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Why Facts Alone Rarely Resolve Construction Disputes: Decision Making, Identity and Belief in the Built Environment

In construction, engineering and property disputes, the profession continues to labour under a persistent assumption: that if the facts are clear enough, the dispute will resolve itself. Better programmes, more detailed expert reports, thicker bundles and ever more forensic submissions are expected to move parties inexorably toward agreement.

Yet experienced adjudicators, mediators and practitioners know that this assumption routinely fails. Disputes harden rather than soften. Parties confronted with adverse evidence often double down, not retreat. The question is not whether this happens, but why.

Recent work in psychology on belief formation and belief change provides a useful lens through which to understand this phenomenon—and, more importantly, to adapt our professional practices accordingly.

The "Information Deficit" Fallacy in Construction Claims

Much of modern dispute practice is built on what psychologists call the information deficit model: the belief that disagreement exists because one party lacks information, and that supplying better information will correct the error.

In construction disputes, this manifests as:

- ever-expanding delay analyses,
- increasingly complex quantum models,
- expert reports written more to *win* than to *be understood*.

The difficulty is that human beings do not update beliefs in a neutral, mechanical way. Once a position has become psychologically embedded—particularly where reputation, competence or professional identity is at stake—contradictory evidence is often processed defensively. Rather than prompting revision, it is treated as hostile.

This helps explain a familiar adjudication pattern: a party presented with a cogent opposing expert report does not concede ground, but instead produces a longer, more strident rebuttal.

Disputes as Identity Conflicts, Not Just Contractual Ones

In construction and property disputes, positions frequently become entwined with identity:

- *“We are not the sort of contractor who causes delay.”*
- *“Our design is not defective.”*
- *“This claim culture is the real problem.”*

Once a dispute crosses that threshold, it ceases to be a disagreement about facts alone. It becomes a perceived threat to competence, professionalism, or moral standing. Psychology suggests that challenges at this level trigger the same cognitive defences as threats to physical safety.

This is why parties can acknowledge adverse facts in isolation while rejecting their implications wholesale. The facts are not denied; their meaning is.

Tribal Dynamics in the Construction Ecosystem

The construction industry is intensely tribal. Contractors, consultants, employers, funders and insurers each operate within strong professional reference groups. Within those groups, certain narratives become self-reinforcing:

- employers are unreasonable,
- contractors are opportunistic,
- consultants are risk-averse,
- adjudicators are unpredictable.

Beliefs that signal loyalty to the group are rewarded; beliefs that challenge the group risk ostracism. In that environment, changing one’s mind publicly can feel professionally dangerous.

This dynamic helps explain why disputes escalate even when commercial settlement is plainly rational. Concession is not merely financial—it is social.

Why Adjudication Sometimes Entrenches Rather Than Resolves

Adjudication is designed as a rapid, interim, fact-driven process. Yet its adversarial framing can unintentionally amplify the very psychological forces that resist belief change.

When parties are required to commit early to fixed positions, publicly and in writing, those positions become harder to abandon. Each submission reinforces the internal narrative. Each reply deepens investment.

This is not a criticism of adjudication as a process but a reminder of its limits. Adjudication determines entitlement; it does not reliably change minds.

Implications for Practitioners

If belief change does not operate through facts alone, what follows for construction professionals?

1. **Narrative matters as much as analysis:** Submissions that acknowledge the opposing party’s perspective—without caricature—are more likely to be engaged with than those that seek to overwhelm.
2. **Procedural justice influences substantive outcomes:** Parties who feel heard are more open to adverse conclusions. This is as true in adjudication as in mediation.
3. **Mediation aligns better with how minds actually change:** The success of mediation in construction disputes is not accidental. It works because it allows parties to explore meaning, not just liability.

4. **Experts should explain, not prosecute:** Expert evidence that educates rather than attacks is more likely to influence both decision-makers and opponents.
5. **Adjudicators should be alert to identity threats:** A well-reasoned decision can still be rejected psychologically if it is experienced as humiliating or dismissive.

Towards Better Dispute Resolution in the Built Environment

None of this suggests abandoning technical rigour or contractual discipline. Construction disputes remain, at their core, legal and factual problems. But they are resolved by human beings, not algorithms.

Understanding how beliefs form, harden and change allows practitioners to deploy evidence more effectively, choose forums more intelligently, and frame arguments with greater realism about how they will be received.

The uncomfortable truth is that disputes are rarely lost because the facts were unavailable. They are lost because the facts arrived too late, too aggressively, or in a form that threatened identity rather than informed judgment.

If the industry wishes to reduce conflict rather than merely manage it, that psychological dimension can no longer be ignored.

#ConstructionLaw #Adjudication #DisputeResolution #ConstructionClaims #BuiltEnvironment #ExpertEvidence #DecisionMaking #LegalPractice #ConstructionProfessionals

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ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012