannot be said to have been persuasive. So to be persuasive, further criteria apply. In my view, these additional criteria are:

1. The statement of case leads to the dispute board giving the decisions sought by a party;
2. The other (losing) party complies with the issued decision; and
3. The dispute board's decision finally decides the dispute.

Although it is very common, under the FIDIC Conditions at least, for a losing party to issue a notice of dissatisfaction with a dispute board decision in order to reserve the right to take the dispute to arbitration, such right is rarely enacted. If the dispute board decision provides clear reasoning, as almost always they do, the decision normally sits as binding, becoming final and binding upon agreement of the final account. Of more common occurrence is the refusal of a losing party to immediately (or at all) comply with a dispute board decision, for which the 1999 editions of the FIDIC forms provide little in the way of salvation (a point of concern specifically addressed in the recent 2017 editions). The enforcement of dispute board decisions however falls outside the scope of this paper.

I outline eight tried and tested guiding principles for parties to use when making an effective and persuasive case to a dispute board.

If the criteria set out above define what the outputs of an effective and persuasive case to a dispute board are, what are the necessary inputs? In my experience, there are eight guiding principles that apply, most of which substantially benefit from being applied by experienced construction dispute practitioners familiar with managing and administering the referral process from start to finish. These eight principles are:

1. Honour the intent of the dispute board provisions.
2. Comply with the applicable procedural rules.
3. Clearly define the dispute.
4. Analyse the dispute.
5. Define dispute strategy.
6. Statements of case.
7. Advocacy of case.
8. Managing perceptions.

I consider each of these guiding principles in turn below.

Honour the intent of the dispute board provisions

The FIDIC Forms of Contract provide for a Dispute Adjudication Board as the first tier of the dispute resolution process. The NEC forms provide for contract adjudication. The dispute board decides disputes arising between parties during the currency of a contract; the purpose being to provide parties with certainty on matters that otherwise may continue to escalate and critically impact successful completion of the project.

Although the FIDIC and NEC dispute resolution procedures are different, they have certain principles in common. Foremost among these is the relatively short timescale in which a dispute referral is to be decided – 84 days under the FIDIC Conditions and 8 weeks under the NEC forms (albeit these periods are extendable by agreement with the parties). The clear intent of both suites of contract is for the giving of decisions within a short time-scale in order to resolve, at least on an interim basis, disputes that may materially impact current and ongoing delivery of a project. For example, a dispute over whether a particular material is specified under the Contract or is a Variation has evident commercial and potential time impacts. Of more severity would be a claim for extension of time (under the FIDIC conditions) that goes unanswered by the Engineer or Employer's Representative – is the contractor entitled to an extension or not? The answer to this question will have direct implications on the contractor's planning of ongoing and future works – does it need to accelerate or not? Is time 'at-large'? Is the contractor liable for delay damages or not?

The clear intent of the FIDIC and NEC suite of contracts is to give decisions within a short timescale in order to, at least on an interim basis, resolve the dispute that may impact the delivery of the project.

By receiving an independent and impartial decision in relation to such matters soon after receiving and considering party positions under a referral would remove uncertainty, allowing the contractor to make informed decisions, rather than speculate at risk, and the employer to make informed decisions and any necessary design and/or budgetary adjustments. It is not difficult to see that dealing with disputes soon after they arise by way of an expedited dispute process can provide these kinds of real benefits to contracting parties.

Given such benefits, why is it the case, at least in my experience, that the prescribed timescales are commonly not met? Or, put another way, why are the prescribed timescales often extended, sometimes by months, thereby significantly delaying issue of the decision? I think there are a number of reasons that explain why:

- Dispute referrals are sometimes not well considered, dealing with too many issues in an attempt to have 'everything answered' in one go.
- Referral documentation sometimes comprises all the correspondence, submissions and responses that relate to an issue, with little or no attempt to summarise the key issues or provide focus.
- Dispute referrals sometimes comprise a completely new or re-argued case to that which has been previously considered by and responded to by the other party, and/or decisions are requested for matters that the Engineer/Employer has not had the opportunity to respond to prior to the referral being made.
- Parties often do not fully understand the dispute board process, considering it either (or both), akin to arbitration or to a legal process, resulting in the engagement of external counsel to run, manage and prosecute each dispute referral.
- Dispute board members sometimes do not have sufficient time available to consider referrals or to draft decisions within stated timescales.

Whatever the reason, it goes against the intents of the dispute board provisions to extend the prescribed timescales for the giving of decisions. My first guiding principle is therefore for contracting parties to fully understand the intents and benefits of dispute board provisions, and to then actively work to realise such intents and benefits by ensuring that decisions can be issued within the 84 days/8 weeks periods identified under the FIDIC and NEC contracts, respectively.

The further guiding principles to be addressed below provide the ways and means for this first principle to be achieved.

Comply with the applicable procedural rules

How parties prepare and present their respective cases to a dispute board is defined by the procedural rules governing the making of referrals.

The procedural rules of the FIDIC Forms of Contract (and to a lesser extent those of the NEC forms) require the dispute board to establish (with the agreement of the parties) the procedures to be applied for deciding a dispute. In this respect, the dispute board is to ensure the procedures to be adopted are suitable to the dispute, avoid unnecessary delay or expense, and give each party reasonable opportunity to put his case and to respond to the other's case.

Contractors need to be aware of applicable procedural rules before they agree to them as rules drafted by employers can often be demanding and highly restrictive impacting on the contractor's ability to make referrals.

However, rather than leave it to the dispute board to decide the applicable procedural rules, it is not uncommon for construction contracts to contain their own procedural rules for adoption by the parties and the dispute board. Though contractors especially need to be aware of such rules before they agree to them as procedural rules drafted by employers can often be demanding and highly restrictive, placing limits and constraints on the ability of the contractor to make referrals.

Examples of some of the kinds of 'party' procedural rules that have appeared in contracts I have been engaged on have included:

- Limiting the definition of 'dispute' to make it more difficult to refer certain disputes to the dispute board;

- Requiring certain 'pre-referral' steps to be taken before a 'dispute' is deemed to exist, such as the giving of a 'notice of a disagreement' or for 'senior management negotiations' to be held;
- Requiring the dispute board to decide disputes on the basis of 'documents only';
- Prescribing what documents are to comprise a party submission to a dispute board;
- Prescribing different referral/document procedures for different kinds of dispute (e.g. with respect to Employer's claims as opposed to Contractor's claims, or for disputes that require a determination under the FIDIC conditions as opposed to those that don't etc.);
- Prescribing deadlines and timescales for completion of certain actions, that might constrain the ability to fully address issues;
- Expressly preventing or requiring party legal representation at hearings;
- Preventing or limiting the use of experts; and so on.

Whether such 'party' procedural rules are intended to improve the efficiency of the dispute resolution process or to make the referral of disputes more difficult is often a moot point. But clearly, if a contractor enters into a contract with onerous procedural rules, it is bound by those procedural rules and must comply with them.

Regardless of what procedural rules are applicable, a party must know, understand and comply with the prevailing procedural rules if it is to have any chance of making an effective and persuasive case to a dispute board. Any lack of understanding or failure to comply with the applicable procedural rules will likely compromise that party's case, perhaps fatally, and may lead to jurisdictional challenges being raised by the other party, which could result in the dispute board deciding it has no jurisdiction to act. At the very least, a failure to comply will probably result in a delay in proceedings. It is for these types of reasons why the engagement of experienced construction dispute practitioners to lead and administer dispute board proceedings is usually to be recommended. It is easy to trip up on procedural compliance, especially for the novice practitioner.

Clearly define the dispute

Perhaps an obvious point, but a referral to a dispute board cannot legitimately be made unless a dispute actually exists between the parties.

Sometimes it is not easy to divine from a referral what the dispute actually is. This is particularly the case where a party's referral effectively advances a completely revised or new position to the one previously considered and responded to by the other party or a party simply submits all the correspondence relating to a matter with no overarching document to highlight the key issues. I have also encountered situations where the 'wrong' dispute was referred, which led to the referral having to be withdrawn (a contractor referred a claim to a dispute board for decision on quantum when in fact the true dispute was the Engineer's failure to issue a determination in respect of that claim. In another instance, an employer sought to refer a dispute concerning a matter that had already become final and binding under an earlier referral, rendering the subsequent referral of no standing).

As these examples indicate, it is essential to ensure that a dispute actually exists between the parties, and to know what that dispute is, prior to making any referral to a dispute board. In this respect I have found that issuing a formal 'notice of dispute' to the other party prior to the instigation of dispute proceedings is helpful, since it informs that a dispute is considered to exist between the Parties with respect to a matter. Although not conclusive, the notice will serve as persuasive evidence of the existence of a dispute if the other party does not respond to deny or reject the declaration.

Even if a dispute does exist between the parties, it may still not be appropriate to refer it to the dispute board. The applicable procedural rules need to be checked to see whether there are any 'pre-referral' steps that need to be taken first, such as for the dispute to firstly be considered by senior management of the parties.

Analyse the dispute

Even though a dispute may exist between the parties, this does not always mean that a referral to the dispute board will or should be made. The decision to proceed with making a referral or not requires careful consideration of several issues, including:

- What is the strength of case? This question is answered by undertaking a close examination of the dispute by reference to the respective cases of the parties, the facts

and the evidence. Such examination is best undertaken by experienced construction dispute practitioners so as to provide a realistic and considered evaluation of the relative strengths and weaknesses of the case, and to provide an evaluation of the prospect of success.

- The importance/value of the dispute and the investment/degree of effort that will need to be expended.
- Whether the dispute might be resolvable in another way (e.g. by commercial agreement or 'trade-off').
- If the matter is referred and a decision is awarded in the referring party's favour, can the other party be relied on to comply with that decision?
- Has the dispute board previously issued any decisions that may relate to the case and, if so, what impact might that have on the prospects of success?

The outcome of such a review might suggest that further work should be undertaken to improve the strength of the case and for this to then be resubmitted to the other party for further consideration. Following the further response, a dispute may no longer exist between the parties, meaning the matter is resolved. But if a dispute does still remain, the case should be stronger than it was before and therefore have a higher prospect of success.

Define dispute strategy

Assuming that a dispute exists which the referring party considers from its review has reasonable or strong prospects of success, what should that party do to maximise its chances of achieving success?

To begin formulating an effective case it is necessary to clearly and precisely identify and define all the issues considered to be in dispute, as well as the facts and evidence that support (but also undermine) those issues. This step will inform a number of key decisions such as:

- The issue(s) to be referred (in other words, the scope of the dispute);
- The key themes/arguments/evidence to be advanced and relied on to support the case being made and to undermine the case of the other party;
- The decisions and relief to be sought from the dispute board.

Once these key elements have been decided, it is then necessary to give consideration to other matters, such as:

- Identifying the procedural requirements for the making of the referral;
- Deciding whether any specialist legal or expert advice or evidence is required to support the case;
- Deciding whether any witness statements will be required to support the case;
- Making an assessment of the time likely to be required to reach a written decision by the dispute board, if expert evidence and a hearing are anticipated;
- Liaising as necessary with the other party and the dispute board to address any matters of procedure.

Key decisions have to be made. For example, if expert evidence is considered necessary (in most cases expert evidence is not necessary and in any event undermines the intents and benefits of the short timescales for the giving of decisions), should this form part of the referral documentation or come later? Experts need to be identified, assessed and selected. They will require a clearly defined brief and adequate time to collect, analyse and consider relevant information and prepare reports. This all takes time.

Similar considerations will apply to the engagement of legal counsel to administer the dispute board referral process. I have been engaged on dispute referrals led and managed by legal counsel who adopted the approach of treating the dispute board process as a quasi-arbitration, with all the associated steps and stages of pleadings, defences, replies, rejoinders, expert evidence, witness statements, submissions and so on, and with a heavy focus on contractual and legal matters, even though the issues in dispute largely related to the quanta of extensions of time and additional cost. But this approach resulted in the dispute board timescales for referrals extending well beyond the 84 days set out in the relevant contract to nearly two years. At the conclusion of the referrals counsel recommended that the dispute board process should be abandoned in favour of the direct reference of disputes to arbitration, because of the time and expense that had been incurred and because the decisions were considered unsatisfactory!

Not only is treating a dispute board or contract adjudication process as a quasi-arbitration contrary to the intents and benefits of the FIDIC and NEC dispute provisions, it renders decisions too time-distant from the occurrence of the dispute to have any meaningful impact on project delivery or programming. Any party considering engaging legal counsel to run their referrals please take heed!

Statements of Case

The statement of case is the most critical document under a referral. It sets out details of the dispute, the party's position in respect of that dispute, identifies the arguments and evidence relied on to support the case being made (and to undermine the case of the other party), and clearly identifies to the dispute board the decisions and relief being sought.

It is remarkable how little thought and attention is given to the statement of case - the document that has the most impact on the outcome of the case.

Given the importance of the statement of case, it is remarkable how little thought and attention is often given to its preparation. Sometimes the referral consists of a simple letter stating that a dispute exists, with attachments comprising all the correspondence, submissions and responses extant in relation to that dispute. Pity the poor dispute board given the task of wading through such a volume of documentation! Where effort has been made to provide a statement of case, sometimes this contains little more than bare allegations and denials; again this is of limited assistance to the dispute board. Usually, poor quality submissions such as these have been prepared by contract administration or project controls staff with limited or no experience of dispute resolution procedures or any real understanding of the standards and burden of proof required.

For these kinds of reasons, I strongly recommend that parties should always consider engaging experienced construction dispute resolution practitioners to draft high quality and persuasive statements of case. This is the document that will have the most impact on the dispute board and the outcome of the case. Given the high value and criticality of most disputes, investment in the engagement of experienced construction dispute practitioners to lead and manage the referral process should really not be an issue.

What then should a statement of case address? In my view, the statement of case needs to clearly and precisely set out for a dispute board:

- The nature and scope of the dispute;
- The contractual (and sometimes legal) basis of the dispute;
- The specific issues in disputes;
- The facts, and to the extent necessary, relevant background and context;
- The arguments, contentions and evidence upon which the party relies;
- Any specialist or expert advice or evidence being relied upon and any witnesses of fact;
- The decisions the party seeks from the dispute board; and
- The remedies and/or relief sought.

A well-drafted, clear, logical and precise document needs to be prepared. The dispute board will not have anywhere near the detailed or comprehensive knowledge or understanding of the dispute as the parties. Therefore, the statement of case needs to set out in clear and concise terms the nature of the dispute and demonstrate why a party's case should be preferred over the other party's case. Understanding is best conveyed by the drafter of the statement of case:

- Focusing on the facts;
- Focusing on relevance; and
- Focusing on evidence.

This means there is no need to rehearse and repeat everything that has already been set out in the correspondence, claims and responses previously exchanged between the parties, especially as these documents will generally form part of the bundle of material that supports the referral. Instead, relevant elements and extracts of such documents can simply be cited or referenced in the statement of case by way of footnoting.

Most disputes succeed or fail on the facts. Therefore, the factual situation must be brought to the fore in any statement of case.

Relevance should always be borne in mind, as the temptation is to include as much detail as possible. But having said that, the statement of case must deal with all the issues and bases of entitlement/defence, even if these are in the alternative. Any issues or matters that are excluded from the referral should be clearly identified; for example, if the referral is limited to the principle of entitlement only, an express statement that quantum is not to be considered by the dispute board should be included. Again, compliance with the applicable procedural rules is essential. If the rules set out limitations on, for example, the length of documents or what types of document can or cannot be included etc., then these limitations need to be honoured.

In the absence of any 'agreed procedure', both the FIDIC and NEC forms of contract envisage a single submission from the referring party; the intent being that the dispute board adjudicates a dispute on the basis of the positions of the parties at the time the relevant dispute crystallised, not against any later revised or updated positions of the parties. However, in practice, this is rarely the case. Instead, each party normally submits at least one statement of case in relation to a dispute for consideration by the dispute board, usually containing additional arguments and evidence to that previously pleaded or considered by the parties.

Subject to the agreement of the parties or at the express request of the dispute board, further submissions might be made. But bearing in mind the intents and benefits of decisions being given within stated timescales, it is recommended that parties be limited to a single and complete submission of its respective case, with any clarifications or requests for further information being limited to those sought by the dispute board.

From the feedback I have received, dispute board members generally think too many submissions and too much information and documentation is issued by parties in relation to disputes. Perhaps if parties recognised that, in essence, most disputes are decided on quite narrow issues, facts and evidence, concise and tightly drafted single submissions of statements of case should ordinarily suffice, since dispute boards will invariably request for clarification of any matter that is unclear or uncertain. However, if parties insist upon making further submissions and submitting further evidence, there is little the dispute board can do without potentially providing the basis for an allegation of denying a party the opportunity to make its case as fully as it wishes to. If parties put more trust and belief in the ability of dispute boards to determine what is relevant and what is not, decisions will be issued far more in line with stated timescales than they perhaps are now.

Advocacy of Case

After submissions have been made by the parties, either they or the dispute board will decide whether a hearing of the dispute is required or not.

In the event a hearing is considered necessary, the parties should seek to agree the agenda, with the dispute board issuing directions if they cannot agree. Party preparations for the hearing should include:

- nomination of a principal spokesperson to lead the presentation of submissions and the making of responses (most dispute boards prefer for the spokesperson to be personally and directly involved in the performance of the project rather than a professional advocate);
- arranging for the attendance of any necessary witnesses and experts; and
- being clear on the focus of the submissions and the points to be made. To be avoided is the raising of new evidence or arguments for the first time or the re-stating of what has already been said in the statements of case. The hearing is for the principal benefit of the dispute board to hear the key points and contentions of each party and then to ask any questions it feels may assist in their consideration of the dispute. If experts have been engaged by the parties, then some form of questioning of the experts or 'hot tubbing' can be expected to be directed for by the dispute board.

A hearing often commences with the referring party giving a presentation on its case, followed by a presentation by the other party of its case. Questions may be asked by the dispute board at the end of each presentation and the other party may be asked whether it has any comments. Following the completion of this part of the hearing, the dispute board may ask specific questions to either or both parties, or stimulate a debate on certain matters to better understand or clarify a point. The dispute board may request either or both parties to further consider a particular

point and to respond later in the hearing. Given these potential demands, it is essential that the party representative is fully in control of the facts and arguments in order to be able to respond promptly to issues arising and to avoid any inadvertent misleading of the dispute board. Again, the benefits of having an experienced construction dispute practitioner acting as party representative cannot be overstated. Lastly, it is also essential that each party has in attendance somebody with authority to make decisions.

Once the parties have completed making their written and oral submissions, the dispute board will deliberate and prepare a decision report which they will issue to the parties, hopefully within the time period allowed by the contract or as otherwise agreed with the parties. Normally, the decision will be given with reasons. The decision is binding on the parties until and unless a notice of dissatisfaction is issued by a party within prescribed time limits and the decision is superseded either by the amicable agreement of the parties or by arbitral award.

Perception

The seven guiding principles I have identified above go to the core of making an effective and persuasive case to a dispute board. As should be evident, these principles come together as a holistic set of principles for maximising the chance of securing the decisions sought from the dispute board. But in my mind there is also an eighth principle, which is intangible in terms of the extent to which it may or may not affect the outcome of a referral. This eighth principle is perception: to what extent, if any, does the manner in which a party or the parties conduct themselves influence the outcome of a referral?

Clearly, acting all times calmly, politely and professionally will stand any party in credit. But what if a party makes constant challenges to a referral to delay and disrupt proceedings? Or make unnecessary and critical comments during the making of a presentation by the other party? Or talk over the other party when that other party is addressing the dispute board?

Of what if both parties cannot agree on even the smallest detail of procedure and constantly require the dispute board to issue directions? Or else just generally act unreasonably and unprofessionally? Would a dispute board simply ignore such antics and decide the dispute based on the facts and the evidence alone? Can the dispute board ignore such antics? This would make an interesting study but my feeling, having been in hearings where such antics have occurred, is that a dispute board may find more reason to find in favour of a party, intentionally or not, because of the antics of the other party.

But rather than test this theory in practice, surely it is better for all if a party at all times:

- Was professional in its submissions and in its approach;
- Assisted the dispute board wherever possible;
- Avoided making jurisdictional challenges or requests for directions and instead seek to reach agreement with the other party; and
- Always acts reasonably.

Conclusions

These then are my eight guiding principles for the making of an effective and persuasive case to a dispute board. Many of these points will resonate with both dispute board practitioners and parties that have been engaged in dispute board or contract adjudication proceedings.

In summary, each dispute is unique in its facts, context and issues. Making an effective and persuasive case to a dispute board requires a holistic approach: adopting the procedural rules as the framework for the referral; identifying the issues in dispute; developing the theory of the case; identifying the arguments, contentions and evidence, including expert evidence (if required); drafting of clear, precise and focused statements of case based on the facts; and providing clear and concise presentations at the hearing.

The FIDIC and NEC forms of contract set out clear provisions for the resolution of disputes within a short period of time.



About the author

Simon Longley, BSc(Hons) LLB(Hons) LLM PgDip(Arb) FRICS, FCI Arb FCI InstCES, AMEA, is a Partner of HKA, the leading global consultancy for consulting, expert and dispute resolution, and advisory services..

Simon is based in Dubai, UAE and has a practice that covers Europe, the Middle East, Africa and Asia. Simon is regularly appointed to assist, lead and advise clients on dispute board and contract adjudication proceedings. He has acted as party representative/advocate/expert advisor on some 100 dispute board and adjudicator referrals, for both contractors and employers, on major land and marine infrastructure works, road and railway transportation projects and various power plant projects around the world.

For further information about dispute boards or contract adjudication, including how to best manage and administer dispute procedures, please contact me by emailing simonlongley@hka.com.

My plea to all parties and practitioners is to give effect to the FIDIC and NEC forms of contract provisions and avoid causing delay to the giving of decisions. Early decisions lead to certainty going forward, and take disputes off the table. What can anybody consider bad about that?

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