

**University of Salford**

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**Thesis**

**In partial fulfilment of the award of:**

**Doctor of Philosophy (PhD)**

**CONFLICT AND CLAIMS CULTURE IN**  
**CONSTRUCTION**

**An ethnographic investigation into conflict over claims  
in the GCC construction industry**

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## **ABSTRACT**

Construction industry conflict persists despite decades of research on the subject. Incomplete design, ambiguous contract terms and poor contract administration remain common, causing contractors to routinely make claims for additional time and money. The settlement of claims is made more difficult by inadequate record-keeping, exaggerated claimed submissions and partisan attitudes amongst project teams. As a result, claims often lead to escalations in adversarial behaviour, formalised conflict and, ultimately, costly disputes. This thesis explores how conflict around claims emerges in practice and how it influences practitioners' perceptions and behaviours, from an insider-perspective. Through an auto/ethnographic study of the author's practice as a claims consultant in the Gulf Cooperation Council States, the thesis draws on symbolic interactionist theory to explain how practitioners experience claims as projects play out, how they generalise about other practitioner groups and their own in light of these experiences, and how an adversarial "claims culture" can emerge by recurring events common across construction projects. The research found that claims culture is created through carefully tailored interactions constructed based on shared histories of previous projects. The research shows how project culture and behaviour continuously transforms in response to adverse experiences, and it identifies those key events and circumstances that lead to project culture transformations. The author recommends that changes to adversarial industry culture may be brought about by influencing how practitioners perceive other professional groups and themselves, and through modifications to contractual and project structures that could avoid those situations and experiences that often lead to self-reinforcing cycles of conflict and the problems that result. The empirical, insider perspective of this research has value in an academic setting by offering contextual explanations for 'poor' claims management practice framed in the view of practitioners, while being grounded in sociological theory.

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## CHAPTER 1 - INTRODUCTION

### 1.1 Introduction

This thesis presents the findings of a practice-based ethnographic research project that utilised my work-life experience to explore the world of construction contract claims management in the Gulf Cooperation Council States ('the GCC'). The research focused on the culture surrounding construction contract claims in the GCC, how that culture influences practitioners' actions towards claims, and the implications that the patterns of behaviour emerging from claims have for practice. The purpose of this research was to contribute to knowledge of the conflict surrounding construction contract claims in the construction industry, through an insider ethnographic investigation of the everyday lives of claims practitioners.

The issues which are the focus of this thesis consist of the social context of claims, the perceptions of claims managers toward the contractor, employer, consultant and themselves, and how these factors influence behaviour towards claims through the project cycle. The findings set out in this thesis were developed from a triangulation of autoethnographic data comprising participant observation, one-to-one interviews and other material collected over a two year period of my work life as a claims manager, and from personal memory data drawing on over six years of experience in GCC claims management. The findings were also influenced by my tacit understanding of the GCC's claims culture and my continual introspection as a member of this culture. By adopting a symbolic interactionist perspective and ethnographic methodology, the research ultimately attempts to arrive at a general statement of the sequence of changes in attitude and experience of practitioners during the claims management cycle, and to identify the implications of these changes for the delivery and outcomes of construction projects.

This chapter provides a background and introduction to the research area, and explains its importance and justification. The typical structures and parties to construction contracts and the key issues associated with construction contract claims in the GCC construction industry are set out. The overall aim of the research is then presented, the research objectives are specified, and the way these objectives are addressed through the chapters of the thesis are outlined. I also clarify the boundary and limitations that I



imposed on the research, and present an autobiography and discussion of the factors that have likely influenced my worldview and interpretation of the research material. I then justify my decision to use the first-person/subjective presentation to report the research findings. This chapter concludes with an outline of the overall structure of the submission, and the purpose of each of the remaining chapters.

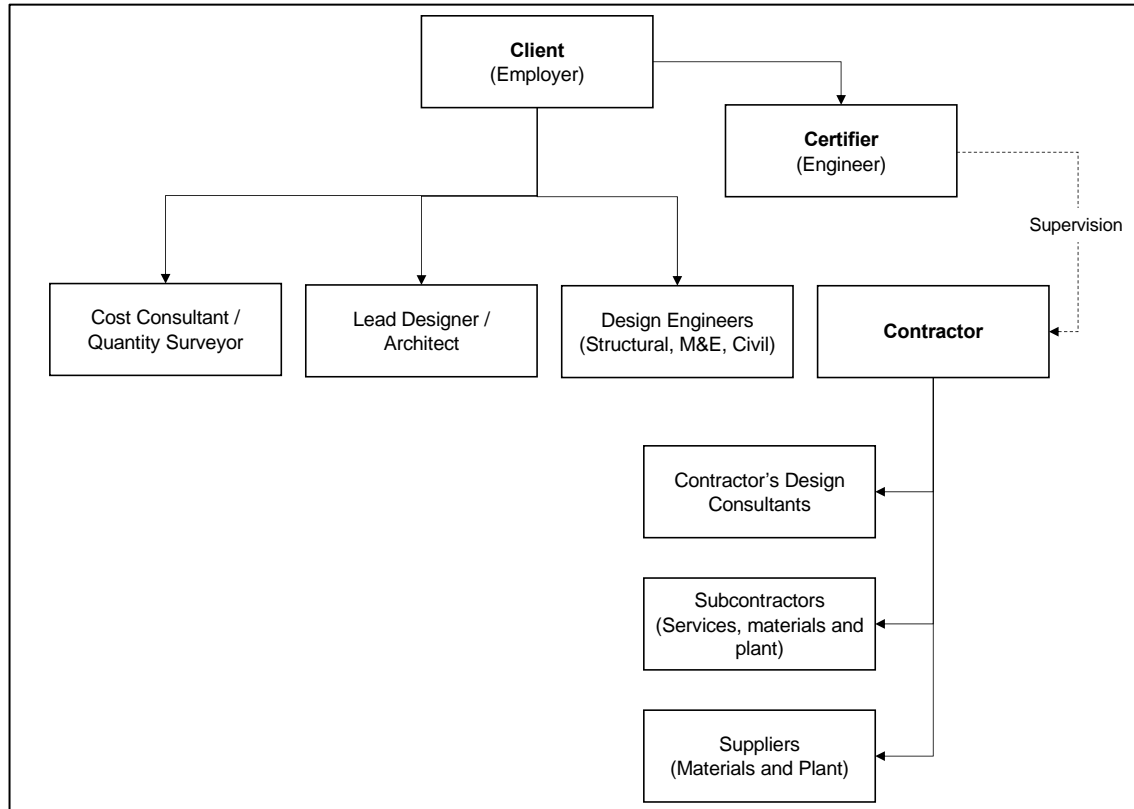
Appendix A and B of the thesis include evidence of ethical approval. Appendix C includes a list of the acronyms used in the thesis.

## **1.2 Research background**

The construction industry is labour-intensive, decentralised, and delivers highly bespoke complex projects (Brockmann and Birkholz, 2006; Koskela and Vrijhoef, 2001). Each project requires collaboration among multidisciplinary teams covering design, engineering, management and construction (Howes and Tah, 2003) in a complex web of contractual relationships (Hughes, Champion, and Murdoch, 2007). Under most construction contracts, clients, known as ‘employers’, utilise ‘contractors’ to undertake work under the supervision of a ‘consultant’ appointed by the employer as a representative and independent certifier (Abdul-Malak et al., 2020).

As parties to the contract, the employer and contractor are ultimately responsible for discharging obligations such as making regular payments (in respect of the employer) or performing the work (in respect of the contractor). Yet the consultant’s role is equally important in acting as the referee of the contract on the one hand, while at the same time as representing and protecting the employer’s interests on the other. In addition, the contractor employs various specialist subcontractors and suppliers to perform the obligations it holds under its contract with the employer. In this sense, the contractor performs a similar role to the consultant in relation to these subcontractors, by acting as the referee and administrator of subcontractor packages at the same time as representing its own interests.

Each of the relationships in the construction industry is governed by the rules of the contract between the respective parties, the primary functions of which are to set out the processes for performing the work, and to allocate risk between parties (Bunni, 2003). Figure 1, below, illustrates the traditional contractual structure of a construction project.



**Figure 1: Contractual relationships: FIDIC Contract (Hughes et al., 2007)<sup>1</sup>**

However, the high-risk nature of construction work (Acharya, Dai Lee and Man Im, 2006; Semple, Hartman, and Jergeas, 1994), failures to properly administer contracts by the parties (Mitkus and Mitkus, 2014) and frequent project delays (Prasad, Vasugi, Venkatesan and Bhat, 2019), result in industry behaviour that is adversarial and prone to conflict (CIRC, 2001; Egan, 1998; Latham, 1993, 1994; Zhu and Cheung, 2020). This conflict reduces productivity by diverting resources away from practical work into argument and debate around contractual claims and other issues (Arditi et al, 2017), a situation that may ultimately lead to costly formal disputes (Arcadis, 2019).

## ***Construction contract claims***

In a construction context, the term ‘claim’ simply means the assertion of a right to recover money or additional time under a contract (Chappell, Powell-Smith, Marshall and Cavender, 2008). Contractors make claims for ‘extension of time’ to obtain relief from liquidated damages in the event of delay, and for additional payment to recover losses or expenses arising from additional work, delays or disruption (Pickavance, 2013) caused

<sup>1</sup> In this example, the consultant is identified in the contract as the Engineer.

by, for example, design changes, late records or information, access restrictions, physical obstructions, or inclement weather (Thomas and Wright, 2016). The complex nature of construction creates difficulties in untangling excusable delay events from other causes of delay, which is made worst where the parties fail to operate the contract properly (Arcadis, 2019). Compounding these issues is the lack of adequate provisions to proactively address delay-related matters in most standard contracts.

This research focused specifically on ‘claims management’ in the construction industry, which is the process of notifying, preparing and presenting claims in appropriate detail and in accordance with the contract. It includes contract administration, technical analysis, and formulation of a strategy to maximise the prospect of loss recovery (Klee, 2014). For instance, the FIDIC 99 forms place strict obligations on the contractor in respect of claims management (Sunna and Al Saadoon, 2007). Failure to comply with such conditions may result in a total loss of entitlement (Whaley, McAdam, and Crowe, 2015), and conditions are often made more onerous on the contractor by employer amendments (Bueno, 2013). In consequence, effective claims management is critical to project profitability and success.

### *The Gulf Cooperation Council States*

This research was undertaken within the construction industry of the GCC, a collection of six rapidly developing oil-rich, monarchical states situated in the Arabian Peninsula (the geographic location of the GCC is depicted in dark grey on Figure 2, overleaf). The construction industry is a major contributor to GCC economies: projects totalling over US\$86bn were awarded in 2016 alone (MEED, 2017b), whilst construction accounted for over 8% of GDP in rapidly developing GCC States like the UAE during the period of the research (Callen, Cherif, Hasanov, Hegazy and Khandelwal, 2014; Emirates NBD, 2015).



*Figure 2: GCC States (Wikipedia, 2015)*

Accelerating construction industry growth has historically resulted in a significant influx of migrant workers from South Asia and white-collar professionals from the West (Talbot, 2016), creating a highly diverse and transient workforce. Across the GCC, expatriates now make up over 50% of the private sector workforce (Callen et al., 2014), with the construction industry being amongst the largest employers of migrant workers there (Human Rights Watch, 2006). In the UAE, for example, the migrant population consists of more than 200 nationalities (Rizvu and Bell, 2015) making up over 87% of the overall population (UAE Government, 2016). There are, however, significant differences in the work lives of expatriates in the GCC construction industry, with Asian workers often living in basic shared accommodation, and Western workers housed in luxury gated communities and high-rise towers (Brunn, 2011). Many labourers are subject to long working hours and poor working conditions (Brunn, 2011), and sometimes receive little training and development.

More recently, regional economic and political challenges and falling oil prices have caused illiquidity, erosion of profit margins and reduced government investment (Deloitte, 2016, Arcadis 2019). Together, the Middle East's volatile political and

economic landscape and the GCC's internationalised, multicultural and high-risk contracting environment (El-Sayegh, 2008) result in a challenging work setting, a high incidence of construction claims (Deloitte, 2015, 2016, Arcadis 2017, 2019), and complex, protracted disputes (Arcadis, 2015, 2016, 2019; Pinsent Masons LLP, 2015). Going forward, the spread of Coronavirus is likely to be transformative in the GCC construction industry, having already postponed keystone projects such as Dubai Expo 2020 (Meed, 2020), it could be a catalyst for more conflict and more disputes.

### **1.3 Research justification**

There has been a proliferation of claims and disputes within the construction industry in recent times (Brimah, 2013; Arditi, 2017), and contractors frequently face difficulties managing claims effectively (Tan and Anumba, 2013). Whether this situation is a symptom of spiralling project complexity driven by technological advances, economic liberalisation, globalisation and industry fragmentation (Gidado, 1996), or the consequence of an adversarial contracting culture (Cheung, Yiu and Chiu, 2009), there is an increasing need to manage claims effectively and efficiently without resorting to dispute resolution (Latham, 1994). Compounding these issues is the negative perception of a 'claims culture' within the construction industry. This is a culture in which contractors are said to plan tactically for claims to unfairly maximise profit from employers' errors (Chappell et al., 2008; Rooke, Seymour and Fellows, 2003, p.167). Therefore, there is a case for investigating measures that might be effective to improve claims management practice, particularly in rapidly developing economies like the GCC, where claims and disputes have become endemic (Arcadis, 2015, 2016, 2019; Pinsent Masons LLP, 2015).

Despite the importance of claims within industry, existing literature has focused predominately on the physical causes of claims (Diekmann and Nelson, 1985; O'Connor, Chmaytelli and Hugo, 1993) or the technical approaches taken by practitioners in evaluating them (e.g. Arditi and Pattanakitchamroon, 2006; Brimah, 2013; Ndekugri, Brimah and Gameson, 2008). Aside from some limited examples (e.g. Rooke et al., 2003; Rooke et al., 2004), there has been little focus on the 'everyday' practice of claims management in the real world, or on the implications that the so-called 'claims culture' might have on practice. As a result, existing literature lacks contextual research that

explores how claims management operates on an individual level, and how the industry's culture influences practice, particularly from a GCC perspective. To address this gap, the purpose of this research was to contribute to knowledge of the conflict surrounding construction contract claims in the construction industry

#### **1.4 Research aim and objectives**

In order to address the inadequacies of the current literature to account for the full complexities of claims management, this research utilised autoethnography to explore the implications of conflict and claims culture in practice. The overall aim of the research was to *gain an understanding of how conflict and claims culture in the construction industry manifests and influences claims management practice.*

The overall aim was met through the following six research objectives:

1. Critically review existing literature to determine the current understanding of conflict and claims culture within the construction industry.
2. Analyse the empirical literature to determine the principal practice issues within contractor claims management.
3. Develop and justify a theoretical perspective suitable for understanding claims management issues from the perspective of practitioners.
4. Review the methodological literature to determine a suitable methodology for insider research based on work-life experience.
5. Undertake an in-depth study of claims management practice based on the researcher's work-life experience as a claims manager, and the experiences of other practitioners.
6. Analyse the data and develop theory to explain the social mechanisms through which conflict and claims culture emerges in and/or has influence on practice.

Objectives 1 to 4 were formulated to provide a theoretical and methodological basis for the empirical research addressed in Objectives 5 and 6. Objective 1 involved a detailed literature review to identify salient issues in contractor claims management, and Objective

2 examined the concept of conflict and claims culture in current research. The findings of Objectives 1 and 2 are set out in Chapter 2 [Literature Review]. Objective 3 developed a social theoretical perspective for understanding claims culture, focusing mainly on theories underpinned by a symbolic interactionist sociological perspective and reflective practice. The findings of Objective 3 are set out in Chapter 3 [Theoretical Perspective].

The research utilised an analytic style of autoethnography, a methodological approach that construction management literature has largely ignored. Consequently, Objective 4 examined the literature to explain and justify the methodological basis of this research, the findings of which are presented in Chapter 4 [Methodology]. Objective 5 consisted of primary data collection based on personal memory, participant observation, and interviews. Chapter 5 [Research Methods] explains the specific methods and approach utilised to meet Objective 5. Finally, Objective 6 encompassed the analysis and discussion of the data in the context of issues identified in the literature reviews. Objective 6's overall findings are presented through Chapters 7, 8 and 9. The findings are then reviewed in Chapter 10 [Discussion].

## **1.5 About the researcher**

Much of the research material presented in this submission is based on my first-hand experiences gained while working as a claims consultant in the GCC. My employment provided opportunities to experience the issues that cause projects to fail and the ensuing patterns of behaviour that result in conflict and disputes between the parties to construction contracts, particularly in respect of claims.

One advantage of my perspective is that I may be more equipped to understand and interpret the experiences of contractors' personnel than an outsider-researcher would be. On the other hand, whilst an outsider-researcher would have their own preconceptions that would shape the way in which they interpret the world (Morehouse, 1994), they may not hold the same preconceptions about the construction industry that I do. Put simply, my perspective is inevitably influenced by my own idiosyncratic life history and culture, and as an insider-researcher, it is incumbent upon me to make explicit the origins of my thinking and preconceptions (Bourdieu, 1990). As Malterud (2001) puts it, 'preconceptions are not the same as bias, unless the researcher fails to mention them'.

I am a 35-year-old, white, British, heterosexual male with centrist political views and a protestant Christian heritage. From that perspective, I am fairly typical of the Western expatriates who work in the GCC. I commenced my career in 2001 as a trainee carpenter. After completing my trade apprenticeship in 2004, I progressed into quantity surveying, earning technical qualifications and a degree while working for regional subcontractors and contractors in the UK. I left the UK in 2011 to work in Africa and the Middle East and have predominantly worked as an independent expert consultant since then, at all times pursuing a keen interest in the development of the practice of claims. In 2017, I returned to work in the UK. I am now employed as a Director in an international consultancy,<sup>2</sup> providing claims and expert services to contractors and clients globally. I still regularly visit the Middle East for work assignments and maintain close personal connections with the people I met while working there. However, it was my work as a claims consultant in the Middle East up to 2017 that was the primary motivation for carrying out the research.

From this perspective, I wish to emphasise three relevant factors that might have influenced the findings of this research. Firstly, as I was employed as a claims consultant when collecting research material, I did not participate in claims management as an interested party to the process, but rather as an advisor and representative. I cannot therefore claim to be an ‘insider’ in the very strictest of terms. Secondly, and following from the first factor, my experience of the construction industry may be somewhat different from that of the ‘average’ project participant, because much of my work has concentrated on failing projects. Thirdly, a more general influencing factor is that I spent the formative years of my career working in contracting companies, and a significant portion of my consultancy work is still dedicated to assisting contractors. I still regard myself as a ‘contractor’, despite having worked within consultancy organisations for several years.

## **1.6 The subjective ‘I’**

As will already be apparent, I have chosen to present this thesis with first person subjectivity, which is a format that is surprisingly rare in construction management

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<sup>2</sup> I currently hold professional qualifications in quantity surveying, construction management and adjudication, and postgraduate qualifications in construction law and expert witness skills.



research, and therefore potentially controversial. For this reason, I wish to briefly justify my decision to present this thesis in a first-person style.

First-person subjectivity is sometimes avoided in academic research, for fear of colouring research with researchers' preconceptions and biases (Murray, 2013). One confusion is that 'I' refers to a subject within a grammatical construct (i.e. the researcher), meaning 'I' is a 'subjective' pronoun. However, the grammatical term 'subjective' bears no relation to the epistemic issues of subjectivity and objectivity. It simply describes the person or thing which is the subject of a sentence. It follows that referring to oneself in the third person does not necessarily neutralise epistemic subjectivity, nor does adopting a first-person style necessarily result in epistemic subjectivity (Shear and Varela, 1999).

Another confusion highlighted by Droege (2003) is that a first-person presentation style is thought to adversely influence the ways in which research is perceived and understood, because of the difficulties of distinguishing between things that the researcher perceived to have happened, and things that 'really' happened. Where a researcher reports 'I saw this event happen', that does not mean that the event actually happened in an ontological sense, but it does represent a situation experienced from the researcher's own point of view. Crucially, however, this same issue occurs in research presented in a third-person presentation style, because the outcomes of research are directly influenced by the perceptions of the researcher, however well (or otherwise) this influence is concealed by written presentation style.

After forming the view that neither first- nor third-person presentation style materially influences epistemic subjectivity, my choice to use first-person narrative in this thesis arose for two more practical reasons. The first is convenience: it is more obstructive when presenting research focused on my own experiences to refer repeatedly to 'the researcher' or 'the author', when I am actually referring to myself. The second reason is that, through the use of first-person presentation, I am able to more clearly distinguish between elements of the research that were based on my experiences, such as my self-observations and external observations in the field, and elements of the research based on the experience of others, which were predominantly reported through interviews.

A final reason for the subjective 'I' in this work is the influence that the literature I studied had on my understanding of stylistic qualities of most ethnographies. It is rarely the case

that ethnographers report their findings in a third-person style. The wide body of ethnographic literature has developed to conventionalise first-person subjectivity, meaning that my work would be incoherent within the very body of literature to which I hoped to contribute. Having dealt with this choice at the outset, it is intended that this work is viewed as an ethnographic text first and foremost, albeit one which was produced within the construction management discipline.

## **1.7 Thesis structure**

The overall structure of this thesis breaks down the research into five separate phases.

- 1) First, the thesis defines the research problem.
- 2) Second, the thesis provides a detailed review of the literature dealing with conflict and claims management practice issues, and the sociological theories that underpinned the research design.
- 3) Third, the thesis sets out and justifies the research methodology and methods.
- 4) Fourth, the thesis presents the findings of the empirical research that I undertook.
- 5) Finally, the thesis concludes with a discussion of the research findings, and the conclusions and recommendations born out of the discussion.

These phases are organised in the following chapters of this thesis.

This chapter (Chapter 1) sets out a general introduction to the thesis, providing an overview of the research problem. It also specifies the research aims and objectives that drove the final research project, as presented in this thesis.

Chapter 2 and Chapter 3 provide the detailed review of the current literature that deals with the problems set out in Chapter 1.

- In Chapter 2 [Literature Review], I critically review the existing literature relating to construction conflict, claims and claims management. I set out a detailed background to the discipline, and then highlight major issues within claims management as reported in the literature, including the issues surrounding the

culture of claims and the propensity of contracting parties to enter into conflict over claims. I also discuss the shortcomings of existing research in claims management, based on a review of the primary streams of claims management literature. Finally, I discuss the current gaps in the construction management literature, and justify the particular focus of this research.

- In Chapter 3 [Theoretical Perspective], I critically review the sociological literature, and develop and justify an interactionist theoretical perspective through which to examine issues in claims management. During this review, I explore the interactionist sociological theories that explain human group behaviour and develop the central theoretical perspectives that guided my data collection and interpretation of the data while preparing this thesis. I argue for the need to examine issues of claims management practice from the perspective of practitioners, and to understand claims culture from a human level, and developmentally through the lifecycle of a project.

Chapters 4 and 5 set out and justify the research methodology developed for this thesis, and the specific methods employed to collect and analyse ethnographic material or ‘data’.

- In Chapter 4 [Methodology], I discuss the overarching auto/ethnographic methodology of this research, explore the issues and challenges associated with insider- and practitioner-led research, and outline the contributions an auto/ethnographic methodology might have to construction management research. I also provide some reflections on the personal challenges I faced when developing and implementing the research methodology, and the ways in which the application of the methodology shaped my understanding of claims management theory and practice.
- In Chapter 5 [Research Methods], I explain how the research was actually conducted, by specifying the methods of research. I set out how I interpreted and implemented the auto/ethnographic methodology within the boundaries and constraints of my own professional practice and field of research, and explain the main types of data collected, how the data was analysed and the techniques adopted for reporting and presentation of the data in this thesis.

Chapters 6 to 9 set out the detailed auto/ethnographic findings of the research. They draw on the autoethnographic material and data collected to present a range of findings on the practice of construction claims management in the GCC.

- In Chapter 6 [Research Setting] I introduce the locations and situations in which the field research took place, and the main participants in the research, including myself.
- In Chapter 7 [The Everyday Lives of Claims Practitioners], I provide a context for the detailed ethnographic findings set out in Chapter 7 to 9, through a reflection on the practice of claims management. I examine my own experiences and use the ethnographic material to consider the key issues in claims management from a practitioner's perspective.
- In Chapter 8 [Role Generalisations in the Construction Industry] I examine how the contractor, engineer and employer view each other and themselves in the context of the construction claim process. I reveal that there are significant differences in practitioners' perceptions of each other and themselves based on their roles under the contract.
- In Chapter 9 [The Emergence and Consequences of Conflict Surrounding Claims] I develop the findings further by examining the key changes in perceptions and behaviour that surround claims at different stages of a project cycle. The key motivators for making claims are identified and the impact of claims on how practitioners relate and engage with each other is examined. Through this account I draw out the similarities and differences in meanings the key stakeholders attach to claims management, and how differing perspectives influence (and explain) behaviour commonly observed in the claims management cycle.

Chapters 10 and 11 discuss and conclude the research and explore the potential implications and contributions that the research may have.

- In Chapter 10 [Discussion], I bring together and discuss the findings of the research, and the implications in the context of existing claims management literature and interactionist sociological theory. Through this discussion I identify

the principal factors that may be likely to result in the adversarial or partisan behaviours reported widely in the claims management literature, and develop a theoretical model of construction industry conflict as it relates to claims. I also discuss the effectiveness of existing solutions to poor claims management and conflict and provide some recommendations of techniques that may assist in avoiding (or minimising) the impact of the construction industry's adversarial claims culture.

- Finally, in Chapter 11 [Conclusion], I summarise and conclude this thesis. The conclusion addresses the overall aim and objectives of the research, the contributions that the research has made to existing theory and practice in construction management, and discusses the limitations of the research, and the directions in which it might be developed in the future.

## CHAPTER 2 – LITERATURE REVIEW

### 2.1 Introduction

This chapter sets out a critical review of the construction management literature that deals with issues around construction industry conflict and claims. This is a rich body of multidisciplinary literature covering technical, legal and social issues. To address this diversity, the review begins by examining the nature of the construction industry, including its formal structures and characteristics, and the primary causes of conflict faced by construction industry practitioners. The review then focuses on the principles and practice of construction contract claims, including the legal and contractual rules that underpin claims, and the concept of the construction industry's 'claims culture' as it is depicted through the literature (Objective 1). The review then turns to address the three main streams of literature that deal with the management of claims. These three main streams focus on: the causes and frequencies of claims, the approaches taken by practitioners in evaluating them; and the issues with claims management in practice, including the common deficiencies and problems that occur in claims management (Objective 2). Finally, this chapter discusses the literature in light of the research problem outlined in Chapter 1, and identifies a specific focus for the theoretical and empirical work presented in the remainder of the thesis.

### 2.2 The nature of the construction industry

The 'construction industry' is a broad term used to describe a range of interrelated industries with a shared focus on the development, construction, refurbishment or maintenance of the built environment. The construction industry is concerned with completing construction projects, which are essentially *temporary organisations* that have comparable structures and business-objectives (Lundin and Söderholm, 1995). Construction projects are normally characterised by labour-intensive work, decentralised management structures, and a highly communicative, result-orientated working environment (Brockmann and Birkholz, 2006). Koskela and Vrijhoef (2001) emphasise these factors as being representative of the industry's tendency to utilise one-of-a-kind production, site-based production, and its need for multiple specialist functions spanning

design consultancy, contracting, equipment supply, construction materials, and management (Howes and Tah, 2003). Integration of these specialist functions is achieved through a complex web of contractual relationships (Hughes et al., 2007) underpinned by ‘market-based, short-term interactions between independent business’ (Gann, 1996, p. 445).

This research was set within the context of international construction projects. These are projects in which the contractor is of a different domicile to the employer, and at least one party is working outside its country of origin (Knutson and Abraham, 2005; Stebbings, 1998). The international construction industry has been subject to continuous expansion in recent times in response to globalisation and international development. Dikmen and Birgonul (2006) estimated annual global construction industry turnover exceeded US\$3 trillion per annum by the end of the twentieth century. Emerging markets are expected to dominate industry expansion, driving an increase in output to over US\$15 trillion per year by 2030 (Oxford Economics, 2015). To support this growth, contractors originating from advanced industrialised countries increasingly perform work in developing economies (Dikmen and Birgonul, 2006; Ngowi, Pienaar, Talukhaba, and Mbachu, 2005) - which is a trend typified by the GCC market. Consequently, the growth of the international sector has provided opportunities for national contractors to diversify and expand market access (Gad, Kalidindi, Shane, and Strong, 2011).

Yet despite these opportunities, international contracting poses specific challenges. Zhi (1995) highlights that at the national level, political challenges, cultural and religious traditions and economic instability cause significant difficulty to international projects. At the industry level, market fluctuations, complex legal systems and unfamiliarity with local contract forms present further risks. These risks manifest at the project level in funding shortages, disadvantaged suppliers, labour disturbances and delays, all of which increase the prospect of claims and disputes (Chan, 2003; Chan and Tse, 2003; Cremades, 1998; Semple et al., 1994). Whilst those studies did not focus on the GCC, industry-led research by Deloitte (2015), Pinsent Masons LLP (2015), and Arcadis (2016, 2017, 2019) point to similar challenges in the GCC. However, there exists little empirical research examining the effects of these challenges on contractor claims management (Dikmen and Birgonul, 2006), particularly from a GCC perspective.

### **2.3 Conflict in the construction industry**

Construction industry behaviour is consistently portrayed as being adversarial and prone to conflict (CIRC, 2001; Egan, 1998; Latham, 1993, 1994, Arcadis, 2019). Studies by Acharya et al. (2006) and Semple et al. (1994) suggest that the unique challenges of construction, including unanticipated site conditions, design errors, and management deficiencies are at the root of this conflict. Further, Mitkus and Mitkus (2014) and a range of industry-led studies (e.g. Arcadis 2016, 2017, 2019) identify poor administration of contractual procedures as a primary factor in construction industry conflict.

#### *The problem with construction industry conflict*

At a general level, conflict refers to a process of social interaction involving a struggle over claims to scarce resources, power and status, beliefs, or other preferences and desires (Appelbaum, Abdallah and Shapiro, 1999). Brown (1993) defines conflict as a type of problematic group behaviour characterised by opposition, controversy, antagonistic interaction and disputes. Conflict may involve difficulties in communications between individuals, broken personal and professional relationships and reduced effectiveness in cooperation during delivery of objectives. It is widely assumed that conflict is problematic in industry because it distracts project managers from productive work and undermines team cohesion (Wall and Callister, 1995). In turn, this situation can cause delays, increased costs and permanent damage to relationships (Cheung and Suen, 2002). For instance, Arditi et al. (2017) considered the relationship between organisational culture and delays in the construction industry. They found a significant correlation between organisational culture and the magnitude of delays: more adversarial cultures were associated with an increased incidence of delay, while more cooperative cultures were associated with a lower incidence of delay.

Given its importance to productivity and efficiency in industry, there are a range of studies that focus on construction industry conflict. These studies either attempt to identify the causes of conflict, or propose methods through which to avoid (or resolve) conflict as it emerges.



*Causes of conflict*

There are broadly three causes of construction industry conflict reported in the current literature: technical issues, contractual issues or behavioural issues (Jaffar, Tharim and Shuib, 2011). Technical and contractual issues can be viewed together as the root causes (or catalysts) for conflict. Technical issues relate to the adequacy or completeness of design or specification information needed to achieve cost certainty (Galbraith, 1973). Contractual issues relate to ambiguities in contractual terms which define the rights or obligations of each party, including the scope of work and methods of payment (Diekmann and Girard, 1995). In both cases, conflict normally results from differences between employer, consultant or contractor on the level of adjustment of prices and time periods for completing the work, where initial pricing or scheduling assumptions turn out to be incorrect as the result of ambiguities in scope or contractual obligations (Essex, 1996). It follows that limiting the opportunities for conflict to emerge due to technical or contractual differences is assumed to be an effective way of avoiding conflict. However, it is also broadly accepted that attempts to avoid these root causes altogether are unlikely to be effective in practice (Whitfield, 2012). While contracts between parties are intended to rationalise behaviour through a consistent set of meanings and definitions, they are frequently at the root of construction industry conflict (Crichton, 2013; Higgin and Jessop, 2013). As Hohns (1979, p.23) put it: ‘everyone involved in construction readily recognize and are quick to admit publicly the very obvious fact that a perfect set of contract documents simply does not exist’.

While technical and contractual differences are often at the root of conflict generally, they are not the sole reason that conflict manifests into problematic behaviour. Conflict can also develop from behavioural issues between project teams, which can lead to dysfunctionality in dealing with the inevitable uncertainties of construction work. McManamy (1994, p. 3) put it this way: ‘It is one thing to lose money in a contract problem, but it is a lot to lose face. All people have an idea of themselves which they feel must be defined.’ In practice, the formal organisation which the contract is intended to impose on parties is continuously challenged by problems inherent in the informal, social organisation of a construction project. Problems in informal communications or behaviour can effectively modify the formal organisation that the contract is intended to impose, and transform the project into an adaptive, informal organisation that is

significantly more dysfunctional and prone to conflict than it otherwise would be (Higgin and Jessop, 1965; Crichton, 1966). According to Vorster (1993), these social problems can emerge from at least three factors: differences in professional background, clashes in cultures and perceived disparities in authority amongst the project team.

## *Differences in professional backgrounds*

Franks (2003) argues that divisive attitudes between the main construction professions (consultants, contractors and employers) are a principal cause of conflict in the construction industry. This argument stems from the theory that common, shared experiences (in upbringing, education, training and so on) correspond with the effectiveness of social groups to communicate and act cohesively (Drucker, 2013). Jaeger and Adair (2013) support this theory in demonstrating that construction practitioners with ‘business’ qualifications hold different views towards organisational issues than those with ‘engineering’ qualifications (those with ‘business’ backgrounds were found to align more closely with a hierarchical organisational structure, and those with ‘engineering’ backgrounds were found to align more closely with a flexible organisational structure). Also, as Emerson and Emmerson argued over six decades ago: ‘the industry could improve its standards and raise productivity by inter-relating the training of its constituents administrating branches’ (Emmerson and Emmerson, 1962, p. 323).

## *National culture*

There are also a range of studies that associate behavioural conflicts to nationality and national culture, and particularly clashes in the ‘typical’ behaviours that can be exhibited by different nationalities during construction projects. Hall (1973) emphasises the significant differences between Arab and Western cultures. On the one hand, Hall argued that the importance of time is diminished in Arab culture, insofar as timekeeping, strict planning and sanctions for lateness are typically deemed less important than in the West. On the other hand, the value of detail and context is said to be diminished in Arab culture, where ‘reading between the lines’ is deemed to be more acceptable than it would be in the West. These different orientations may therefore lead to conflict, where, for instance, lateness is deemed to show a lack of interest from a Western practitioner but is not a concern to an Arab practitioner (Hall, 1960). Loosemore and Muslmani (1999) put these differences into a construction context, focusing specifically on differences between

British and Arab culture. Their study, based on a survey of British and Arab construction practitioners, indicated low levels of sensitivity to Arabic values and relatively relaxed attitude towards uncertainty. These findings were further confirmed in a study by Rees-Caldwell and Pinnington (2013), where British practitioners were found to regard time planning, integration, innovation/technology and communication as significantly more important than their Arab counterparts did. In a GCC-specific study, Jaeger and Adair (2013) found that Western and Asian survey respondents aligned with a more flexible organisational culture, whereas Arab and other respondents aligned more closely with a hierarchical organisational culture. These cultural differences, researchers argue, go some way to explain the high incidence of conflict reported in the international contracting sector (Bunni, 2013; Chan, 2003; Cremades, 1998; Jaeger and Adair, 2013).

#### *Disparities in authority*

Finally, the traditional contracting structures in the construction industry have been criticised for creating potential conflicts of interest for those with authority or decision-making powers, which presents another cause of behavioural conflict.

In particular, the consultant under traditional forms of contract typically holds the dual (and potentially conflicting roles) of independent certifier on the one hand, and representative of the employer on the other (Ndekugri, Smith and Hughes, 2007; Abdul-Malak et al, 2020). This problem is often compounded in international contracts by the tendency of employers to significantly limit the authority of the consultant in matters affecting time or money, through amendments to standard terms (Sunna and Al Saadoon, 2007), and the frequent deletion of the dispute avoidance mechanics, such as the Dispute Adjudication Board procedure included under standard issue of the FIDIC international forms of contract. Both forms of amendment have been found to cause conflict during construction projects (Bunni, 2013).

#### *Conflict resolution*

In response to the problems outlined above, the construction industry has also developed a range of methods through which to avoid or resolve conflict (Whitfield, 2012). Conflict avoidance strategies combine techniques such as risk management and collaborative procurement structures to avoid the situations that lead to conflict (Fenn, 2012). For

instance, collaborative contract forms (such as the NEC3/4 ECC forms) incorporate specific procedures designed to avoid conflict, such as the requirement to act in ‘good faith’ and to manage the time and cost impacts of changes to design or site conditions proactively during the course of the project (Atkins, 2007). Where conflict escalates into a formal dispute, the industry tends to favour low cost, high-speed procedures (Fullerton, 2015). For this reason, alternative dispute resolution processes such as mediation, adjudication or arbitration are often written into construction contracts to avoid costly litigation (Fenn, 2012). Some common law jurisdictions have gone even further, by introducing statutory laws providing access to fast track dispute resolution procedures (such as adjudication and mediation) to parties under construction contracts (Turner and Turner 2014). Yet despite these measures, construction conflict continues to proliferate, particularly in an international setting (Arcadis, 2019). One reason for this may be that governments and businesses in emerging markets, such as the GCC, are yet to adopt progressive conflict avoidance strategies and may often prefer to delay resolution of the dispute (and the need to make payment) for as long as possible (Bunni, 2013). Where modern dispute avoidance strategies have been attempted in emerging markets like the GCC, they have been found to be ineffective, potentially due in part to the inflexibility of industry to adapt to new working practices (Attia, 2012).

### *Summary*

In summary, conflict in the construction industry is caused initially by the technical or contractual uncertainties that are inherent in construction work, which act as catalysts for differences and confrontation. While there are already an array of techniques employed in the industry to minimise conflict, the uncertainties of construction work always remain inevitable to at least some degree.

If the causes of conflict are unavoidable, there may be more value in focusing on problematic human behaviour that causes uncertainties to evolve into conflict at a project level. When human factors are taken into account, conflict can be viewed as essentially a social problem: specifically, it can be viewed as an inability by the project teams to deal with uncertainty in an effective way. As will be illustrated below, contractual claims are regarded as a significant factor in construction industry conflict, yet there have been relatively few studies that address this issue at a social level.

It is partly for this reason that the current thesis focuses specifically on the relationship between claims and conflict in the construction industry from a sociological perspective. To more fully explore the social of context of conflict, I specifically address three of issues identified above later in this thesis: differences in professional background, clashes in cultures and perceived disparities in authority amongst the project team. My findings on these issues are presented in Chapters 7 to 9 of this thesis.

## **2.4 Contractual practice in the GCC**

A primary driver of GCC construction conflict and disputes is a failure by contracting parties to properly administer the contract (Arcadis, 2019). One cause of this problem may lie in the propensity of GCC projects to be contracted under traditional competitive procurement routes, now less popular in the West (Brunn, 2011), with heavily amended FIDIC 1987 and 1999 based contracts most commonly used (Bueno, 2011; Charrett, 2015).

### *The use of FIDIC contracts in the GCC*

At the time of this research the most common form of contract between employers and contractors in the Middle East was the FIDIC (1999) 'red book'. Under the standard FIDIC regime, the client or 'Employer' enters into a contract with the 'Contractor', who supplies labour, plant, materials and management expertise to construct the physical works at site. The Employer also appoints the 'Consultant', either as an in-house delegation, or more commonly, from an external consultancy. The Consultant completes designs and supervises the works on behalf of the Employer, and is also obligated to review and determine claims for additional time and payment from the Contractor. As in any form of contract, the parties have various obligations towards each other. The Contractor agrees to work regularly and diligently and complete the work, without defects, within a stipulated time period. The Employer must pay the amounts certified by the Consultant and also underwrite the Consultant's failures in issues such as late drawings or defects in design.

There are two particular aspects of the FIDIC contract that prove problematic in the GCC. First, the settlement of claims is tightly controlled under the FIDIC forms. Contractors are required to submit timely notifications and details of claims, failing which, under the

contract, their entitlement to a Consultant's determination of time or money may be reduced or removed (e.g. FIDIC, 1999 cl. 20.1). This time-barring regime is a common feature of common-law construction contracts, but sits in an uncertain position within the Civil law framework adopted in GCC countries. There remains uncertainty as to whether the time-bars are enforceable given (amongst other reasons) the obligation under the Civil Codes to act in good faith, which is an issue that frequently forms part of disputes in the GCC (Crawley, 2011).

Second, the contract administrator has a conflicting role under FIDIC forms. For example, clause 2.6 of the older (1987) FIDIC form placed an obligation on the Consultant to act impartially in its decision-making duties, including in its decisions on claims. This obligation is somewhat diluted in the updated 1999 forms, with the Engineer expressly stated to be the agent of the Employer on the one hand, but with a secondary obligation to act 'fairly' between the parties when making decisions. Yet unlike the 1987 forms, the Contractor has recourse to a Dispute Adjudication Board (DAB) for independent decisions in respect of claims under the unamended 1999 forms. As explained above, the consultant's dual role as representative of the Employer on the one hand, but determiner of contractor's claims on the other, has been criticised for presenting a potential conflict of interest (Ndekugri et al., 2007).

These problems are compounded in the GCC by the tendency of Employers to significantly limit the authority of the Consultant in matters affecting time or money through amendments to standard terms (Sunna and Al Saadoon, 2007), and the frequent deletion of the DAB mechanism under the FIDIC 1999 form (Bunni, 2013), which I have already addressed above. One commentator summed up why employers and consultants tend to favour the deletion of these terms in the GCC in the following way (Hewitt, 2013).

*[S]ome of the less fair-minded employers may see DABs as an erosion of their ability to act in a high-handed manner toward contractors and that some supervising consultants fear that DABs may expose poor contract administration.*

The implications of these issues in the GCC are that parties face uncertainty about the enforceability of terms, and that Employers are able to intervene in the consultant's administrative duties to a greater extent than would be possible under the unamended FIDIC forms. They also mean that GCC Contractors' sole opportunity to obtain an

independent and impartial decision in respect of disputed claims is through lengthy and costly arbitration, potentially discouraging the early settlement of disputes.

### *The limited use of collaborative contracts in the GCC*

As can be seen from the discussion above, the FIDIC contract forms commonly used in the GCC adopt a largely adversarial scheme to deal with breaches and compensation, relying primarily on the contractor to “claim” entitlement to additional time or money, and the consultant to “determine” what the entitlement should be. This regime is similar to other traditional forms of construction contract (such as the JCT forms used widely in the UK), but differs quite significantly from more collaborative forms of international contract, such as the NEC 3 or 4 forms of contract. For instance, according to NEC (2019), contractual claims are *‘managed collaboratively rather than through the adversarial approach promoted by Fidic’*.

Unlike FIDIC contracts, NEC contracts include several collaborative features intended to promote the early identification of risks. In particular, the consultant plays an active role in identifying change, and the contract conditions avoid potentially emotive terms such as “claim” and “determination”. There are express risk management procedures, such as the detailed Early Warning system. There are also provisions or ensure that claims (“compensation events”) are assessed as soon as possible and, where possible, consensually. In addition, the contract includes an express obligation to act with ‘mutual trust cooperation’ (which is similar to the obligation to act in ‘good faith’ that arises under Civil Codes in GCC countries). It is broadly for these reasons that NEC contracts have are promoted as influencing more collaborative (i.e. less conflictual) behaviour amongst project teams (NEC, 2019; Attia, 2012).

However, the NEC forms are practically never utilised in GCC countries (Kerr et al, 2014). Previous attempts to adopt NEC3 contracts in the GCC were not wholly successful, an experience which did little to encourage the wider use of collaborative contract practices in the region (Attia, 2012). It remains unclear how (or if) collaborative contracts like the NEC forms can become more widely adopted in the GCC and if they might improve practice. If supporters of the contract are correct, it may offer potential benefits to the GCC construction industry by addressing the problems within the FIDIC contract regime that commonly cause conflict. Yet further research on the nature of conflict in the

GCC is needed to develop measures to improve the GCC's particular style of contracting practice, potentially through implementation of collaborative contracts such as the NEC forms, or potentially by other means.

In Table 1, overleaf, I have compared the FIDIC forms and the NEC forms and commented on the collaborative features of NEC compared to FIDIC as used in the GCC. I will discuss these features in light of the research findings in Chapter 10 of this thesis.



**CONFLICT AND CLAIMS CULTURE IN CONSTRUCTION**  
**Alan Whaley**

**Table 1: FIDIC vs. NEC – Collaborative features**

<b>Aspect of contract form</b>	<b>FIDIC (1999; 2017)</b>	<b>NEC3/4 (1993; 2017)</b>	<b>Collaborative features of NEC 3/4 compared to FIDIC</b>
Obligations to collaborate	None	Obligation to act in act in a spirit of mutual trust and co-operation	Express obligation to act collaboratively / in good faith
Role of contract administrator	Engineer (often designer)	Project Manager (normally neutral)	Separation between design and supervision roles
Risk management	Limited provisions	Early warning, Risk Register, Risk Reduction Meeting	Detailed risk management provisions including recognition of risk register, risk meetings and so on.
Claims process and terminology	Event, Notice, Claim, Determination	Event, Instruction, Quotation, Assessment	Avoidance of emotive terminology such as 'claim'
How events are identified/notified	Contractor's notice of claim, required irrespective of source of event	Project Manager's Instruction or Contractor's Notice of Compensation Event	Shared risk for notifying events
Nature of claim submission	Detailed particulars of claim	Compensation Event Quotation	Contemporaneous assessment, up-front pricing, recognition of risk.
Nature of assessment	Negotiation or Engineer's determination	Acceptance of quotation or Project Manager's assessment	Explicit agreement / assessment procedure. Deemed acceptance if assessment delayed.
Time bars	Claim notice: 4 weeks (from event)	CE notice: 8 weeks (from event), unless PM was required to instruct but did not	Extended time bar period, limited only to Contractor risk events
Default method of interim dispute resolution	Adjudication (commonly deleted in GCC contracts)	Adjudication (Statutory or contractual depending on jurisdiction)	Fast track dispute resolution (when viewed from GCC perspective)
Default method of final dispute resolution	Notice of dissatisfaction, ICC Arbitration (normally sole recourse in GCC contracts)	Notice of dissatisfaction, litigation or arbitration (depending on jurisdiction/project)	Tiered dispute resolution mechanism (when viewed from GCC perspective)

## **2.5 Construction contract claims**

Contractual claims are a contentious and complex area of construction practice that relates closely to the frequent conflict-prone, problematic behaviour in the industry. Whilst much

research has been done in this area to identify the potential causes of claims, both claims and their resultant disputes continue to proliferate in the industry.

The term ‘claim’ is used commonly within the built environment literature. Yet it is a term that can be variously defined. Viewed widely, the term might include claims for personal injury, damage to property, and employment-related matters. However, construction management literature normally refers to claims in the context of contractor requests for additional payment or time under construction contracts. Even when limited to this basis, the term requires some further definition. On the one hand, Chappell et al. (2008, p.70) describe ‘claims’ as an ‘assertion of a right’ to payment or extensions of time that the contractor seeks in the absence of an agreement with the employer under the contract. Pickavance (2013) infers a similar interpretation by differentiating between variations to scope and requests for additional time or payment not relating directly to additional work.

On the other hand, Diekmann and Nelson (1985, p.74) define ‘claims’ as the ‘seeking of consideration or change, or both, by one of the parties to a contract based on an implied or express contract provision’. Sykes (1991, p.9) supports this position in describing a claim as ‘any request which a contractor may wish, or need, to make as a result of any event arising which he has not anticipated’. This research takes the latter view, by defining claims as any request for adjustments to the contract price or completion period.

### *Principles of construction claims*

There are a range of principles that underlie the practice of construction claims, which stem from either the law, the contract or industry tradition. These principles underpin much of the practice of claims in the construction industry, and sometimes go to the root differences and conflict surrounding claims. While the objective (contractual and legal) principles of claims are not the specific focus of the current research, it is useful to refer to them here, to set a context for the social problems explored later in this thesis.

Briefly, most claims in the construction industry are intended to compensate for additional loss and expense or delay incurred due to some adverse event during the project. This compensation is normally viewed as the equivalent of damages in law.<sup>3</sup> For a claim for

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<sup>3</sup> *Wright Ltd v. P. H. & T.* [1968] [34]; *F. G. Minter Limited v Welsh Health Technical Services Organisation*, [1981].

damages to succeed, a claimant must normally establish a causal link between the event giving rise to the claim and the claimant's loss,<sup>4</sup> and the amount of damages must be in proportion to the loss suffered.<sup>5</sup> Furthermore, should the claim be the subject of litigation, the courts require a Letter of Claim to be issued with particulars such as the cause of loss, the basis of the claim and details of the amount of damages requested.

Similar principles apply to construction claims. It is widely accepted that a claim should link causes (i.e. discrete events) to effects (i.e. costs or time actually incurred)<sup>6</sup> to be credible. This means that the contractor should have provided records and information as necessary for the certifier to form an opinion and must provide further details that are reasonably necessary to ascertain the contract sum adjustment and any extension of the time to complete the work (JCT, 2011). While the contractor does not need to provide such adjustment beyond reasonable doubt – a visit by the certifier to the contractor's office to inspect records is sufficient, for example<sup>7</sup> – it is incumbent on them to 'prove' their claim. As will become clearer later in this thesis, the need to 'prove' entitlement to compensation often involves a high degree of subjectivity. This subjectively frequently goes to the root of conflict and disputes under construction contracts.

I should finally add that, for brevity in the main body of the thesis, I have adopted a hybrid referencing style in this sub-section. I have used a Harvard style for referencing publications and a footnote (OSCOLA) style for referencing case law.

### *Types of claims*

Whilst a 'claim' is simply the assertion of a right that must be proven on some kind of evidential basis, the construction literature classifies at least four different types of claim:

- 1) Liquidated damages and extension of time claims
- 2) Prolongation claims
- 3) Disruption and acceleration claims

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<sup>4</sup> *Galoo Ltd v Bright Grahame Murray* [1995] [1374].

<sup>5</sup> *C. & P. Haulage v Middleton* [1983] [1467].

<sup>6</sup> *Mid Glamorgan County Council v. J. Devonald Williams and Ptnrs* [1992].

<sup>7</sup> *Walter Lilly & Co Ltd v Giles Mackay and DMW Developments Ltd* [2012].

4) Variations and increased scope.

The first three types of claims are raised as the result of actual or forecast project delays and disruption. The fourth category of claim arises when an employer requires variations to the originally defined contract scope associated with time, cost or quality. I explain each of these types of claim further in the paragraphs below.

*Liquidated damages extension of time claims*

Traditional construction contracts almost invariably include provisions that: (i) fix a period for completion of the work; (ii) provide the employer a fixed amount of compensation for each day over contractual period which the contractor takes to complete the work ('liquidated damages'); and (iii) provide for the completion date to be extended in the event of employer-responsible delay ('extension of time') (Haidar, 2011). This means liquidated damages claims (from employer to contractor) and extension of time claims (from contractor to employer) represent outcomes of the contractual mechanism relating to the time for completing of the works.

Extension of time claims are attempts by the contractor to extend the completion date for employer-caused delay, so as to avoid the imposition of liquidated damages (Thomas and Wright, 2016). Strictly speaking, extension of time claims serve only that purpose, and there is normally not a contractual link between the extension of time awarded, and payment of compensation for prolongation costs. However, many of the events that lead to extension of time will also result in delay-related costs (Turner and Turner, 2014). For this reason, most delay claims encompass both extension of time and requests for additional payment.

One important aspect of liquidated damages is that the employer can use the threat of levying the damages as a way to influence a contractor's behaviour, by refusing to grant extensions of time. In extreme cases, the threat of liquidated damages can force the contractor to accelerate the work, or take some other action, that it would not otherwise have to do if the employer properly operated the contract (Whaley et al., 2015).

### *Prolongation claims*

Prolongation is an increase in the duration of work caused by events which impact the critical path of the programme (Davison and Mullen, 2009). The effect of prolongation is to increase the contractor's time-based costs (Gibson, 2008, p.217.) Therefore, contractors' prolongation claims are for increased project-overhead costs incurred as a result of an extended project duration (Lee, 2016; Pickavance, 2013).

Contractors normally present claims for delay and disruption under several 'heads' (Ramsey and Furst, 2012). These heads include: increased site/project overheads; increased or lost contribution towards head office overheads; loss of profit; the cost of inflation; finance charges and, in some cases, the cost of claim preparation.

#### *Increased site/project overheads*

This head includes time related costs for site accommodation, standing plant/ equipment, site supervision, non-productive labour and utilities (Ndekugri and Rycroft, 2009). The loss and/or expense claimed is based on actual cost.<sup>8</sup> Recovery of equipment maintenance/depreciation is permissible where the equipment could have been utilised elsewhere.<sup>9</sup> Such costs are calculated by the period of delay rather than the period of prolongation.<sup>10</sup>

#### *Increased or lost contribution towards head office overheads*

Delays on a project can prevent the share of overhead costs being spread over new projects (Constable and Lamont, 2007). The contractor must establish that it has been prevented from commencing other projects which would have funded the overhead costs during the period of delay. An exception applies if the contractor carries out one project at a time.<sup>11</sup> It is acceptable to use widely known formulae, such as 'Hudson's'<sup>12</sup> formula or 'Emden's'<sup>13</sup> formula (Anderson et al., 1990; Wallace, 2014), to calculate such costs.<sup>14</sup> However, to recover costs for additional head office resources, the contractor must

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<sup>8</sup> *Alfred McAlpine Homes North Ltd v. Property and Land Contractors Ltd* [1996] [103].

<sup>9</sup> *Whittall Builders v. Chester-Le-Street* [1985].

<sup>10</sup> *Ascon Contracting Ltd v. Alfred McAlpine Construction Isle of Man Ltd* [1999] [43].

<sup>11</sup> *Alfred McAlpine Homes North Ltd v. Property and Land Contractors Ltd* [1996].

<sup>12</sup> A formula which calculates the overhead contribution per unit of time, which relies on the tender for the relevant data inputs.

<sup>13</sup> A variant of Hudson's formula which adopts accounting data inputs in lieu of tender data inputs.

<sup>14</sup> *Walter Lilly & Co Ltd v Giles Mackay and DMW Developments Ltd.* [2012].

evidence that the resource was prevented from undertaking alternative work.<sup>15</sup> A loss of profit claim follows the same principles as head office overhead claims (Ndekugri and Rycroft, 2009). The loss of normal profit is recoverable.<sup>16</sup> An exceptionally high amount of lost profit would not be recoverable unless the employer was made aware before or upon the commencement of the relevant matter.<sup>17</sup>

#### *Increased costs resulting from inflation*

Inflationary increases in the cost of materials, plant, services and labour are claimable to the extent not provided by the contract (Ramsey and Furst, 2012). If a relevant matter causes delay, the contractor can claim such costs. Ascertainment of the amount is based on actual cost, or by reference to published indices (Constable and Lamont, 2007). Such amounts should not be based on the completion date, but rather on the comparable date(s) of the delayed activities (Ndekugri and Rycroft, 2009).

#### *Finance charges*

The cost of finance charges can be claimed to the extent that financed plant/equipment lay idle due to delays.<sup>18</sup> If a non-compensable event causes delays, recovery of finance is precluded for the respective period.<sup>19</sup> The calculation is of simple interest compounded at quarterly intervals.<sup>20</sup>

#### *Claim preparation costs*

Commentators suggest that claim preparation costs are a general overhead and not claimable as an independent head (Haider, 2011). However, the courts suggest that claim preparation costs could be regarded as a loss and/or expense.<sup>21</sup> This may occur if the Certifier fails to properly determine amounts otherwise due and the contractor deploys additional resources in preparing the claim<sup>22</sup>, or if litigation costs are reduced by the

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<sup>15</sup> *Amec Building Ltd v. Cadmus Investment Co. Ltd* [1997] [50].

<sup>16</sup> *Hadley v Baxendale* [1854].

<sup>17</sup> *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949]

<sup>18</sup> *F. G. Minter Limited v Welsh Health Technical Services Organisation* [1981] 10.

<sup>19</sup> *Rees & Kirby Limited v. The Council of the City of Swansea* [1985] 10.

<sup>20</sup> *Amec Process & Energy Ltd v. Stork Engineers & Contractors BV* [2002] [30].

<sup>21</sup> *Walter Lilly & Co Ltd v. Giles Mackay and DMW Developments Ltd.* [2012] [509].

<sup>22</sup> *Croudace Ltd v London Borough of Lambeth* [1986].

contractor collating and analysing its own evidence<sup>23</sup>. In this case, such costs are unlikely to be recoverable.

### *Third party settlements*

In addition to direct losses and out-of-pocket expenses, the contractor normally incurs amounts for subcontractor loss and expense in the event of a delay or change to the condition of the works. These costs are claimable<sup>24</sup>, subject to the contractor establishing that any agreement regarding the amount due to its subcontractor was reasonable<sup>25</sup>.

### *Disruption claims and acceleration claims*

Disruption and acceleration claims are similar in nature, because both relate to the abnormal cost of construction works in non-optimal conditions.

Disruption claims are requests for costs arising from labour and plant inefficiencies (Lee, 2016; Pickavance, 2013). The most common form of disruption assessment is termed the ‘measured mile’, where the contractor compares the productivity and cost of undisrupted work with the productivity and cost of disrupted work (Lee, 2016). For this reason, disruption claims are typically complicated claims which are heavily reliant on accurate and complete daily labour allocation and productivity records (Lal, 2002).

Acceleration claims are requests for additional payment to cover costs of changes in working methods to achieve an earlier completion date (Tweeddale, 2004; Whaley, 2015), which practitioners relate to an increase in the rate or speed of the performance of work at site (Baker et al, 2013; Creyke and Bixler, 1964). This may be a single activity in the programme or, as is normally the case, the remainder of the whole works to achieve an earlier completion date (Arditi and Patel, 1989). In *Amec Process & Energy Ltd v Stork Engineers & Contractors BV*, Hicks LJ found that, ‘In the context of this contract [acceleration] would entail finishing, or possibly reaching some intermediate stage, before the contract date’.<sup>26</sup> Pickavance takes this view to define acceleration as ‘the completion of work in a shorter time than... anticipated by the contract.’ (2000, p.73).

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<sup>23</sup> *Amec Process & Energy Ltd v. Stork Engineers & Contractors BV* [2002] [9].

<sup>24</sup> *Biggin & Co. Ltd v. Permanite Ltd* [1950]; *Royal Brompton NHS Trust v. Hammond (No. 1)* [1999]. *Fletcher & Stewart Ltd v. Peter Jay & Partners* [1976].

<sup>25</sup> *Biggin & Co. Ltd v. Permanite Ltd* [1950] [53].

<sup>26</sup> [1999] 68 Con LR 17 (QB) [101].

Similarly, Chern (2010) explains that this time may be the original contractual completion date, or a later date after determining any extension of time entitlement. In either case, the contractor undertakes to complete the works earlier than it would otherwise be required to under the contract.

However, acceleration has negative consequences on the efficiency and cost of carrying out the work. It is these costs that contractors seek to recover through acceleration claims. Table 2 summarises the possible consequences of these measures for the contractor's work.

*Table 2 Consequences of acceleration measures*

Method	Consequences	References
<b>Re-sequencing activities</b>	Increased works-inspections	Dieterle and Gaines (2012)
	Increased management time	Dieterle and Gaines (2012)
	Increased defects	Atkins (2007), Dieterle and Gaines (2012)
	Reduced labour efficiency	Mohan (2008), Frendt (2000), Livengood and Bryant (2004)
<b>Increasing resources</b>	Disruption of smooth trade interfaces	Horner and Takhouni (1996), Livengood and Bryant (2004)
	Learning curve for new workers	Barry Bramble and Callahan (2011)
	Additional equipment/supervision	Livengood and Bryant (2004), Tweeddale (2004)
	Use of uncompetitive suppliers	Barry Bramble and Callahan (2011)
	Reduced labour efficiency	Smith (1987), H. Thomas and Jansma (1985)
<b>Increased working time</b>	Enhanced/overtime payments	Horner and Takhouni (1996), Baker (2012)
	Reduced labour efficiency	Mohan (2008)
	Material delivery premiums	Barry Bramble and Callahan (2011)
<b>Temporary works</b>	Additional equipment at site	Davidson (2008)
	Defects and re-work	The Royal Institution of Chartered Surveyors (2011)



### *Variation claims*

Variations are contractual changes which arise from changes in the design or scope of work specified under the contract (Knutson and Abraham, 2005). In principle, they are not 'claims' in the strictest sense, because entitlement to payment is often not the issue, but rather the valuation. In practice, entitlement-in-principle is often denied, and the variation becomes treated as a claim. This means that the various types of claim often overlap and combine, increasing complexity and the prospect of disputes (Turner and Turner, 2014).

## **2.6 The 'claims' industry**

I collected the ethnographic material underpinning this research during my work as a 'claims consultant' in the construction industry. Claims consultants are specialists hired by contractors and employers to provide management and advisory services in relation to construction contract claims (Furst and Ramsey, 2012; Patten, 2003; Redmond, 1993). Because claims consultants originate from a range of construction disciplines, their exact function is difficult to define (Carnell, 2005). Claims consultancy might be described as a 'quasi-profession', because there is no industry-recognised body that regulates claims consultants (Levin and Haar, 2013); yet many claims consultants consider themselves to form a profession in their own right, given their specialist advisory capacity and skillset (Jones, 1998; Patten, 2003). In practice a claims consultant's workload can vary from providing contractual and legal advice, to contract administration, to carrying out forensic investigations of project records and accounts, to preparing evidence for court (Carnell, 2005; Donaldson and O'Rielly, 1983; Redmond, 1993). Across all of these functions is the requirement to manage information and people through a process of preparing and presenting a defensible claim (or a defence to a claim), or at least an element of it, for the benefit of a client.

The management of construction claims has been identified as 'an industry within an industry' (Lal, 2002, p.18). The emergence of this specialism was probably linked to the increasingly complex requirements for contractors' claims under the main forms of construction contract from the middle of the twentieth century (Patten, 2003, p.93; Ren et al, 2001). These new contractual procedures included the introduction of 'condition precedent' clauses for the first time (RIBA, 1963, cl. 24), which had the effect of

extinguishing a contractor's right to claim where a timely claim notice had not been issued. Keating (1964, p.16) welcomed these provisions for preventing contractors from submitting 'vague, sweeping claims in the final account stage'. The 1970s then saw a collapse in the UK domestic construction market (Ball, 2014; Greenhalgh and Squires, 2011), leading to an upsurge in construction litigation (Gaitskell, 2005). The changes in the construction sector at this time may have acted as a catalyst for the nascent claims industry, where for the first time the process of making claims was recognised as a specialist function in its own right. For instance, the literature collected for this research shows that the services of claims consultants were sought as far back as 1970; a vacancy advertised in the journal *ICE Proceedings* at the time required a 'Claims Consultant' with 'very extensive experience, Building and Civil Engineering construction..., [who] reviews and prepares presentation, Contractors' claims on fee or percentage basis' (sic; Institute of Civil Engineers, 1970, p.xiii). Similarly, a contributor to the journal *Arbitration* described themselves as 'a Surveyor' who had 'practised as a 'Claims Consultant' since 1972' (Donaldson and O'Reilly, 1983, p.286).

The economic difficulties experienced in the 1970s also encouraged significantly more British contractors to operate overseas (Ball, 2014). This, coupled with the utilisation of common law-based construction contracts in international projects, led the British approach to claims and contractual management to spread across the globe. For instance, as I explained above, many international construction projects use the contract conditions promulgated by FIDIC (Ramazeeden and Rajapske, 2007), a form based principally on British standard construction contracts and common law principles (Baker et al., 2013, p.268; Glover and Hughes, 2011; Jaeger and Hök, 2009, p.128; Wallace, 1974). Therefore, the specialist role adopted by claims consultants, and the commercial practices surrounding claims, are now broadly similar across international projects.

## **2.7 Claims culture in the construction industry**

A negative portrayal of a 'claims culture' has been prevalent in construction management literature for decades. Industry commentators lament the so-called 'claims conscious' contractor (Chappell et al., 2008) who strategically plans and manages claims to leverage unjustified profit from omissions or errors (Rooke et al., 2004). Others talk of contractors practising 'claimsmanship' to maximise profits (Zack, 1993) in similarly unfair ways,

including misrepresenting facts in an attempt to exaggerate entitlement (Ciccarelli and Bennink, 2009). In his seminal report on the UK construction industry, Latham (1993, p.18) criticised this culture as giving rise to ‘a new profession of ‘claims consultant’... whose duty it is to advise some participants in the construction process how they should act to make money out of the alleged mistakes and shortcomings of other participants’. Similarly, Rooke et al. (2004) and Hassanein and El Nemr (2008) suggest that contractors view claims as ‘profit centres’ rather than as a means of mitigating loss. This recurring discourse around construction practice was summed up by Rooke and Seymour (1995, p. 289), as follows:

*Many believe that relationships in the construction process are now dominated by suspicion, mistrust and cynicism; that there has developed a culture of confrontation and conflict where too much of people’s attention and energies are directed towards defending themselves against the opportunism and unreasonableness that they see in others, rather than at finding ways of collaborating more effectively.*

These general criticisms must be put into some context, however. Modern construction work is complex, and characterised by risk and uncertainty (Potts and Ankrah, 2014; Sykes, 1996), meaning that the proposition that contractors are able to strategically plan for claims may not apply in many situations. By contrast, in larger projects, clients often insist on onerous contract terms, and employ commercial teams whose *raison d’être* is to guard against spurious claims. Thus, contractors may rarely be able to justify claims based on misrepresented facts or exaggerated figures. It is also often ignored that contractors look to future contracts with clients as a potential source of profit (Tochaiwat and Chovichien, 2005), and individuals within contracting organisations are acutely aware of this. This makes attempts to present fallacious claims a very high-risk strategy indeed. It must also be acknowledged that irrespective of client perceptions of contractors, the construction industry exists in an adversarial society where conflict is an inevitable consequence of differing interests (Fenn, Lowe and Speck, 1997). Equally, whilst the perception of a ‘claims culture’ is widespread, practitioners would ordinarily agree that contractual provisions which function to compensate for scope changes, or the other party’s defaults, are fundamental to maintaining the intended balance of risk (Lal, 2002).

*Studies on claims culture*

Despite the frequent reference to ‘claims culture’ in construction management literature, I found only three academic articles that specifically focus on how this culture operates in practice, with each developing the findings of the preceding article. These three articles were of particular influence on me in drawing together the ideas presented in this thesis.

First, Rooke and Seymour (1995) set out an initial framework of the construction industry’s claims culture within a review of how the implementation of NEC contracts might be resisted by practitioners, drawing on interview data with around 30 project managers. They predicted that the primary challenges to implementing NEC contracts would be cultural differences between lawyers, contractors and engineers; and the need to ensure contractors made an economic profit.

Rooke and Seymour were, potentially, the first construction researchers to treat ‘claims culture’ as a central focus through which to understand the “habits and capabilities acquired by practitioners as members of the [construction] industry” (p. 292), rather than treating it as a general concept confined to nationality or some other broad grouping. As I explained earlier in this chapter, divergent professional attitudes are thought to be a primary cause of construction industry conflict (Drucker, 2013). Interestingly from this perspective, Rooke and Seymour (1995) applied Strauss et al’s (1963) negotiated order theory to draw attention to ‘the ways different groups [such as engineers and quantity surveyors] in the industry are characterised by others in the normal course of talk’ (p. 296). Further, they were probably the first to give ‘claims culture’ a conceptual framework, by identifying two extreme industry attitudes (or ‘ideal types’ (Weber, 1949)): those with a ‘distributive’ (i.e. contractual, profit driven) attitude, and those with an ‘integrative’ (i.e. cooperative, results driven) attitude. On the other hand, they stressed that this early work was not ‘intended to convey a comprehensive, or representative view of the existing culture of the industry’ (p. 302).

Second, the conceptual framework of claims culture was developed further by Rooke et al. (2003), who provided a ‘taxonomy’ of claims culture as an output of an ethnography of UK construction practice. As with the 1995 study, the taxonomy mapped attitudes towards claims over styles of management, but added further definition by distinguishing two elements of construction project culture.

- To define the nature of control exercised over the construction project, the researchers used the concepts of the ‘economic order’ and the ‘occupational order’. The economic order concerns economic ownership and control of scarce resources between stakeholders. By contrast, the occupational order concerns control of occupational functions and competence, such as the distinction between the functional roles of a quantity surveyor and an engineer on the construction project.
- To define practitioners’ orientation towards relationships and problem solving, the researchers defined attitudes as either ‘distributive’ or ‘integrative’. Distributive attitudes focus on the distribution of scarce resources (i.e. money or control) between stakeholders, which might manifest in enforcing strict contractual rights or in mistrust of other professions. By contrast, integrative attitudes focus on negotiating outcomes that are mutually advantageous, but which may not rely on strict contractual rights or traditional occupational control boundaries.

Third, based on the same wider research project, Rooke et al. (2004) published a further study setting out observations of how contractors strategically ‘plan’ for claims before and during projects, and the motivations for this behaviour. They also illustrated the complex situations in which contractors approach claims ‘reactively’ and the circumstances in which they may be forced to compromise on commercial differences to maintain site progress. This study was useful in illuminating claims as a complex social process influenced to a large degree by practitioners’ own viewpoints and attitudes in the field.

These studies were unique in illustrating the complex behaviours that characterise claims culture within the competitive economic culture of the construction industry, but they potentially have four primary limitations. First, they did not fully consider how project specific personal factors might influence the ways in which practitioners act towards claims. Second, as academic-led (rather than practitioner-led) research papers, they focused primarily on cultural differences and only broadly addressed the interactions that occur in claims management. Third, they did not fully examine claims culture through the day to day, longer term interactions that are associated with managing construction

projects through the eyes of practitioners, nor did they comprehensively address how the claims culture influences practice based on individuals' perceptions emerging from interactions in different contexts. Finally, they focused only tentatively on two professional groups (contractors and employers) and two professions (engineers and surveyors).

Therefore, there remains scope within the current literature to more fully address three important issues in claims management practice. First, to consider how claims culture manifests itself in the particular social interactions of construction projects and *from the perspective of individuals* tasked with managing claims. Second, to explore claims culture as a dynamic concept, including how it influences behaviour depending on individuals' actions and interactions through the course of construction projects. Third, to understand more fully the mechanisms and implications of role generalisations within the construction industry. Without a more comprehensive exposition of these issues from the practitioners' perspective, it remains difficult to understand the full complexity of claims culture and its implications in practice. These issues provided a specific focus for the empirical research presented from Chapter 6.

## **2.8 Issues in claims management**

The development of a claim, from identification of a claim event to final settlement is collectively described as 'claims management' (Ren et al., 2001, p.186). Kimmons (1989) highlights that claims management commences with the execution of the contract, and continues through contract performance, dispute resolution, and litigation. Furthermore, claims management might be seen as a 'business strategy' tailored to the economic situation of the project and the relationship with the client (Hewitt, 2016; Klee, 2014), a position that points towards a social domain. Consequently, claims management is a discipline that requires the expertise of multiple specialists (Jaeger and Hök, 2009; Ndekugri et al., 2008), including those with expertise in construction technology, construction law, conditions of contracts, contract administration, planning systems, and the psychology of negotiation (Potts and Ankrah, 2014). However, the management of claims is problematic because the accurate assessment of claim events is difficult and subjective (Braimah, 2013; Jaeger and Hök, 2009), and clients view claims with mistrust and suspicion (Kadefors, 2004). As a critical element of administration and management

of construction projects, claims management offers a potentially valuable area of research, and unsurprisingly, numerous studies have investigated issues surrounding claims. These studies can be broadly organised into four relevant streams: those that examine the causes and frequency of claims; those that examine contractor approaches to making claims; those that examine the causes of deficient claim management; and those that focus on the development of normative claims management models through IT systems or similar prescriptive processes.

### *Frequency and causes of claims*

Several studies have sought to determine the types of claims that appear most often in construction projects and their causes, revealing recurring issues across countries and sectors. For instance, Zanelidin (2006), Kumaraswamy (1998) and Semple et al. (1994) separately report that practitioners most frequently experience claims for variations, increased scope, and delays, with claims for acceleration occurring far less often. The relative frequency of the different types of claims is replicated among these studies despite geographical and methodological differences: Zanelidin's (2006) and Kumaraswamy's (1998) findings arise from surveys of contractors in the UAE and Hong Kong respectively, yet yield broadly equivalent results. Semple et al.'s (1994) work reaches similar conclusions, but is based on a legacy of claims made in Canadian transport projects.

There are further similarities reported across literature in this stream. Table 3 summarises a review of nine studies dealing with the primary causes of claims, which reveal that design changes, scope increases, and interpretation of contract submissions cause frequent issues. Whilst there are some differences within sectors, such as the research dealing with transport projects which identifies site conditions as the most frequent cause of claims (Hashem, Mohammed and Grigg, 2014; O'Connor et al., 1993), the primary causes of claims are broadly equivalent across all studies.

# CONFLICT AND CLAIMS CULTURE IN CONSTRUCTION

Alan Whaley

**Table 3: Causes of claims**

Study	Nature of study	Major causes of claims
Zidane and Andersen (2018)	Questionnaire survey, Norwegian contractors	Design changes, interpretation of contract submissions, deficiencies in contract submissions
Ujene and Edike (2016)	Questionnaire survey, Nigerian contractors and consultants	Contract submissions, site conditions
Hashem et al. (2014)	Quantitative review of 204 claims originating from US transport department	Site conditions, interpretation of contract submissions, deficiencies in contract submissions
Bakhary, Adnan, and Ibrahim (2014)	Questionnaire survey, Malaysian contractors and consultants	Design changes, interpretation of contract submissions, deficiencies in contract submissions
Hassanein and El Nemr (2008)	Interviews with Egyptian industrial contractors	Scope increase, owner delay, deficiencies in contract submissions
(Faridi and El-Sayegh, 2006)	Questionnaire survey, UAE contractors and consultants	Approval of drawings, inadequate early planning and slowness of employer decision-making process
Zaneldin (2006)	Questionnaire survey, UAE contractors and consultants, quantitative review of 124 UAE contractor claims	Scope increase, owner delays, poor communication
Kumaraswamy (1998)	Questionnaire survey, Hong Kong contractors and consultants	Site conditions, deficiencies in contract submissions, poor communication
Semple et al. (1994)	Quantitative review of 24 Canadian contractor claims	Scope increase, weather, site conditions
O'Connor et al. (1993)	Quantitative review of 71 claims originating in US transport department	Site conditions, deficiencies in contract submissions, contractor performance
Diekmann and Nelson (1985)	Quantitative review of 427 claims originating from 22 US federal projects	Deficiencies in contract submissions, design changes, site conditions

Quantitative insights like these are useful in focusing research on areas that are likely to result in unplanned cost increases and conflict within projects. They also illustrate that many of the issues faced in construction projects are recurring across nations and sectors – supporting the importance of claims management research and the potential transferability of the conclusions of the current study. However, an understanding of the frequency and factual causes of claims does not itself provide an understanding of the day-to-day issues faced by claims managers. As Rooke et al. (2004) observe, apart from the occurrence of the events identified above, there are potentially other more contextual factors that cause contractors to make claims, or increase the frequency of claims. These



issues mean the literature in this area has limited utility in explaining the social dynamics of claims management in practice from the perspective of practitioners. As I will address further under Chapter 10 [Discussion] of this thesis, the abstract knowledge generated by these quantitative studies appears to be well known to practitioners, but over-reliance on this generic knowledge to address specific industry problems may inhibit motivations to obtain more meaningful, contextual insights obtained through the study of “real” problems in day to day practice.

### *Issues in practice*

Construction contracts generally require contractors to provide both timely and methodological analysis of claim events (Enshassi et al, 2009). This need has led to research that investigates the ways contractors make and present claims. Research in this area is more useful from the perspective of the current study, as it provides explanations as to why claims are rejected, giving some context to the statistical findings examined in the previous section. Overall, there is consensus that contractors often fail to manage claims effectively. Claim settlement is often frustrated by late or global claims, that are poorly presented, and that lack crucial evidence (Ren et al., 2001; Treacy et al., 2016). For instance, Braimah (2013) reports that contractors habitually aggregate claims and delay their submission until months after the occurrence of the original claim event, a practice Zack (1993) suggests is motivated by savings of management time and avoiding the need to settle prospectively and at risk. Yet standard form contracts frequently limit the contractor’s entitlement in the event of failure to make timely claim submissions (e.g. FIDIC, 1999 cl. 20.1). Abdul-Malak and Khalife (2017) statistically analyse the occurrence of such notice provisions across standard contracts, and demonstrate that such provisions are commonplace in the construction industry. Delays in issuing claims may also reduce the prospect of the claim submission standing up to a claim reviewer’s scrutiny and increase the likelihood that the contractor will lose or ignore essential evidence due to the passage of time (Tan and Anumba, 2013). Therefore, given the importance of timely claim submissions, it appears there may be more complex motivations for delaying claim submission than the literature suggests.

In addition to delaying claims, poor claims analysis is reported across world regions. Kululunga et al. (2001) benchmark Malawian practices to reveal low performance levels

in claim examination and presentation. Similarly, British construction consultants surveyed by Vidogah and Ndekugri (1998a) highlighted contractor failures to establish entitlement in principle, provide adequate information, and properly quantify claims as common causes of rejection. Whilst these studies do not indicate the extent to which poor practice led to under-recovery, Zanelidin (2006) finds that UAE-based contractors can typically expect to receive just 10-15% of a submitted claim value as final settlement. However, these studies provide little explanation of the reasons why contractors so frequently fail to manage claims effectively, particularly from the perspective of claims managers themselves.

Due to the frequency of delay-related claims, methods used by contractors to evaluate delays are constantly revisited within the literature. Arditi and Pattanakitchamroon (2006) are typical in reviewing previous research to identify strengths and weaknesses of the primary delay analysis methods. These authors conclude that the most robust methods take account of the factual causes of delay irrespective of responsibility. Similar research by Ndekugri et al. (2008) and Braimah (2013) corroborate these findings. Yet when contractors were asked which delay analysis methods most often lead to ‘success’ - defined in terms of settlement without the need to resort to dispute resolution - the *least* robust methods were more frequently cited (Braimah, 2013; Ndekugri et al., 2008). This contradiction points towards a significant difference between theoretical standards and practice in the field. Both Ndekugri et al. (2008) and Braimah (2013) suggest the reason contractors so often associated less robust methods with ‘success’ is rooted in their ease of implementation. However, this assumption leads to two questions. The first is, why would contractors wish to avoid robust analysis methods if those methods would increase the prospects of maximising recovery from a claim? The second is, what would have been the differences in the results of these studies if ‘success’ were defined in different terms? For instance, when asked which factors lead to *project* success, practitioners surveyed in Toor and Ogunlana (2009) ranked attitude and cooperation far higher than dispute avoidance. Therefore, it remains unclear what implications less robust analysis methods have for relationships between contractors, consultants and employers.

### *Reported causes of deficient claims management*

Given that poor claims management practice may result in the oversight of claim events, a reduction in the quality of claim submissions, and reduced prospects of success (Enshassi et al., 2009), there has been much research effort in attempting to identify the issues that result in deficient claim management. Table 4 (at the end of this sub-section) summarises the issues contractors face in claims management as reported over nine studies, but demonstrates that research in this area typically utilises quantitative and statistical methods based on surveys and questionnaires. The review of this literature suggests three broad issues that inhibit effective claims management: poor project controls, a lack of specialist skills within contractor organisations, and an unwillingness to face conflict.

### *Poor record keeping or project controls*

Construction contracts typically make payment of claims conditional upon the issue of supporting factual evidence (e.g. FIDIC, 1999 cl. 20.1), such that the quality of records directly influences the strength of claims (Gibson, 2015). Good records are therefore critical to the success of claims (Braimah, 2013; Fenn et al., 1997; Jergeas and Hartman, 1994). Contemporaneous records such as photographs, site diaries, time sheets and correspondence are often the only means by which claimants can support entitlements (Enshassi et al., 2009; Hewitt, 2016; Scott, 1990). It is frequently the party with the most comprehensive and organised documentary evidence that retains the advantage in a dispute (Kangari, 1995)<sup>27</sup>. If evidence is limited, ‘global’ claims are necessitated, where the link between cause and effect becomes blurred, and the chances of early agreement and recovery is considerably reduced (Haidar, 2011). Furthermore, claims management relies on knowledge sharing between commercial, technical and operational teams to identify and assess the effects of claims events (Jaeger and Hök, 2009). However, the heterogeneous nature of construction projects, and the resultant fragmentation of staff and information flows between them, creates significant practice challenges in capturing and utilising information effectively (De Fillippi and Arthur, 2002).

It is therefore unsurprising that several studies identify a lack of effective project controls as a primary barrier to claims management. Research by Enshassi et al. (2009), Bakhary

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<sup>27</sup> *A.G. Falkland Islands v Gordon Forbes Construction (Falklands) Ltd (No2)*, [2003] F.I.S.Ct.

et al. (2014), Braimah (2013) and Ndekugri et al. (2008) demonstrate that a lack of records creates difficulties in supporting assessments raised in claims, whilst Vidogah and Ndekugri (1997) add that failure to keep records contemporaneously contributes to failures in submitting claims in a timely manner. Possibly more serious is the failure to recognise claims and contractual requirements in risk management. From a project management perspective, risk is an uncertain event that could have a negative effect on project objectives (Aloini, Dulmin, Mininno and Ponticelli, 2012). Whilst contractor risk registers may account for physical risks such as safety or weather issues, in practice risks associated with failing to manage claims effectively could be entirely ignored (Jaeger and Hök, 2009). However, these studies do not attempt to explain *why* poor record keeping and related problems is so often reported. Klee (2014), Hassanein and El Nemr (2008) Bakhary et al. (2014) and Hashem et al. (2014) offer one possible explanation, observing that contractors often lack centralised claims management systems. Yet even if this assumption were correct, none of these studies establish why, from a contractor's perspective, collecting evidence for claims is not given priority over other project functions. I will address this issue later in this thesis.

Further, the heterogeneous nature of construction projects, and the resultant fragmentation of staff and information flows between them, creates significant practice challenges in capturing and utilising knowledge effectively (DeFillippi and Arthur, 2002). These issues are arguably more acute in an international setting, where projects span several years and are executed remotely from organisational headquarters. Front-line operational teams are often the first to experience potential claims events such as labour disruption and the effects of repeated changes. However, if knowledge of these circumstances is not transferred to the project commercial team in a timely manner, claims notifications may be missed and critical details of claims events left unrecorded. It is normal in projects for front-line knowledge to remain informal and amongst a limited group of people (Kartam, 1996). Nevertheless, the tacit experience of front-line staff may prove invaluable in determining the effects of claims events. The value of codifying this tacit knowledge, or 'externalisation' (Anumba, Egbu and Carrillo, 2008; Nonaka and Takeuchi, 1995), may therefore be significant in the claims process.

*Lack of skills*

Despite the significant need to retain claims management expertise (Jaeger and Hök, 2009; Ndekugri et al., 2008), the literature identifies both a lack of skilled claims practitioners (Bakhary et al., 2014; Enshassi et al., 2009; Ndekugri et al., 2008) and a lack of contractual awareness amongst project teams (Bakhary et al., 2014; Hassanein and El Nemr, 2008; Sabitu Oyegoke, 2006) as primary barriers to effective claims management.

By ignoring procedural claims requirements, contractors' administrators may forward revised drawings or information from the client's design team to the contractor's construction team without initiating a review of changes and resultant cost increases, for example. Similarly, time and cost performance may be monitored separately by project departments, whereas proving claims frequently requires a contemporaneous link between delays and cost increases to be established (Lal, 2002). Ndekugri et al. (2008) also found that a lack of familiarity with established delay analysis techniques acts as a major obstacle to preparing defensible delay claims. These difficulties are illustrated in a case study by Gorse et al. (2006), who found delay analysis based on real project records to be far more complex than the theoretical literature would suggest. From an international perspective, Oyegoke (2006) compared British and Finnish contracting traditions and concluded that differences between national practices can result in skill gaps when practitioners work outside of their home countries. However, whilst lack of skills might be easily addressed by more training, these studies do not examine any other possible or underlying causes of contractors' failures to administer claims robustly.

Another commonly report issue is the poor contractual practice endemic in the industry. This is an issue that compromises the success of many construction claims (Brimmah, 2013), and significantly raises the likelihood of a dispute (E.C Harris, 2013). Agreed contractual terms provide the initial framework for any claim, where the process of notifying and valuing claims is defined with reference to discrete events. Standard form contracts frequently include mandatory terms controlling the timing of notifications and details of claims, which may lead to loss of entitlement in cases where the contractual requirements are ignored. The failure to deal with claims promptly also leaves the memories of key stakeholders faded, and renders the particular facts surrounding each claim difficult to establish (Levin, 1998). In turn, contractors may find that their claims

fail to stand up to the claim reviewer's scrutiny, due to lack of a contractual basis or critical evidence (Tan and Anumba, 2013), leaving their chances of recuperating otherwise recoverable losses in turmoil. The claims process therefore demands both timely and accurate analysis of each claim event (Enshassi et al., 2009). Despite these risks, contractors are often reluctant or unable to follow mandatory contractual requirements with respect to claims. Research demonstrates that contractors regularly delay the presentation of claims to the end of the project, rather than deal with claim events as they occur. Braimah (2013) found that a majority of British practitioners experienced late settlement of claims, despite contractual provisions to the contrary. These problems are not restricted to the United Kingdom. Klee (2014) found that contractors in Eastern Europe were averse to formal contractual procedures. Similarly, Hassanein and El Nemr (2008) and Enshassi et al. (2009) report poor contractual practice in notifying and presenting claims in the Middle East. These studies linked this poor practice to the contractor's inability to evidence claims properly, and a reluctance to strain relationships with the employer.

Project managers and others responsible for developing project workflows may assume that the only objective in project management systems is to facilitate physical work progress, rather than accommodate conflict, risk or change (Jaeger and Hök, 2009). Similarly, cost performance may be monitored separately by project departments, whereas proving claims frequently requires a contemporaneous link between delays and cost increases to be established (Lal, 2002). The potential causes of this skills-gap may be the lack of training some project managers receive in commercial practice (Zack, 2004), or a reluctance to acknowledge that claims, and the employer's adversarial reactions to them, may be inevitable (Fenn et al., 1997).

### *Reluctance to face conflict*

The literature also reports a tendency within contractor organisations to avoid conflict with the employer by formally raising claims. For instance, from interviews with East European contractors, Klee (2014) reported a reluctance to proactively administer mandatory contractual provisions to avoid straining relationships between employer and consultant. Interviews of Egyptian contractors conducted by Hassanein and El Nemr (2008) and surveys of Malaysian contractors conducted by Tochaiwat and Chovichien

(2005) reported a similar disinclination. Hassanein and El Nemr (2008) suggested that the reluctance stems from the cultural traditions operating within the Egyptian construction sector, whilst Tochaiwat and Chovichien (2005) linked this perception to the relative bargaining power of Malaysian clients compared to the contractors. Reluctance to disturb an otherwise harmonious relationship is unsurprising in an industry where clients identify contractor claims as sources of mistrust (Kadefors, 2004) and project team integration is recognised by executives as a key performance driver (Baiden, Price and Dainty, 2006). Yet at the same time, conflict is an unavoidable fact within commercial transactions (Fenn et al., 1997; Kolb and Putnam, 1992), making it unclear why contractors let the prospect of conflict influence claims management practice. What is not clear from these studies, however, is the social context in which this fear of conflict arises, and the reasons it can exist in the first place.

### *Issues in employer/engineer claims management*

The discussion so far has concentrated on the issues within contractor claims management, to which a wide literature is devoted. However, the focus on contractor management ignores the substantial activity involved in reviewing claims by the employer and its representatives. It is therefore surprising that this research uncovered only one study, Vidogah and Ndekugri (1998a), which focused on claims management from a consultant's (employer's representative's) perspective. From a quantitative survey of practitioners, Vidogah and Ndekugri (1998a) reiterate many of the findings of contractor-focused studies in respect of issues in contractor claims management. They also highlight some of the practical difficulties that can be faced by an employer's representative in respect of lack of skill and resources. However, like much of the literature on contractor claims management, this study provides no insight into the everyday experiences of employers and consultants regarding claims, and the particular experience these practitioners have when dealing with claims settlement in the real world.

CONFLICT AND CLAIMS CULTURE IN CONSTRUCTION  
Alan Whaley

**Table 4: Issues in contractor claims management**

Study:		Klee (2014)	Bakhary et al. (2014)	Braimah (2013)	Enshassi et al. (2009)	Ndekugri et al. (2008)	Hassanein and El Nemr (2008)	Sabitu Oyegoke (2006)	Vidogah and Ndekugri (1997)	Tochaiwat and Chovichien (2005)	Total
Research Design:		Qualitative / Interview	Quantitative / Survey	Quantitative / Survey	Quantitative / Survey	Quantitative / Survey	Mixed method / Structured Interview	Qualitative / Interview	Quantitative / Survey	Quantitative / Survey	
Issues Surrounding Claims Management	• Poor record keeping/project		X	X	X	X	X		X		6
	• Lack of contractual knowledge		X				X	X			3
	• Fear of conflict with employer/certifier	X					X			X	3
	• Insufficient skilled personnel		X		X	X					3
	• Lack of awareness of claims events by employees		X		X						2
	• Lack of a claims management system	X					X				2
	• Ambiguities in contract submissions		X							X	2
	• Employee resistance to claims management	X									1
	• Poor communication				X						1



## 2.9 Normative claims management literature

Current empirical claims management research demonstrates that there is great potential to improve practice in relation to claims. This review indicates that contractor failure to prepare defensible claim submissions, and the numerous barriers to effective claims management that may result in these deficiencies, is a complicated and nuanced area of practice. Whilst the empirical studies have, to a limited extent, provided insights into the problems within contractor organisations that result in poor practice, little theory has been developed to describe or predict the circumstances that underlie these problems. Instead, the research community has principally approached the problems within claims management through the conception of ‘guidelines’, or more commonly, normative process models.

Studies which aim to develop ‘guidelines’ for proper contractual administration tend to focus on generalised issues. For instance, El-adaway et al. (2016) present contract administration guidelines for operation of extension of time clauses based on a comparative analysis between frequently used contracts.

The remainder of this section focuses on the wide body of literature describing more detailed normative process models. This stream of literature lacks discussion of theoretical tradition. However, the endeavour to produce systems or technology to tackle practical problems has roots in design science research. Simon (1996, p.114) distinguishes design science on the basis that ‘the natural sciences are concerned with how things are...design on the other hand is concerned with how things ought to be’. Design science research therefore aims to produce new technology or methods through the process of design and application (Venable, 2006) and testing (Van Aken, 2005) in practice, and therefore adopts a broadly positivist ontological perspective (Zutshi and Sohal, 2005). The normative models presented in the claims management literature attempt to streamline or automate the process of claims through management and process models, and decision support models, as explored further below.

### 2.9.1 *Management and processes*

Several authors have developed theoretical models of the claims management process through its six generic stages: identification, notification, evaluation, presentation, negotiation, and determination (Ren et al., 2001). Table 5 gives a summary of six process

models, including their basis and justification. At the simplest level, these models define the stages and sequence of the claims process to act as a framework for managing claims (e.g. Abdul-Malak et al., 2002; Motawa, 2012). Abdul-Malak et al. (2002) justify their model on the basis that defining the claims preparation stages might reduce disputes, by informing practitioners of the steps involved in reaching agreement of a claim. However, whilst practitioner failure to administer construction contracts is a major cause of disputes (Harris, 2013), Abdul-Malak et al. (2002) do not support this justification on the basis of the existing empirical research, which does not widely link poor contract administration solely with the lack of normative process on projects. Nevertheless, in the context of the empirical research discussed in this review, management models might be better justified by their potential to form the basis of integrated claims management systems more generally, which has been identified as a root cause of poor contractual practice (Klee, 2014).

*Table 5: Normative research: process models*

Study	Type of model	Origin/Justification
Bilgin, Dikmen and Birgonul (2017)	A delay analysis ontology is proposed to facilitate development of databases	Dispute avoidance
Abdul-Malak and Abdulhai (2017)	Framework for identifying documentation evolution along the claim and dispute timeline based one burden-of-proof requirements from standard contracts	Record keeping, contractual compliance
Abdul-Malak et al. (2002)	Computerised process model, administration of claims by project team	Dispute avoidance
Al-Sabah, Fereig and Hoare (2003)	Computerised database system for storing data in relation to claims	Knowledge capture
Al Qady and Kandil (2010)	Computerised process model, submission management for claims	Record keeping, contractual compliance
Hegazy, Elbeltagi and Zhang (2005)	Computerised process model, submission management for claims	Record keeping
Motawa (2012)	Process model, change impact management	Improved efficiency in change management
Niu and Issa (2012)	Computerised process model, submission management for claims	Record keeping
Tan and Anumba (2013)	Computerised process model, internet based claims tracking and management	Improved efficiency in change management

More refined models integrate descriptive process frameworks into software applications, potentially increasing their practical application. These applications function to either

record data about claims (Al-Sabah et al., 2003), coordinate the claims process (Tan and Anumba, 2013), or capture documentation in relation to claims (Al Qady and Kandil, 2010; Hegazy et al., 2005; Niu and Issa, 2012). In particular, the empirical research identifies poor record keeping (Enshassi et al., 2009) and skills shortages (Bakhary et al., 2014) as primary barriers to effective claims management, challenges which might be reduced through software automation. Furthermore, whilst bespoke contract terms and claims administration procedures might create difficulties in utilising generic models between projects, a combination of a more generic model at a company level, and a more specific model at project level, might counter this difficulty. However, there appears to be little research that tests these models on real projects as would normally be typical in design science research (Van Aken, 2005), and which might establish the extent to which claims management models might benefit practice.

### ***2.9.2 Decision support systems***

Decision support systems facilitate organisational processes by aiding resolution of complex practice-based problems (Keen, 1980), and therefore have various potential applications in claims management. Table 6 gives details of four studies that present decision support systems for assistance in the agreement of delay claims and the facilitation of claims agreement. For example, Ren et al. (2001) develops a package that coordinates parties' proposals for settlement of claims with the assistance of a computerised knowledge system, an application justified by its potential to alleviate 'personal issues' in claims management, including factors such as the fear of conflict uncovered by Klee (2014) and others.

*Table 6: Normative research: decision models*

Study	Type of model	Origin/Justification
Hegab and Nassar (2005)	Decision model, course of action to take in the event of delayed commencement	Reducing conflict in commencement delay claims
Ren et al. (2001)	Decision model, evaluation and agreement of claims	Record keeping, human factors
Riad, Arditi and Mohammadi (1994)	Decision model, dealing with owner directed acceleration	Dispute avoidance
Rustom (2012)	Decision model, assessment of delay claims	Improved efficiency in claims management

The high frequency of delay claims and availability of computerised critical path network programmes means that there have been several specific attempts to automate delay claim evaluation. Rustom (2012), Hegab and Nassar (2005) and Riad et al. (1994) present models that utilise computerised programming records to facilitate claims evaluation decision making in the event of project delays. Rustom (2012) proposes a system that develops deductive ‘what would have been’ schedules through an automated process, whilst Riad et al. (1994) propose a method to automate the process of determining price adjustments and cost apportionments for owner directed acceleration. Hegab and Nassar (2005) also propose a systematic method to identify an appropriate course of action in the event of a project commencement delay. Yet in each case, the authors fail to provide any substantial evidence of the effectiveness of their models in practice.

Given the various accepted approaches to delay claim assessment and their reliance on robust records (Ndekugri et al., 2008), the prospect that a single evaluation model could offer a generic solution to a majority of delay claims is unlikely. Even when records are available, these models might only supplement the logic that practitioners would normally apply to the assessment of a claim event. Furthermore, whilst decision support systems might remove personal influences from decision making (Dalke, 2013) – potentially addressing some of the empirical challenges of claims management - these systems have been criticised for failing to take account of all potential variables applicable to the problem (Dijkstra, 2001), retaining the need for substantial human input. Therefore, in common with other streams of management research, the current attempts to normalise

processes at a general level appear to be of limited value in understanding the social reasons for problematic behaviours in the practice.

## **2.10 Research focus**

This review demonstrates that existing research on construction claims management is approached in two ways.

First, empirical research is mostly designed on the basis of survey questionnaires of practitioners, with findings generated from statistical analysis, provides information about problem areas within contractor claims management. These are the issues that the current literature links to deficiencies within claim submissions, and rejection of claims. This stream provides valuable information to both academics and practitioners looking to identify which contractor management functions are prone to lead to deficient claims presentations and rejections. It serves as a basis to develop technical and management theory centred on procedural improvements. It also demonstrates that contractors face a range of difficulties in managing claims due to challenges in submission management, the availability of specialist skills, and a desire within contractor organisations to avoid conflict. Yet it does not reveal the underlying context in which the reported issues play out, nor does it address the day to day experiences of claims managers in any detail.

Second, normative research attempts to address the problem areas highlighted in the empirical research studies, through the formulation of process models and management systems. This approach to claims management research garners support from Koskela (2008), who argues that construction theory development is more appropriately addressed through applications of design science research, and not solely through explanatory studies. However, others question whether positivist methods like design science are suited to addressing practice-based problems, due to their ignorance of the ‘messy’ nature of practice in reality (Schön, 1983), or the difficulty in objectively defining ‘solutions’ to social phenomena (Rittel and Webber, 1973).

In addition to these academic criticisms, the practical contribution of claims management research appear elusive, given that the same aspects of deficient claims management practice continue to be reported across studies (Bakhary et al., 2014; Tan and Anumba, 2013). This might suggest that the current approach of the research community to address claims management problems has so far been subject to limited consideration in practice.

Alternatively, practitioners may be well aware of theoretical problems, but there may be more implicit circumstances underlying the problem areas identified in existing research, that are neither fully described nor linked into wider sociological theory by current empirical studies. Particularly, the tendency for existing claims management research to adopt quantitative methods means that there is little understanding of claims management from the perspective of claims managers themselves. This is an argument similarly advanced by Seymour, Crook, and Rooke (1997) in the context of wider construction management research. In sum, the claims management literature has yet to explore the full social complexity of claims in the construction industry.

In research which *does* provide a glimpse of the social world of claims, it is implicit in that there is a high degree of social complexity within construction industry conflict generally, and within claims management specifically, which appears to be a fruitful area to explore in greater depth. For instance, the research on claims culture by Rooke et al. (2004) addressed an existing knowledge gap, by exploring some motivating factors for making claims in a social setting, albeit from an outsider/observer perspective.

More generally, semi-structured interviews by Klee (2014) revealed employee resistance to conflict as a primary barrier to claims management, a problem that appears to be rooted within the social dynamics of construction project teams, and which may occur more frequently within international construction projects (Chan and Tse, 2003). Similarly, existing studies acknowledge contrasting consultant and contractor perspectives on claims management (e.g. Bakhary et al., 2014; Vidogah and Ndekugri, 1997, 1998a), but does not explore the full implications of these sometimes-conflicting views. As Rooke and Seymour (1995, p. 298) put it *“If people are to change, they must be persuaded. In order to persuade someone it is necessary, first to understand their point of view.”*

Whilst the symptoms of poor claims management are widely demonstrated in existing literature, the question of how practitioners approach claims management in practice, or the factors underlying the differing perspectives, particularly between professional sub-groups (contractors, employers and consultants), remain little understood. There is currently limited representation of the social circumstances that surround poor claims management performance, nor much of an established link between on-the-ground practice and a wider theoretical knowledge base. Consequently, there is much

justification for claims management research to explore claims management at the practical level, to more fully understand the complex social world surrounding claims.

All of these observations suggest that claims management needs more qualitative, exploratory research to investigate how practitioners manage claims in the real world, and the extent to which social factors play a role in the deficiencies observed in the empirical research studies. The benefits of focusing on day to day lived experience have been evident in other spheres of professional practice (Cassell and Bryant, 2006). For example, such an approach might provide a more detailed understanding of why claims practitioners themselves tend to fail to keep detailed records to support claims, the reasons companies lack sufficiently skilled personnel to prepare claims, and why contractor team members fear conflict from making claims. It may also provide an insight into how more collaborative contracts (such as the NEC 3 and 4 forms) could address these problems. Such information might be best obtained through an appropriate investigation of issues in the context of practice.

Considering the current lack of theory to explain the social and cultural dynamics operating within claims management, research with a more grounded focus therefore presents an opportunity to add context and meaning to the findings of existing empirical research. The recognition of ‘people issues’ in claims management has been raised in previous work (Ren et al., 2001; Vidogah and Ndekugri, 1998a), yet context specific research remains critically undeveloped, particularly from a GCC perspective.

In summary, there is significant potential to adopt a sociological theoretical perspective in claims management research. This is a position that questions whether the circumstances leading to poor claims management can be properly understood and explained through generalised research approaches, and which argues that the behaviour exhibited by stakeholders in claims may be influenced by the social context of a construction project. It queries *how* contractors manage claims in the real world.

Considering the current lack of theory to explain the social and cultural dynamics in claims management, addressing the deficiencies in the literature provided an opportunity for the current research to add context and meaning to claims, and a basis to develop theoretical explanations for claims management issues at the level of interaction. As will be seen in Chapter 6 to 9, the ways in which contractors experience claims, and the

influence of the claims culture on practice, are far more complex than the current literature suggests.



## CHAPTER 3 – THEORETICAL PERSPECTIVE

### 3.1 Introduction

This chapter presents the second stage of the literature review, which develops and explains the theoretical perspective of the research (Objective 3). As was demonstrated in Chapter 2 of this thesis, many of the issues within construction claims can essentially be viewed as problems of socialisation. Yet there is limited literature that applies sociological theory to practice. For this reason, I drew on the wide body of social science literature to develop a theoretical perspective suitable to make sense of the problematic patterns of behaviour that recur within the process at a practitioner level. After reviewing different potential theoretical perspectives, I focused on symbolic interactionism for its potential to break down and explain human group behaviour at the level of action.

### 3.2 Theoretical perspective

In sociological terms, a theoretical perspective is 'a broad set of interrelated concepts, ideas, findings and assumptions about the two-way relationship between man and the socio-cultural system' (Schmitt, 1974, p.453). As Calhoun (2012, p.1) explains, sociologists apply theory to empirical observations to 'guide sociological inquiry and .... to bring order to its results'. Theoretical perspectives therefore provide a basis on which to understand how particular aspects of social life are related and why they influence each other (Macdonis and Gerber, 2010). The intentional use of a theoretical perspective organises the process by which we make sense of empirical observations of practice, and acts as a framework around which we can develop theoretical explanations of issues in practice (Anfara and Mertz, 2006). There is a myriad of social theoretical perspectives from which I could have explored issues in claims management. I might have explored the origins and impact of the overarching power differentials between contracting parties (a conflict/conflict theory perspective); or unpacked the structural features of society that sustain the common practices in claims management (a structural-functionalist perspective); or examined the differences between individual perceptions of common social phenomena (a phenomenological perspective). These perspectives might provide useful insights into the issues discussed in Chapter 2, depending on the particular research problems to be explored. But the perspective I have adopted in the current research –

symbolic interactionism – views the social world in different terms. Its defining feature is its focus on the micro-level interactions between humans, rather than grand theories of the workings of society.

In the remainder of this chapter, I discuss the basic tenets of symbolic interactionism, and critically review the theories of social action and culture used to guide my understanding of claims management behaviour in the field. The chapter concludes with a discussion of claims management issues in light of the theoretical perspective developed in the preceding analysis.

### **3.3 Symbolic interactionism**

Symbolic interactionism is a sociological perspective grounded in the pragmatic traditions<sup>28</sup> of Dewey (1933/1997) and the social philosophy of Mead (1934/2015). It is often associated with interpretivism, phenomenological sociology and dramaturgy (Macionis and Gerber, 2010), but stands alone as the overarching theory used to explain social interaction at a micro-level. In contrast to structural functionalism and conflict theory (the two other main perspectives in social research), symbolic interactionism focuses on how we interpret the world in terms of symbols and meanings, and how these meanings influence our actions (Appelrouth and Edles, 2010). The symbolic interactionist perspective can be understood in terms of four guiding principles (Blumer, 1969/1986; Serpe and Stryker, 2011):

- (1) People attach meaning to themselves, others, objects, concepts, and social situations (collectively, ‘symbols’), and act according to those meanings.
- (2) Meanings emerge from interactions with other individuals within society.
- (3) Interaction occurs within a particular social and cultural context in which symbols are defined or categorised according to that context, and;
- (4) Meanings are continuously created and recreated through a process of interpretation, action and reflection.

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<sup>28</sup> Where ‘truth’ is considered to be whatever effective epistemic explanation resolves a problem from the perspective of the people faced with it, irrespective of the actual (ontological) position.

### *Symbolic meaning*

Symbolic interactionists place symbols at the centre of understanding the social world. The term “symbolic” acknowledges that humans live in a world of physical and social objects that do not in themselves have an intrinsic meaning. The meaning of each object is derived from the particular interpretations of people when interacting in the everyday social world (Tan, Wang and Zhu, 2003)

Symbols can be any gesture, communication, concept, object or other thing that evokes meaning from the perspective of an individual. Anything can serve as a symbol, so long as it represents something meaningful beyond the self (Carter and Fuller, 2016). The range of symbols that might evoke meaning depends on our particular experience and worldview, because the meaning associated with a symbol by one person may be different for another. In other words, symbols are not static concepts which exist outside of individuals.

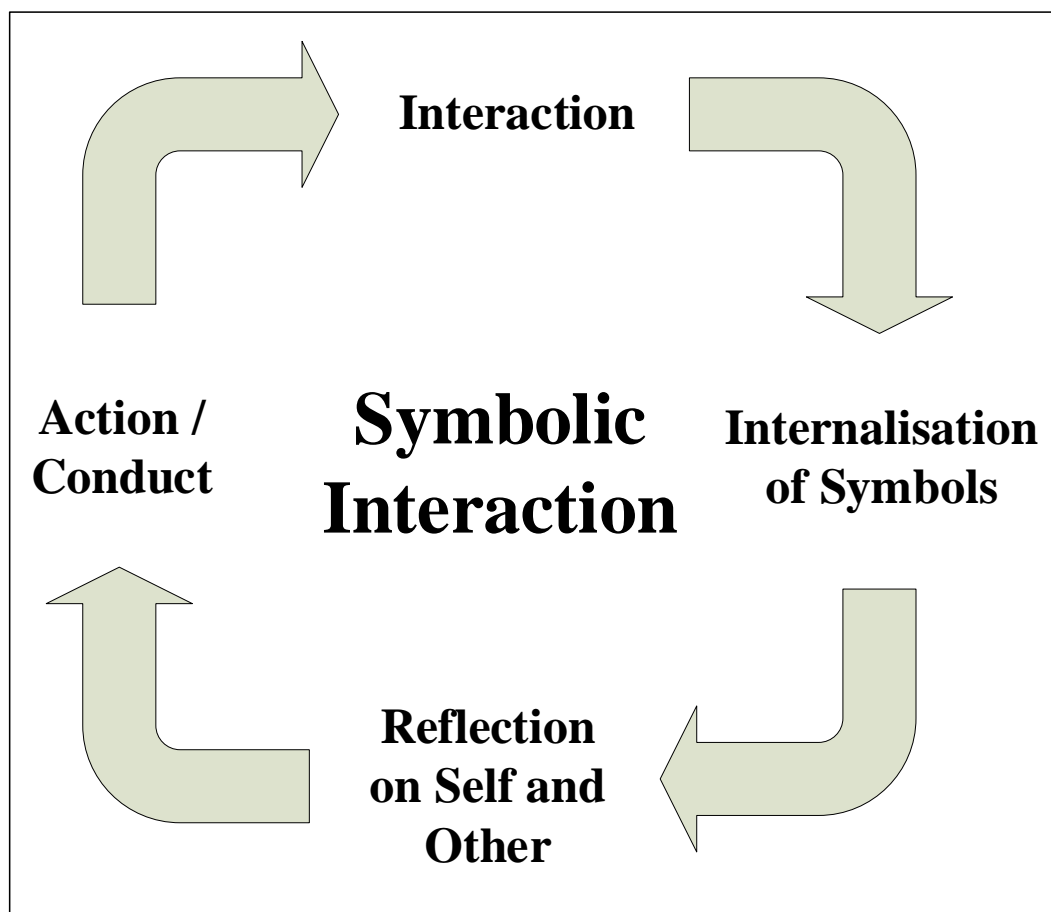
We form symbolic meaning through subjective interpretation of experiences which we act upon with a particular intention (Blumer, 1969, 1986). We do not simply react to another’s actions, Blumer (1969, 1986) explains, but rather interpret (or ‘define’) their actions in meaningful ways. These meaning definitions then guide our subsequent action (or reaction), leading to further cycles of experience, interpretation and action. In this dynamic process, our meanings and consequent actions are subject to continual modification and change to adapt to particular social situations. By raising a fist, we might intend to symbolise our power against another person, for example. But the person (depending on their position towards us) might interpret the fist as a sign of psychological weakness, with no thought of the actor’s underlying motive (Mead, 1934/2015). Similarly, a church might symbolise the power of God to a follower of Christianity, while representing nothing more than an interesting cultural artefact to a secularist. It is these often-conflicting perceptions of the same phenomena that cause us to act in different ways depending on experience.

### *The cycle of interpretation and action*

‘Action’ within a social context can be understood as a reaction to the symbolic meanings that we attach to other people’s actions (within a particular social context), which emerges through a process of reflection and interpretation (Blumer, 1971). Symbolic

interactionists view society as a complex web of action and interaction (Ritzer and Goodman, 2004), and social behaviour as ‘social habit’ that manifests as a collective of actions which arise in particular social situations (Blumer, 1971; Blumer and Shibutani, 1973). In this way, symbolic interactionists view social structure not as a concept separate from members of a society, but as the enduring, “given” aspects or conditions within a situation, which will remain basically “in place” and predictable for some time (Maines, 1991, p.129). Put another way, symbolic interactionists view social structure as the result of experiences of prior actions sustained through present actions. The following sections of this chapter describe in more precise terms the interactionist model of human group behaviour that I applied to understand claims management issues.

Figure 3 (below) shows the basic cycle of interaction, interpretation and changes to action that defines how symbolic interactionism explains human group behaviour in the real world.

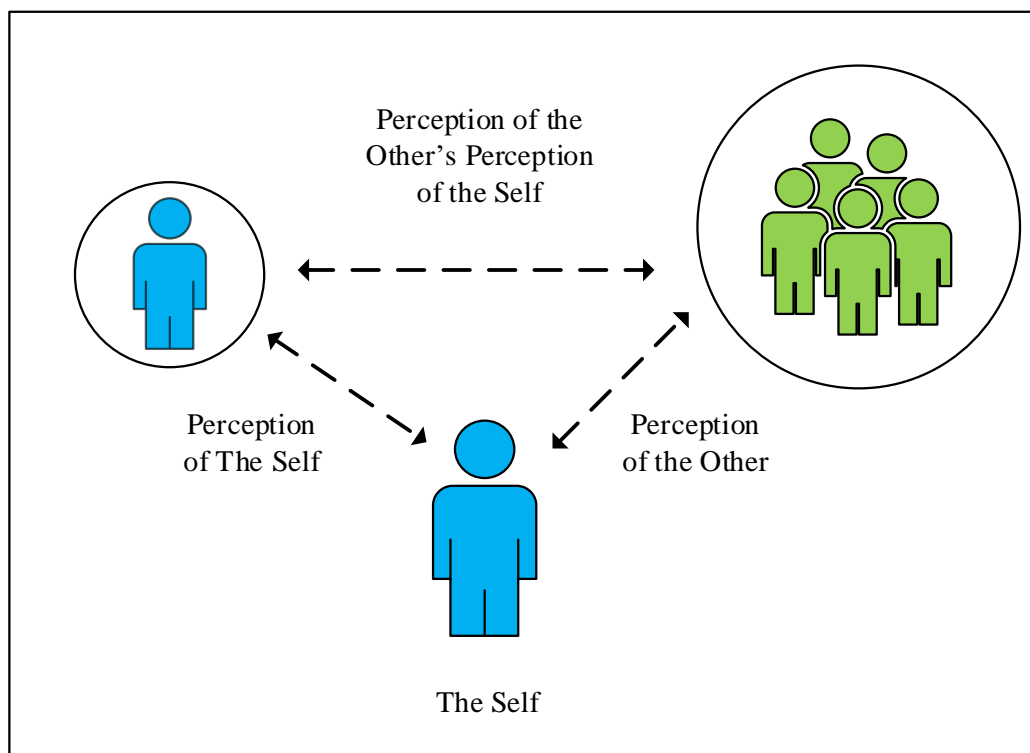


*Figure 3: Human group behaviour understood in terms of symbolic interaction*

### 3.4 How we form meaning

The meanings we construct to make sense of the world emerge within a process of interpretation of ourselves and others within particular social contexts. The ‘other’ might be a specific person (a work colleague or acquaintance), an identifiable group (co-workers or classmates), or society at large (Appelrouth and Edles, 2010). The meanings we construct to define ourselves and others function generally to assist our understanding of ourselves and our role within society, which in turn influences the ways in which we act towards others.

From this perspective, Mead (1934/2015) made a fundamental contribution to the understanding of how humans construct meaning by conceptualising the difference between ‘I’ and ‘me.’ Whereas ‘I’ is the self as a conscious, acting member in a society, ‘me’ is the conception of self we develop to define how we perceive we are perceived by others. In other words, our self-perception is not a purely psychological construct, it is borne from our experience of socialising with other human beings and reflects those experiences in a generalised way.



*Figure 4: Perception of the self and the other*

Cooley (1922) described the process through which our conception of 'me' emerges as 'the looking glass self': this conception of self emerges from (a) our perception of how we appear to others; (b) our perception of the judgments that others make of us; and (c) the feelings (such as pride, embarrassment, shame or affection) that stem from our perception of how we appear to others, and the judgements others make of us. Meltzer (1964) stresses three main consequences of our conception of self: (i) we engage in continual interaction with ourselves and continually redefine ourselves in new ways; (ii) we conceive ourselves ('me') and others ('they') as social objects; and (iii) based on our conception of ourselves and others, we control our compulsions and behaviour towards others. Therefore, a crucial factor in understanding the relationship between our definition of self and our actions is that we do not conceive 'me' in isolation from the world. To construct 'me', we take the role and expectations of the 'others' into account, and consider how our actions might affect the social group to which we belong.

Mead (1934/2015) used the term 'generalised other' to define our understanding of the 'other' in our construction of self. It shares similarities with sociological concepts such as the 'impartial spectator' (Smith, 1761), 'reference groups' (Lauer and Handel, 1977), 'collective representations' (Durkheim, 1965/2001) and the 'ideal type' (Weber, 1949/2011). However, the 'generalised other' represents our internalised conception of 'society', manifested in a symbolic objectification of 'most people' or the collective 'they' (Holdsworth and Morgan, 2007). For Mills (1963) the self-communication between ourselves and the 'generalised other' is a mode of thinking through action, whereby we converse with an internal audience as a check on the potential of our actions on others.

Consequently, the process of our definition of self is underpinned by broad generalisations of the actions and thoughts of a *typical* individual within the society to which we belong. These generalisations emerge from and develop in interaction within our social group, as we take into account the perspective of others, to determine (with reasonable accuracy) how one course of action or another is likely to influence the actions of others (Serpe and Stryker, 2011). But in order for an effective conception of 'they' to emerge, we must first make sense of and develop an understanding of the rules, customs and norms of the social group to which we belong, an understanding which develops continuously in interaction, as we define social boundaries learned through verbal and non-verbal communication. It is our aggregate of understandings of the rules, customs

and norms of a society manifest in our internal construction of the typical ‘other’ that Mead referred to as the ‘generalised other’.

### **3.5 Social groups**

With increasing complexity in society, there is now a multiplicity of recognised social groups with which we come into contact and interact, or to which we belong. As Holdsworth and Morgan (2007) demonstrated through analysis of interviews exploring participants’ decision to leave home, we also generalise others at multiple levels, from society at large, to more definable groups such as ‘my friends’ and ‘my parents’, to identifiable individuals.

From this perspective, we not only conceive ‘they’ as the aggregate of the whole of society, but also construct generalisations to represent defined social groups within society (Da Silva, 2007), such as the ‘working class’, ‘teachers’ and ‘students’. Mead probably recognised this prospect, albeit he did not develop its full implications. For instance, he recognised that the generalised other could exist at different levels which correspond with different groups in society:

‘The individual experiences himself as such, not directly, but only indirectly, from the particular standpoints of other individual members of the same social group, or from the generalised standpoint of the social group as a whole to which he belongs’ (Mead, 1934/2015, p.134).

On this view, Mead’s concept of the ‘generalised other’ can be extended to apply to how we form generalised impressions of different sub-groups in society, and act towards those groups based on our subjective understanding of their social rules, customs and norms. In Figure 5, below, I have attempted to summarise how Mead’s concept of the ‘generalised other’ can be applied to understand how individuals interpret social groups of varying levels.

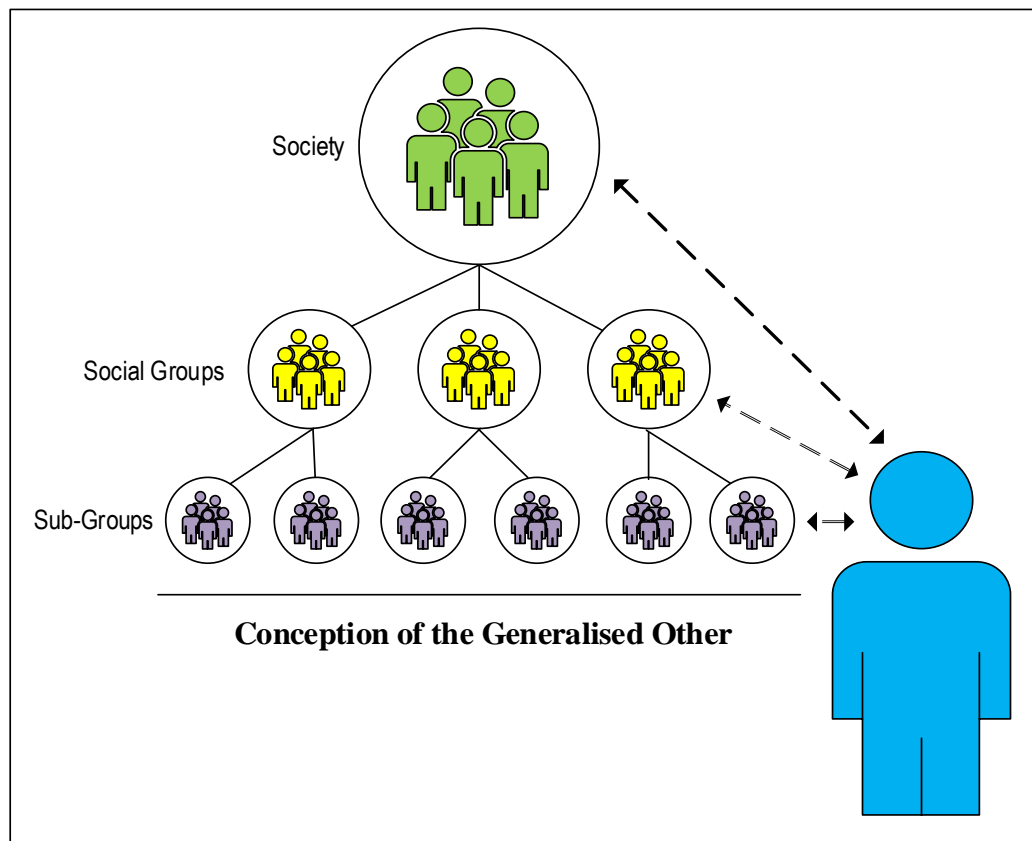


Figure 5: Social groups as generalised others

### 3.6 How meaning influences action

A crucial aspect of the model of human behaviour discussed so far is that the meanings we attach to people and objects jointly emerge from interaction and influence our behaviour dynamically during interaction. It follows that we can theorise *how* the meanings we construct to understand the social world influence our actions in particular contexts, and potentially then identify underlying reasons for problematic patterns of behaviour (Andersen and Taylor, 2012). To demonstrate the implications of an interactionist theoretical perspective on understanding social behaviour, it is helpful to consider the mechanisms through which we convert meaning to action. These mechanisms can be understood in terms of (1) how our conception of the self and the other places limits on our actions, (2) how our actions towards others are shaped by our perception of them, (3) how our role influences others, and (4) how the meanings that guide our actions change over time.

#### *How our conception of the self and the other limits our actions*

Firstly, our conception of the self and the other places limits on our actions, by sensitising us to the social rules and norms of the social group to which we belong, influencing us to



act in certain ways and dissuading us from acting in others. This ‘self-concept’ is a reflection of ourselves from which we determine whether actions are appropriate or inappropriate in our particular social setting (Reckless, Dinitz and Murray, 1956). The connection between our conception of self and our actions has been most developed within research that explores the origins of deviant behaviour (e.g. Becker, 1953/2015; Blumer, 1971; Hirschi, 1969; Matza, 1982; Reckless, 1961; Reckless et al., 1956). These studies demonstrate how deviants (criminals, drug users, rule breakers generally) do not necessarily possess a psychological deficiency, but rather adopt deviant patterns of behaviour that reflect their perceived role in society and the social group to which they belong.

Amongst these studies, Reckless (1961) and Hirschi’s (1969) social control theory provide a theoretical framework within which to understand how our conceptions of the self and the other can influence our behaviour. In this theory, the extent to which we are compelled to commit deviant acts is aligned with the extent to which our ‘inner’ and ‘outer’ controls sensitise us to the social rules of the group to which we belong. The theory’s focus is on why people do not commit deviant acts, rather than why they do.

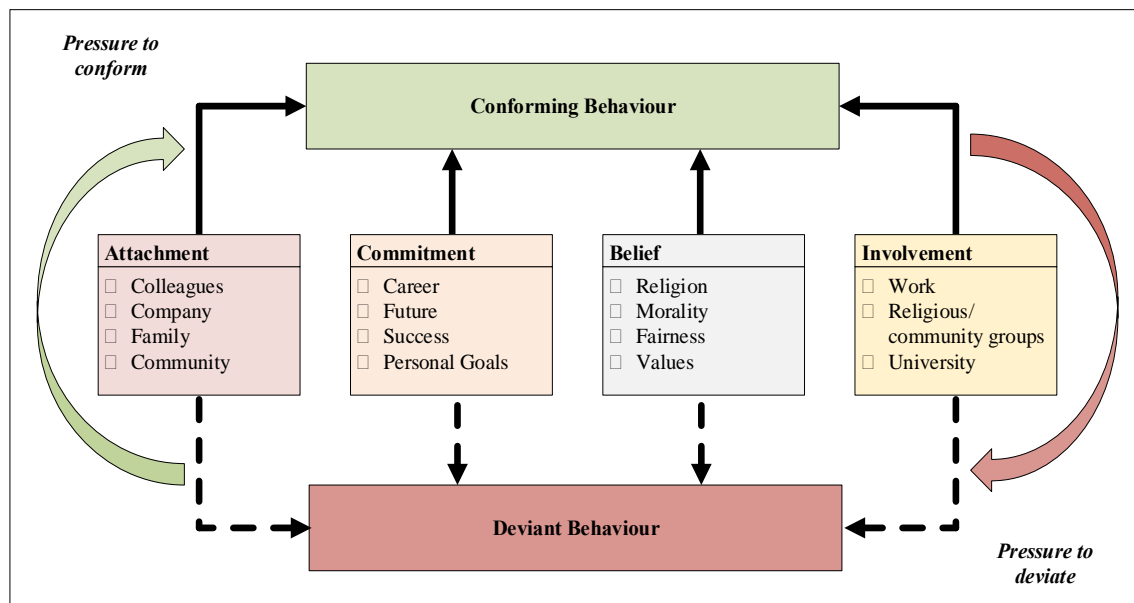


Figure 6: Social control theory (Hirschi, 1969; Reckless, 1961)

Inner controls are internalised values (tacit social rules we consider good, bad, right or wrong) and beliefs (assumed truths), which we call upon to guide our actions. For example, Brooks (1969) explored the relationship between the self and political (right wing or left wing) orientation. His research revealed that the way in which we define

ourselves depends on our political ideology. Our inner controls function to dissuade us from committing deviant acts, for fear of living with the guilt that would result from the act. By implication, where our belief systems differ from those which dominate in a society, we are less inclined to act in accordance with the expectations of wider society, and more inclined to deviate from the widely held social norms.

However, we also tend to control our actions to reflect our conception of the expectations that society (or groups within a society) have of us. These ‘outer’ controls emerge from our perception of the other people in our lives (and the activities we and they undertake together), which encourage us not to deviate from established social norms. For instance, in a study exploring the reasons young men and women leave home, Holdsworth and Morgan (2007) demonstrated that participants frequently referred to the perceived judgements of others as influencing their decision. Hirschi (1969) explained that these outer controls are influenced by the strength of relationship we have with others (such as family members, government officials or religious leaders) and the extent to which we commit to and are involved in activities that reinforce the norms and customs of those others. As Hirschi (1969, pg. 16) put it, ‘The more weakened the groups to which [the individual] belongs, the less he depends on them, the more he consequently depends on himself and recognises no other rules of conduct than what are founded on his private interests.’

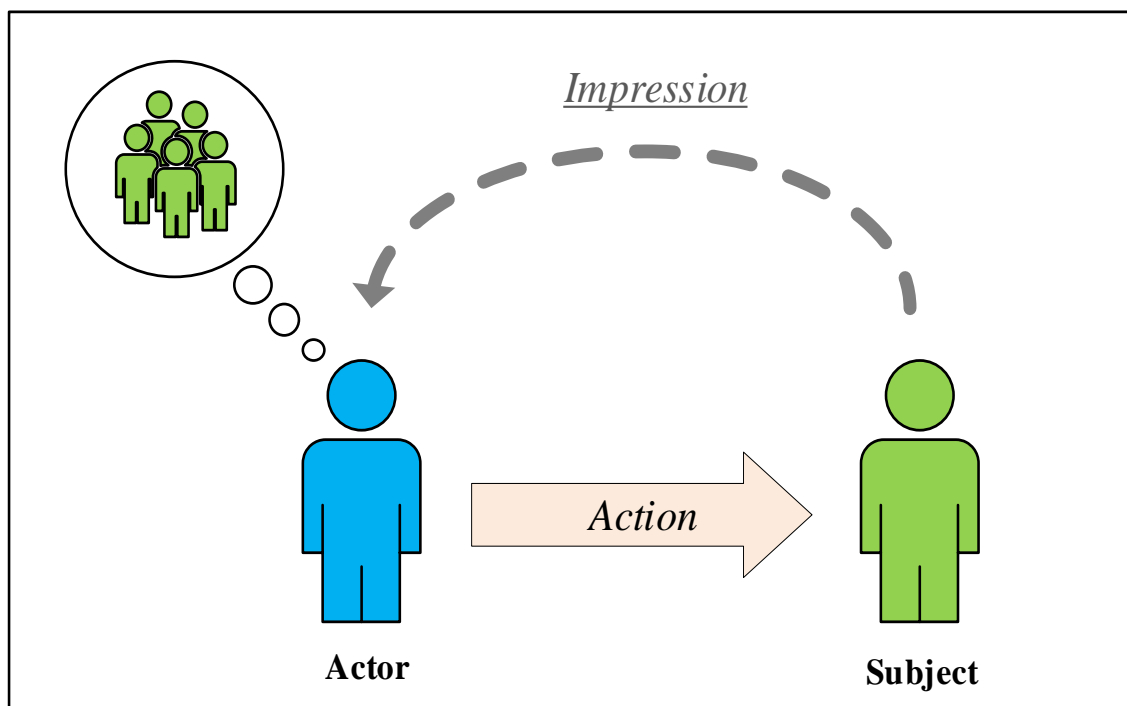
Viewed this way, the extent to which we are inclined to adopt the social norms held by others, such as maintaining a legitimate income through employment, pursuing higher education, or leaving home, aligns with the importance we place on the expectations others have of us. It also follows that when we are less invested in the social norms adopted by others around us, we are less likely to be influenced by them. In sum, this theory demonstrates how our conception of the expectations of the self and the other influences us to conform to society’s expectations, whereby we are able to resist the temptation to deviate from social norms by imagining how ‘others’ would interpret our behaviour.

### *We act towards others in accordance with our perception of them*

Secondly, demonstrating the implications of Mead’s conception of the ‘generalised other’ (Mead, 1934/2015), we tend to act towards others in accordance with our generalised conception of their position in society, and the social group to which they belong: these

are socially developed conceptions, or stereotypes (Triplet, 1993). The way we ‘label’ others influences our actions towards them (Becker, 1963/2008) in the sense that our actions reflect our conception of how we expect them to act towards us and society in general (Goffman, 1956/1999). Triplet (1993, p. 544) explains that ‘stereotypes ease the processing of information by giving individuals established methods for categorising objects, behaviour, or people. Because they are socially created categories, recognition of their influence on, and use by, individuals explains how individual decision-making processes are influenced by societal-level processes.’

Figure 7 (below) illustrates how our generalisation of individuals according to social groups forms the basis of social interaction and action towards others.



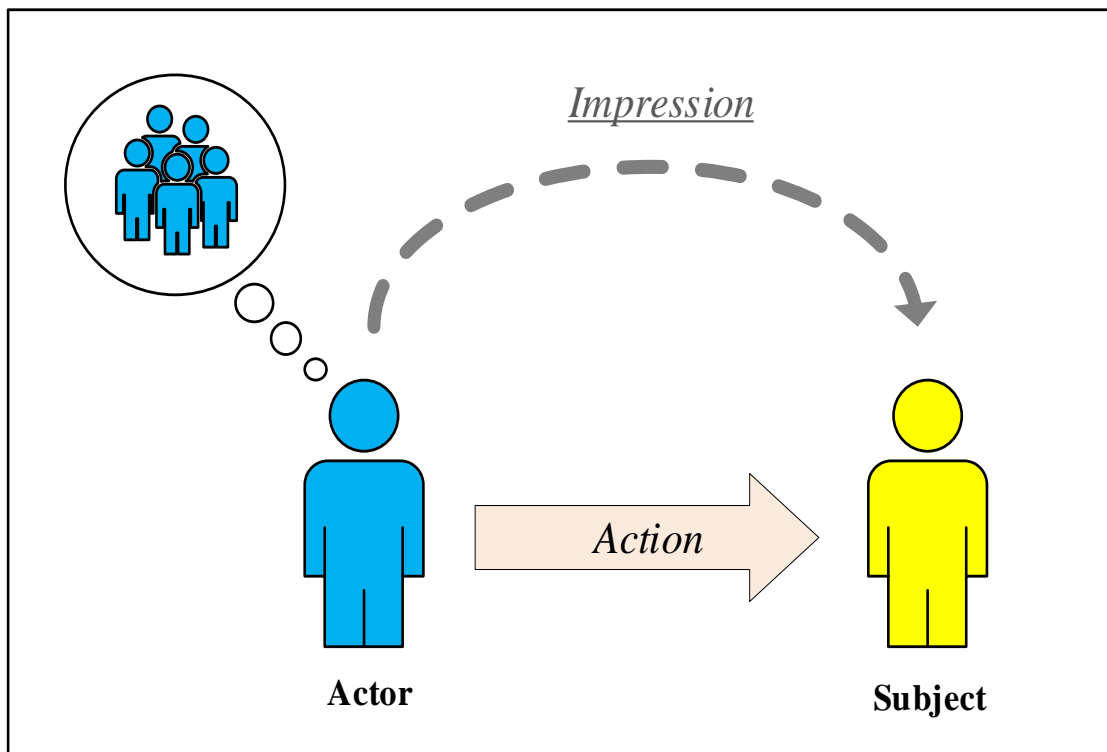
*Figure 7: Labelling theory: impression impacting action*

An important implication of this theory is that our conception of the other can lead us to act in ways that influence them to act in accordance with our conception of them. In extreme cases, particularly where others are labelled by those with power in society, this process can result in a ‘self-fulfilling prophecy’ where the other begins to act in accordance with our expectations of them (Feinberg and Soltis, 2004). This proposition was vividly demonstrated by Rosenthal and Jacobson (1968) in a study of student performance in schools. The researchers selected five average performing elementary school students at random, and advised their teachers that the students were ‘growth

spurters' based on the results of a fictional academic test, a label that implied superior intelligence and academic ability. Despite possessing no substantive intellectual advantage at the start of the school year, the 'spurters' outperformed their classmates - they scored higher on IQ tests and achieved higher grades than their classmates. The teachers also rated the spurters as more content, curious and capable of achieving more than their non-spurter classmates. Similarly, Daniels (1970) revealed how diagnoses of mental illness in the military were dependent not only on patients' symptoms, but also by doctors' awareness of the consequences that a specific diagnostic label may have for the patient. She therefore stressed the influence of meaning (how society might respond to a diagnosis) on action (the act of making the diagnosis). These findings demonstrate how labels can be socially constructed, and how real consequences can result from these social constructions.

*We adopt roles and rituals to influence the impression that others have of ourselves*

Thirdly, we actively tailor the way we present ourselves by taking roles and manipulating objects, to influence the impression that others have of us (Blumer, 1969/1986; Goffman, 1956/1999). Goffman (1956/1999) describes these social performances as the 'presentation of self', a concept sometimes termed 'impression management' (K. Lyons and Tickle-Degnen, 2003). Here, Goffman's contributions on the socially constructed basis of human interaction provide a detailed theoretical framework from which to understand impression management. Amongst these contributions, Goffman's (1956/1999) Dramaturgy theory explains this process through the metaphor of 'theatre', which conceives social life as a performance. Goffman illustrates how, as 'actors', we actively adopt roles tailored to reflect our perception of how we are expected to act in a given social situation.



*Figure 8: Impression management*

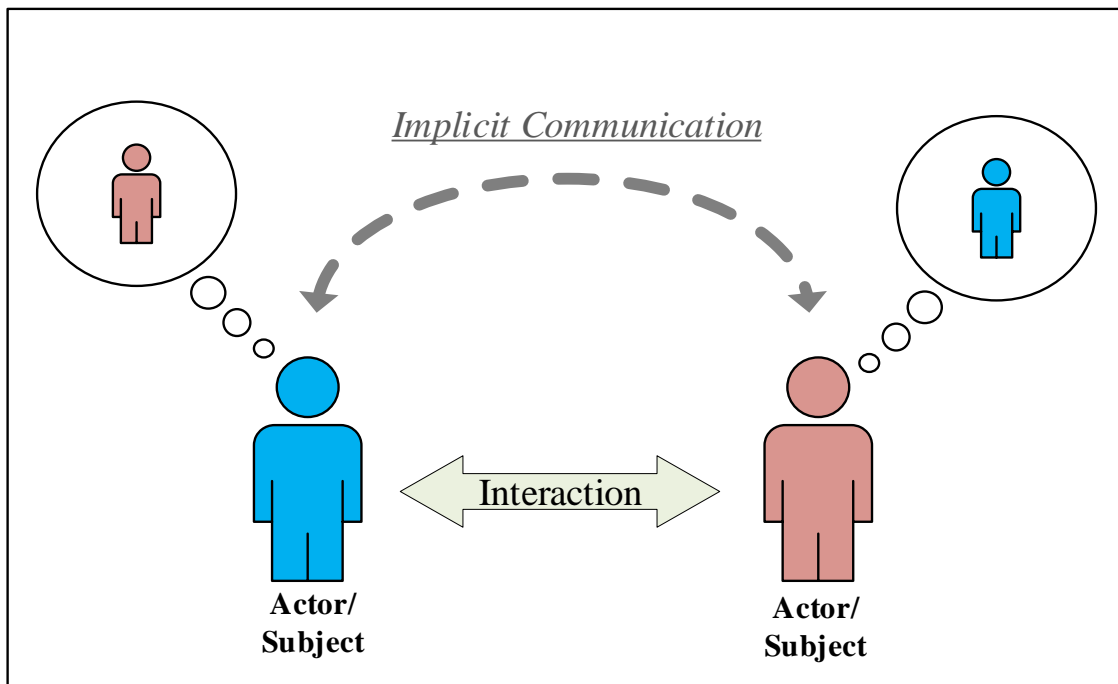
In this perspective, our roles serve as a ‘script’ for communication and action, and social situations provide ‘settings’ in which we use ‘props’ to convey meaning. These roles, settings and props are the basis of dialogue between us and other characters in the ‘drama’ of social life (Macionis, 2013). For example, when a doctor (the ‘role’) engages with a patient in their clinic (the ‘setting’), they will use medical terminology to explain the patient’s problem (the ‘script’) and have medical instruments and prescription books (‘props’) arranged around them. Therefore, the doctor’s careful presentation of itself and clinic reinforce the social construction of the ‘doctor’, which acts to reassure patients of the doctor’s competence and intentions. In this way, the roles we adopt and the settings we create imply commitments to certain values and rejection of others, and work to influence the expectations of others about how we might act in accordance with our commitments.

However, our roles can also signal potential defaults in our espoused commitments, or raise concerns in the other that our commitments do not correspond with the social rules, customs and norms followed by the other (Goffman, 1956/1999). For instance, a young person who constructs an image of themselves to conform with a musical sub-culture like ‘gangster rap’ might find difficulty obtaining work despite their good intentions; the other may view the young person’s image as contradictory to his/her promise to work hard, or

may consider them more likely to deviate from established workplace rules based on their presentation.

*The meanings which guide our actions are subject to continuous change*

Finally, the meanings that we use to guide our actions are subject to continuous and dynamic change, as a consequence of the role interaction plays in our definition of the social world. Meaning insofar as it shapes action manifests in what Goffman (1971/2017, pp. 69-71) termed 'social contact'. Social contact mostly consists of face to face interactions, but may also consist of other forms of interaction, such as written exchanges or telephone communications. Both verbal communications and non-verbal communications are significant in shaping the meaning we use to understand the world, and act as signals to others and ourselves to indicate future lines of action (Gusfield, 2003; Mead, 1934/2015). In this view, we learn the significance or meaning of social objects (people, physical objects, situations etc.) through our experience of the social contact gained in interaction (Silverman, 2016), one consequence of which is that the meanings we make use of tend to reflect common understandings of social objects amongst the group to which we belong (Blumer, 1969/1986). Evidence for this relationship can be seen in Becker's landmark study on habitual marijuana use (1953/2015), where Becker showed that drug users' experience of drug use depended on the extent to which they were socialised to the use of drugs through interaction with other drug users. However, the meanings we construct to understand the social world are not static, they are subject to continuous change as we learn from interactions and adjust our meanings and behaviour accordingly. These changes can occur almost instantaneously, as a gesture from one individual triggers a process of definition and reaction in another (Carter and Fuller, 2016; Goffman, 1956/1999); or developmentally, as an individual adjusts their generalised constructions of others and society in reaction to changes in their social situation (Becker, 1953/2015, 1963/2008). Figure 9 below illustrates how this mechanism works in interaction between two individuals:



*Figure 9: Changing behaviour in interaction*

Goffman's conception of the 'presentation of self' (discussed above) shows how meaning constructed in interaction influences the way we act towards others dynamically, as we consciously and subconsciously look for clues which reinforce or contradict our existing definitions of the self, the other and the generalised other. Where a contradiction occurs, we are forced to redefine our definitions, and by doing so, adjust our expectations of future interactions and alter our behaviour accordingly (Goffman, 1956/1999). This process does not only occur in one individual, however. Both individuals within an interaction simultaneously engage in a continuous and reciprocal redefinition process. Goffman uses the example of the travelling salesperson to illustrate how the definition of the other can be subject to change through interaction. The travelling salesperson will work on the assumption that their primary role is to convince a potential client of their trustworthiness and technical knowledge, and will act in a way that (to the prospective client) exhibits those character traits. Yet in the knowledge that most salespeople actively construct an image of themselves that appears favourable, the prospective client might look more closely at the salesperson's actions for non-verbal signals that either reinforce or contradict his suspicions – they will seek to confirm or undermine his definition of the salesman. But the experienced salesperson knows that their prospective clients will be looking for clues that signal integrity, and will in turn adjust their behaviour – the effectiveness of which will influence how the client defines the salesman. This process of non-verbal, tacit communication continues over the period of an interaction, with one

individual employing strategies to reinforce the image that they wish to project, and the other seeking out clues as to the integrity of the other as a means of checking their definition (Goffman, 1956/1999).

Furthermore, our general conceptions of the self, the other and the generalised other evolve over time to reflect experiences gained in interaction. For instance, by examining the nature of self-meanings held by institutionalised boys labelled ‘emotionally disturbed’, Rosengren (1961) showed that self-meaning can shift over time based on how an individual believes they are seen by others. Similarly, Becker’s detailed studies on deviance demonstrate that recurring patterns of deviant behaviour emerge developmentally through an individual’s ‘career’ of deviance (Becker, 1953/2015). Becker argues that deviants become deviant due to a sequence of adjustments in their definition of themselves and others borne from continued interaction in a social group, which each step in the sequence being made possible by changes in self and social definition arising from the last. As Becker concluded: ‘behaviour of any kind might fruitfully be studied developmentally, in terms of changes in meanings and concepts, their organisation and re-originations, and the way they channel behaviour, making some acts possible while excluding others’. Consequently, changes in the meanings we apply to understand the social world over time can continuously alter our patterns of behaviour.

Figure 10 illustrates how a sequential analysis of human group behaviour can be used to understand the origins of observed patterns of behaviour, using the Dance Musician’s career as a case study:



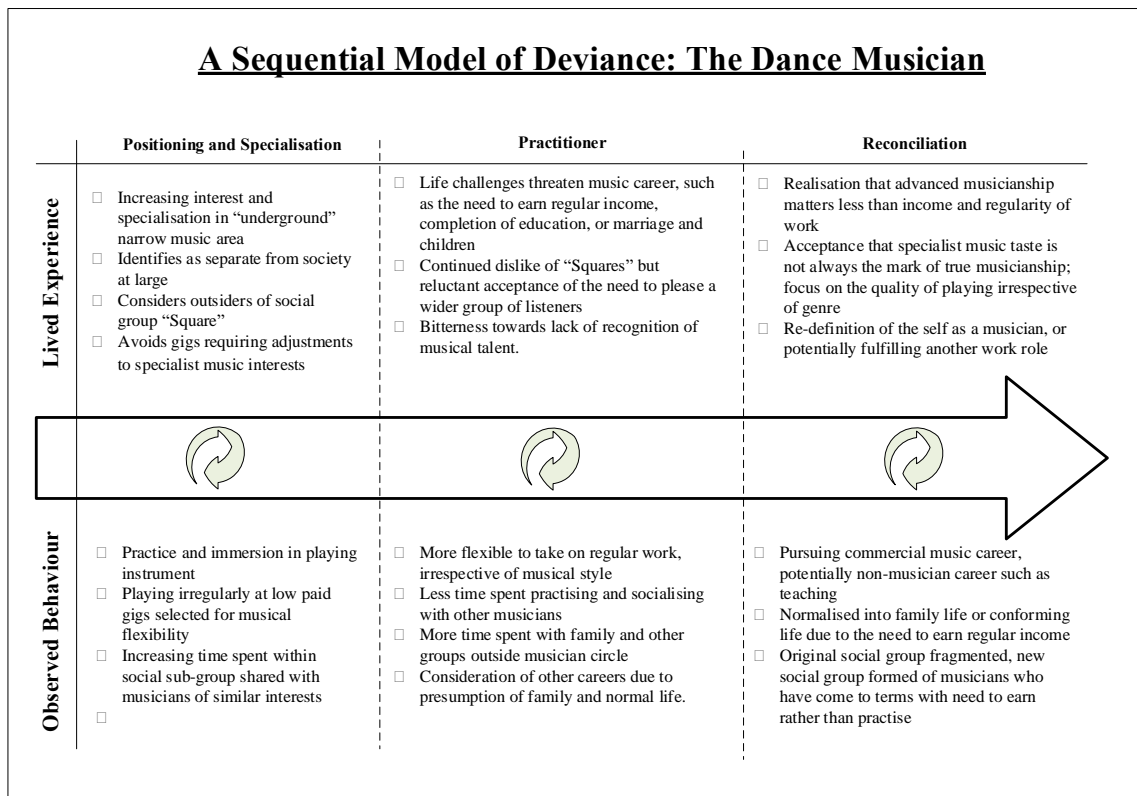


Figure 10: A sequential model of deviance; Adapted from Becker (1963/2008)

### 3.7 An interactionist perspective on culture

One area of focus in this research was to understand the origins and influence of the ‘claims culture’ in the construction industry. While this term has been only rarely used in a formal sociological context, it provided an interesting departure point to understand the broader culture of conflict in the construction industry in the frame of construction claims. However, culture is a notoriously difficult concept to define in abstract terms, partly because its significance depends on the methodologic and epistemological foundations of a research project.

In statistical research, culture is a term often used to distinguish causal factors. In this use, the causality of ‘cultural factors’ may be distinguished from the causality of other factors, such as ‘economic factors’ or ‘operational factors’. Arditi et al. (2017) adopted this use in reporting the statistical significance of project culture upon project delay, for example. One problem with this use is that the term ‘culture’ groups together a range of behaviours broadly considered ‘cultural’, without full consideration of the nature or context of those behaviours.

By contrast, in ethnographic research, culture encompasses the whole focus of the study (Atkinson, 2017). We will see in Chapter 5 how ethnographers study concepts such as Japanese medical culture (Tierney, 1984), Mexican Indian culture (Bernard and Pedraza's, 1989), or the culture of work in various settings (Ouellet 1994; Applebaum, 1981). Crucially, in ethnographic research, these foci are not regarded as causes of behaviour in themselves, but as descriptive categories in which to explain behaviour from the perspective of members of a culture. This thesis adopts the latter use, to define culture as the complex web of actions and behaviours that are used collectively by a social group as the result of shared experiences and meanings. Banks and McGee (1989) offered the following definition of culture using this perspective:

'Most social scientists today view culture as consisting primarily of the symbolic, ideational, and intangible aspects of human societies. The essence of a culture is not its artefacts, tools, or other tangible cultural elements but how the members of the group interpret, use, and perceive them. It is the values, symbols, interpretations, and perspectives that distinguish one people from another in modernized societies; it is not material objects and other tangible aspects of human societies. People within a culture usually interpret the meaning of symbols, artefacts, and behaviours in the same or in similar ways.'

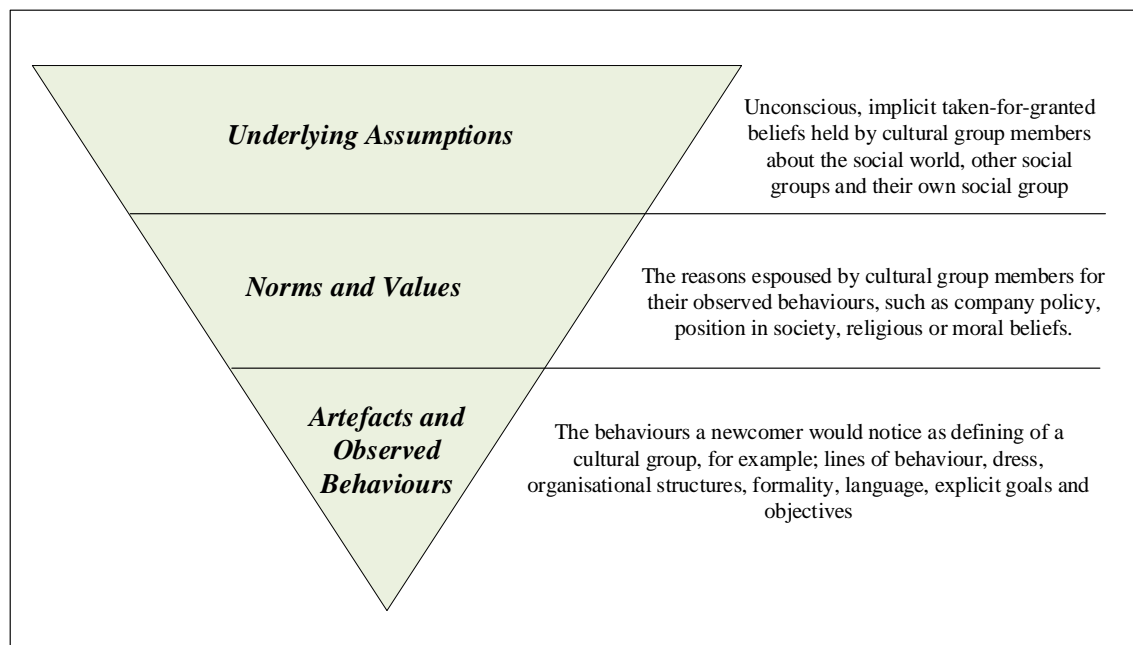
When culture is viewed from a symbolic interactionist perspective, it is similarly defined as a 'way of living' that is constructed collectively by individuals within a group or society, rather than a set of 'cultural prescriptions, norms and values' that exist beyond individuals (Blumer, 1969/1986, pp.103, 106). But symbolic interactionism is most interested in the ways in which culture is constructed at an individual level, and in its influence on individuals' behaviour in a group setting (Becker, 1963/2008). For instance, Redfield (1941, p.132) perceives culture as a viewpoint shared by those in a particular group that consists of:

'[C]onventional understandings, manifest in act and artefact, that characterise societies. The "understandings" are the meanings attached to acts and objects. The meanings are conventional, and therefore cultural in so far as they have become typical for the members of that society by reason of inter-communication among the members. A culture is, then, an abstraction: it is the type toward which the meanings that the same act or object has for the different members of the society tend to conform. The meanings are expressed in action and in the results

of action, from which we infer them; so we may as well identify “culture” with the extent to which the conventional behaviour of members of the society is for all the same.’

These ‘conventional understandings’, or social norms, are the shared meanings that shape and *influence* the actions of members of a culture: groups that share a collective culture adopt common and recurring patterns of behaviour recreated day-to-day through social interaction (Smith and Riley, 2011). Where I infer a causality from culture in the thesis, it is from that tentative, indirect and social perspective that I do so.

This definition of culture as shared meaning and its link to behaviour has been recognised in applied management studies when conceptualising the origins of problematic organisational behaviour. For instance, Schein (1992) conceived a theoretical model of organisational culture which linked basic assumptions about the world to values held by members of the organisation, in a similar way to symbolic interaction. In turn, he argued that these values shape practices and behaviour, and can be influenced as a means of avoiding or minimising problematic behaviour. Schein’s model of organisation culture is summarised in Figure 11, below.



**Figure 11: Levels of culture, Schein (1992)**

In a similar way, an interactionist view of the work setting is interested in the social bonds that organise people at work, how changing social conditions result in changing meanings of work, and how differing perceptions arise and result in power differentials between

different occupations (Andersen and Taylor, 2012). These factors combine to influence the understanding that practitioners have of one another, thereby guiding behaviours. However, because interactions vary amongst individuals, culture is not a static concept separate to a group or society. Behaviours that define a culture are learned and reaffirmed through interaction (Herman and Reynolds, 1994). Viewed this way, individuals within cultural groups continuously influence one another's actions by responding in expected ways to support patterns of behaviour, or in unexpected ways to alter patterns of behaviour. Understanding culture as a concept embedded in interaction brings together the mechanisms of human behaviour discussed so far; culture becomes both a cause and a consequence of collective patterns of behaviour. As Boas puts it, 'culture embraces all the manifestations of social habits of a community, the reactions of the individual as affected by the habits of the group in which he lives, and the products of human activities as determined by these habits' (Seligman and Johnson, 1935, pp.73-110).

Culture influences action because we refer to cultural norms (manifested in the generalised other) to predict the outcomes of potential lines of action. From this perspective, Goffman (1974) uses the concept of 'framing' to explain how we organise interpretations of everyday life by framing social objects, events, and actions in accordance with concepts borne out of group interaction, to selectively emphasise phenomena experienced in the social world. Ratliff and Hall (2014) asserted the importance of framing for combining individual cognitive schema with the cultural schema constructed by activists of particular social movements. They showed how cultural schema create contexts for strategic social action, conceiving framing as a process through which collective action occurs. In addition to framing, the authors applied Goffman's dramaturgical approach to describe the performances that draw on existing meanings to frame phenomena in a way consistent with the movement's message. It follows that when culture is viewed through an interactionist lens, it can be examined from an analytical perspective to understand the norms, meaning and interpretations held amongst different or competing groups to predict group behaviour. The study of culture can be 'scientific' and need not be undertaken in purely observational terms.

### **3.8 An interactionist perspective on the organisation**

As I explained in Chapter 2, a construction project can be viewed as a type of temporary *organisation*, which is constituted in recurring forms to undertake similar tasks (e.g. to

construct a building; (Lundin and Söderholm, 1995)). According to symbolic interactionism, organisations exist as patterns of activities which emerge from the variety of meanings, perspectives and associated actions of the individuals and groups involved in the organisation (Watson, 2001). In this sub-section, to provide a sharper theoretical focus for the remaining thesis, I address the different ways in which symbolic interactionism has been refined to understand organisational behaviour and conflict.

### *The organisation as negotiated order*

Symbolic interactionism tends to view organisational structures in terms of *negotiated orders*. This concept originated in the symbolic interactionist tradition, but it focuses on the social processes and emergent patterns of behaviour within organisations. According to Strauss et al. (1963), the power of some individuals or groups within an organisation tends to be greater than that of others, but the organisation and patterns of activities in practice is always the result of the plurality of contributions of members to the organisation as a whole. Strauss et al. argued that, rather than following externally imposed standardised rules and procedures, individual tasks and duties were more often the product of bargaining and negotiation between members of the organisation. For example, Straus et al. (1963, p. 153) emphasised that the majority of ‘rules’ that influence behaviour in a hospital setting are not derived from formal or codified sources, but rather from the tacit negotiated order that members of the hospital organisation create for themselves through ongoing interaction:

*Except for a few legal rules, which stem from state and professional prescription...almost all these house rules are much less like commands, and much more like general understandings: not even their punishments are spelt out; and mostly they can be stretched, negotiated, argued as well as ignored or applied at convenient moments...*

Given its focus on the implicit and symbolic meanings that influence behaviour in the organisation, Day and Day (1977) emphasised the effectiveness of the negotiated order theory in explaining the multiplicity of informal and tacit rules that exist in organisations, because of its focus on variables such as: temporality (time); the situational context in which actions take place; and the emergence of contingency arrangements in response to the novel or unregulated social situations. They also stressed the regular occurrence of these novel or unregulated social situations and the consequent emergence of negotiative

and interpretive give-and-take behaviours. Further, they highlighted that the commonality of these novel or unregulated situations across similar organisations tend to result in the formation of broader, recurring patterns of behaviour that exist within and between organisations of comparable types.

However, Rooke and Seymour (1995, p. 295) argued that the negotiated order perspective may potentially be mis-used to represent sub-cultures in overly abstract terms: that is, to apply to them ‘a “thing-like” status’, which loses focus on their essential nature as dynamic social processes grounded in the organisation’s members’ individual and collective understandings. In the following example, they use the varying nature by which members follow formal rules (such as contract clauses) depend on the particular social situation (1995, p. 295):

*A similar point has been made about organisational rules (of which contract clauses are an example), these rules are not followed mechanically. They are used by members of the organisation as and when they seem appropriate. For example, as long as they facilitate the work process, they act as resources, if they become an impediment to the process, due to unusual conditions, they may be suspended (Bittner, 1965; Zimmerman, 1971). It is this which makes it important to ground observation in member’s understanding.*

It follows that in order to fully understand the social mechanisms which underpin observed problematic behaviours in organisations, it is necessary to explore the sociological processes that underpin those behaviours at the level of the practitioner. Consequently, in the remainder of this sub-section, I focus on three specific organisational behaviour theories which are rooted in the symbolic interactionist perspective, and which I drew upon when interpreting the research findings presented later in this thesis. These theories were: organisational symbolism, sensemaking, and conflict process theory.

### ***Organisational symbolism***

The importance of meaning and symbols in organisations has also been the subject of a range of research in the applied management studies literature. Organisational symbolism is a branch of management studies that focuses on organisational culture as it relates to behaviour (Fuller, 2008). It is a perspective that draws on interactionist studies on

symbolism (Goffman, 1956/1999; Goffman and Best, 1967/2005) to explain the social importance of symbols in organisational behaviour (Fuller, 2008).

To briefly reiterate, we attach meaning to objects as we construct our social world. Social objects can be any physical or conceptual thing that evokes symbolic meaning for an individual or group.<sup>29</sup> By acknowledging the primacy of meaning in defining social objects, symbolism recognises the power of abstract concepts on human behaviour. According to Smircich (1983), organisations exist as systems of shared meanings (or sub-cultures) that are developed and sustained through interactions. Similarly, Louis (1983) described organisations as ‘culture-bearing milieu’ consisting of a set of common values and norms which manifest in symbolic vehicles for expressing these commonalities (i.e. logos, terminology, objects and actions). Viewed this way, symbols become potential management tools capable of bringing about change in organisational behaviour (Peters, 1978). For instance, Fuller, Edelman, and Matusik (2000) illustrated how the extent to which organisations are able to exert control on employees depends on how the particular organisational rule or law is symbolically perceived by employees. They concluded that organisational rules ‘may seek to... control employees but the impact of such social control depends on how it is received and on the meanings attributed to it’. (Fuller et al., 2000, p.214). Similarly, Dandridge, Mitroff, and Joyce (1980) argued that managers can increase conformity with policies by actively managing symbols to encourage specific behaviours. It follows that abstract concepts such as norms, values and conforming behaviour can be simplified and communicated to employees through symbols, which represent the culture of an organisation. In turn, individuals interpret the symbolic actions and make inferences about the organisation, which inform their behaviour. The implications are that organisational behaviour may be influenced by changing the meaning people attach to organisational symbols. Yet if the concept is to be used in this way, two further problems arise.

The first problem is that managers must somehow influence the meaning held by people within an organisation towards specific situations (Martin and Powers, 1980; Sackmann, 1989). They require effective tools to change cultural norms. From this perspective, Martin (1980) examined the effectiveness of three types of communication in conveying

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<sup>29</sup> By this definition, chairs, communism, the church, cars, and work are all social objects, because they are meaningful to people in different ways

organisational policies: stories, written abstract statements, and quantitative data. Martin found that belief in the underlying policy of the business and commitment to its values was most affected by the story as a means of communication. The effectiveness of storytelling as a means of communicating cultural norms may be linked to the importance of tradition (or shared histories) in a social or organisation setting. Nugent and Flynn (2020, p. 57) highlighted that research on organisational culture lacks sufficient emphasis on the role of tradition in forming perceptions and meaning in an organisational setting. He argued that ‘from an SI [symbolic interactionism] point of view, tradition may serve, as it does in broader society, to provide a sense of participation in a collective endeavour that spans time and gives purpose and meaning to one’s self-identity.’ It emphasises the importance of contextually ‘framing’ proposed changes to practice in terms of the subjective priorities to practitioners based on their particular perspective in each setting (Pondy and Huff, 1988).

The second problem is that there may not be a linear relationship between changing perceptions of symbolic meaning as against observed behaviour. While many studies of organisational culture draw on interpretivist concepts of shared meanings, rituals, ceremonies, and stories, few consider the causal importance of how meanings influence *action* (Nugent and Flynn, 2020). From this perspective, symbolic interactionism predicts that changes to perceptions of symbols can occur developmentally<sup>30</sup> (Becker, 1953/2015, 1963/2008), or almost instantaneously<sup>31</sup> (Carter and Fuller, 2016; Goffman, 1956/1999), depending on the particular situation or experience of participants. It follows that the relationship between meaning and behaviour must be understood dynamically within the context of social interaction, if changes to culture are to be effective. That is why it is so important to understand organisational meaning at the level of individual practitioners.

### *Sensemaking in organisational behaviour*

While symbolism in organisations can be studied in various ways (Morgan, Frost, and Pondy, 1983), symbolic interactionism made a key contribution to symbolic organisational studies by providing the theoretical basis for the theory of “sensemaking” (Weick, 1995, 2009). Sensemaking draws on both symbolic interactionism (Blumer, 1969/1986) and wider management theory (Mandler, 1982; Schön, 1983) to describe the

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<sup>30</sup> For example, as an individual adjusts their generalised constructions of others and society in reaction to changes in their social situation.

<sup>31</sup> For example, as a gesture from one individual triggers a process of definition and reaction in another.



process through which participants in an organisation rationalise their collective experiences by developing shared symbolic meaning towards events, objects or behaviours, which in turn guides their collective acts (Weick, Sutcliffe, and Obstfeld (2005, p. 409). For example, Weick (1995, p. 54-55) applied sensemaking to conceptualise strategic planning in the following way:

*Once people begin to act (enactment), they generate tangible outcomes (cues) in some context (social), and this helps them discover (retrospect) what is occurring (ongoing), what needs to be explained (plausibility), and what should be done next (identity enhancement)*

More particularly, the general process of sensemaking comprises: (i) some form of environmental change; (ii) an interpretation of the change; (iii) the selection of an appropriate course of action to deal with the change, and finally; (iv) the retention of the idea conceived from the action within the organisation's memory and culture (Weick, Sutcliffe and Obstfeld, 2005). Environment changes may be internal or external to the organisation but always create a discrepancy between what was expected to happen and what was experienced. Not all changes are noticed, but environment changes are a necessary condition for sensemaking to begin. When a change is noticed within the organisation, sensemaking involves an interpretation of the change within the cultural framework of the organisation. This may mean labelling the change or conceiving some other way to make sense of it from the participants' perspectives. When the change is sufficiently analysed by the organisation, the organisation selects a course of action that is perceived as most plausible on the basis of dialogue and interaction. Ultimately, the outcome of the course of action against whatever benchmark was set in its selection leads the organisation to retain the ideas which formed from the action, which become part of the organisation's past experience, and which in turn inform future expectations. When environmental changes offend those expectations, the cycle of sensemaking begins again.

It follows that sensemaking can also be understood as an interpretive process that is: (i) grounded in the self-created identities of participants, (ii) retrospective, social, ongoing, and (iii) driven by plausibility rather than objective accuracy. It is grounded in self-created identity because it operates as a social process rooted in subjective experience and perspective. Viewed this way, defined organisational roles or other rules do not *in themselves* result in conforming or non-conforming behaviour, but instead provide

‘interpretive frames’ within which participants rationalise their actions (Lamertz, Martens, and Heugens, 2003). Consequently, the effectiveness of formal rules or role definitions in motivating acceptable behaviour within organisations depends on the extent to which participants themselves rationalise conforming actions on the basis of moral, tradition, reward, or other interpretive symbolic concepts, which are held with subjective importance at a particular moment of interaction (Lamertz et al., 2003; Weick, 1995).

Sensemaking is retrospective, social and ongoing because actions and interaction represent the conditions from which further actions emerge (Schön, 1983). For example, sensemaking is triggered by an interruption to “normality”, such as high stress, that signals an emergency and draws attention to events in the environment (Mandler, 1982). In these situations, the course of further action remains vague when viewed prospectively; but grows clearer in retrospect as participants rationalise their behaviours and their likely consequences in terms of their overall interpretive understanding and position toward the social situation (Shotter, 1997, p. 156).

Finally, sensemaking is driven by plausibility rather than accuracy because it relies on the rationalisation of a situation from the perspective of participants, rather than formal ‘scientific’ objectivity. In this way, problem solving as sensemaking is viewed as a process in which participants interactively define the things to which they will attend and frame the context in which they will attend to them. Specifically, participants define problematic situations in terms the symbolic "things" and boundaries that constitute the situation, in order to impose a coherence onto the situation. This coherence allows them to say what is wrong in the situation and the direction of behaviour needed to resolve the problem (Schön, 1983), p.40).

In short, plausibility represents a rationalisation that brings coherence to a situation by embodying past experience and expectations of future experiences, by drawing on some pre-existing interpretive framework (such as national culture or profession) (Weick, 1995). Therefore, plausible reasoning involves going beyond directly observable information (which is often incomplete) to form ideas or understandings that provide enough certainty to rationalise future behaviour. It makes no difference whether the rationalisations are objectively correct, so long as they present the best fit to the facts, compared to the other alternative conceptualisations. In this sense, sensemaking is not a logical-deductive process. It represents an ongoing interpretive process of *producing*

plausibility based on past experience and situational perspective, which plays out continuously in interaction (Isenberg, 1986).

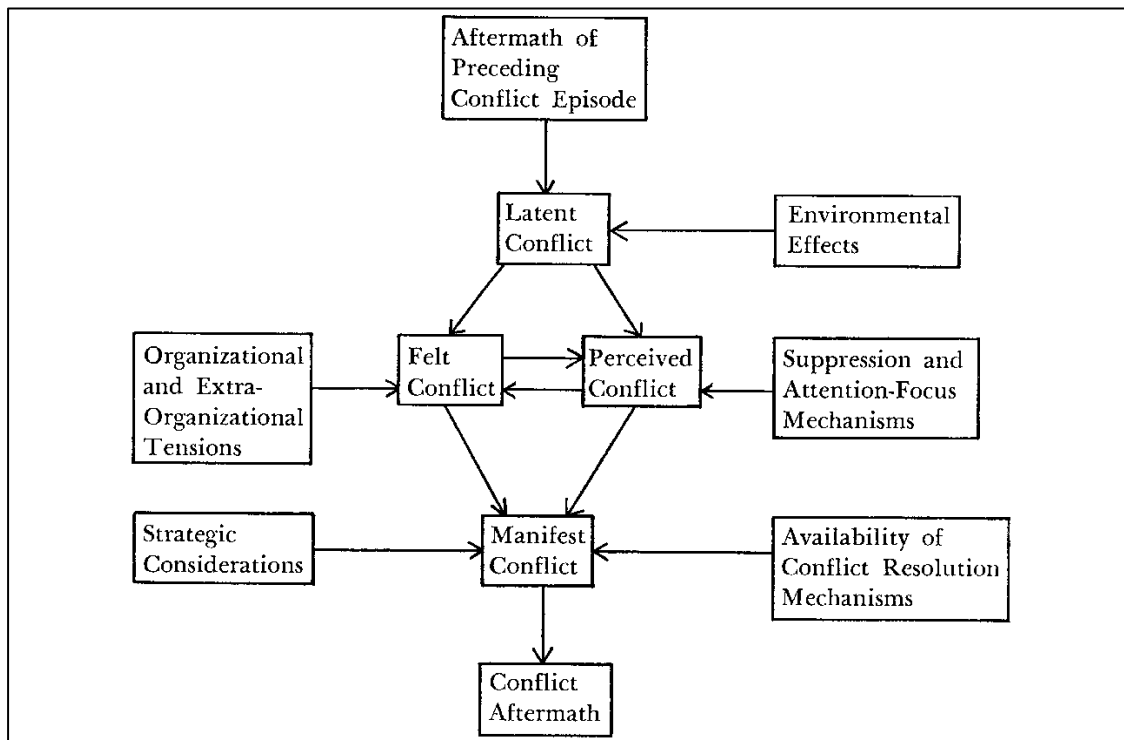
### *Organisational conflict and symbolism*

As I have already set out in this chapter, applied symbolic interactionist studies have tended to focus on problems around deviance from social norms, rather than the causes of organisational conflict. Nonetheless, symbolic interactionist studies of deviance provide a useful starting point from which to understand the social situations and mechanisms that lead to conflict. For instance, both Becker (1963/2008) and Lofland, (1969) define deviance as essentially a conflict between two groups: the first holds formal power and adopts conforming social norms of behaviour, and the second does not hold formal power and does not conform to conventional social norms. Reckless (1961) and Hirschi's (1969) social control theory, which I have addressed above, describes how conceptions of self and others can motivate conforming and deviant behaviours, which in turn causes conflict between those who hold established norms and those who hold deviant norms. Furthermore, symbolic interactionism is most interested in the development of patterns of behaviour rather than static concepts. As Becker (1953/2015) argued, social behaviour can be fruitfully studied in terms of 'changes in meanings and concepts, their organisation and re-originations, and the way they channel behaviour'. This means that conflict can be viewed in symbolic terms of deviance from desired norms of practice, where conflict arises developmentally because of shifts in social norms or values between conflicting groups.

From an organisational culture perspective, conflict can be viewed 'episodically', as a conflict process. Conflict process theories therefore adopt similar principles to symbolic interaction in looking at social behaviour developmentally, rather than in static or structural terms. Pondy (1967) proposed a developmental model of conflict which 'attempts to synthesize the relationships among structural and personality variables that affect conflict processes and conflict outcomes by treating them as elements of a "conflict episode"' (Lewicki, Weiss and Lewin, 1992, p.212). In this model, Pondy conceived conflict as a process consisting of five stages: (a) Latent conflict, (b) Perceived conflict, (c) Felt conflict, (d) Manifest conflict, and (e) Conflict aftermath.

- Latent conflict describes the situations in which conflict may arise due to factors such as competition for resources, drive for autonomy, divergence of goals or role conflict.
- Perceived conflict is an awareness (whether justified or not) that another party may act to thwart future objectives or goals. Perceived conflict may exist without latent conflict where there is a misunderstanding between parties of their true position.
- Felt conflict describes the experience of being in conflict, where emotions such as stress, hostility, and anxiety are felt by one or both parties.
- Manifest conflict is the development of felt conflict, when changes in behaviour occur that others would observe as conflict. Conflict may be experienced through communication or violence, but any adversarial behaviour directed on the basis of felt conflict may be manifest conflict.
- Finally, conflict aftermath is the situation after manifest conflict emerges. The specific situation depends directly on how the conflict was resolved. Amicable resolution may improve parties' underlying relations, while adversarial resolution may damage relationships indefinitely.

Crucially, Pondy (1967) recognised that the conflict process is a dynamic concept, with links to past conflict and manifesting only when the balance of latent conflict is damaged by felt or perceived conflict during interaction.



*Figure 12: Pondy (1967): The dynamics of the conflict episode*

This model has been developed in later studies, but essentially recognises the same episodes of conflict. For instance, according to Robbins (2018), a group conflict episode can be conceived as a progression through four interrelated stages: (a) antecedent conditions; (b) personalisation of conflict, (c) behaviour manifestation and (d) aftermath of conflict. Therefore, like Pondy (1967), Robbins (2018) recognised conflict as a process consisting of pre-existing conditions, personal experience, manifest behaviour and the post-conflict experience. On the other hand, (Walton, 1969) developed an empirical model based on case studies that distinguishes between several stages of conflict cycles, namely: the issues, triggering events, tactical exchanges, and conflict consequences. While descriptively similar to Pondy's model, Walton's model was primarily concerned with intervention, and focused on interpersonal as opposed to organisational conflict.

However, Pondy's episodic conflict-process theory is not capable, on its own, of explaining the interpretive causal mechanisms which effectively lead to conflict prone behaviour in a real-world setting. As Pondy (1967, p.330) conceded when discussing the implications of the model:

*Which specific reactions take place at each stage of a conflict episode, and why, are the central questions to be answered in a theory of conflict. Only the*

*framework within which those questions can be systematically investigated is developed here*

In a similar way, Barley (1991) emphasised the need to develop an ‘ethnography of disputing’ which focuses on the social/cultural context in which conflict plays out. This social/cultural context can be understood in terms of: the historical origin of the social norms which define the meaning of ‘dispute’ and its associated rules and consequences; the socially constructed identities of conflicting parties, particularly those which identify ‘insiders’ vs. ‘outsiders’; the nature of relationships between conflicting parties, including relative authority and power differentials; and the resources that conflicting parties have at their disposal to influence the outcome of the dispute (Barley, 1991).

Consequently, the important contribution of symbolic interaction to the conflict-process theory is its ability to explain the symbolic mechanisms through which individual decision making and behaviour is influenced by inside and outside variables, such as differences in perspective, tradition, value system and power differentials within dynamic organisational structures (Triplett, 1993). These symbolic considerations can then be called upon to explain the conflict process sketched out in Pondy’s model in a specific context.

### **3.9 Implications for research on the construction industry’s claims culture**

In Chapter 2, I explained that the current research focuses on the relationship between social interactions surrounding claims, and the issues faced in claims management. I demonstrated that it remains rare for claims management research to adopt an explicit theoretical perspective, limiting the prospects for cross-disciplinary application of existing or established theory to understand issues in claims management. The current research addresses that gap. Symbolic interactionism has been utilised increasingly to study organisational settings and the effect of symbolism in the work lives of practitioners (Turner, 2014), which may play a critical role in organising social life in the workplace by acting to simplify a complex changing social environment (Hirschheim and Newman, 1991). Indeed, Staw (1985) argues that symbolism may have greater ‘predictive power over more conventional observations of variables’, because symbolism takes account of the reality as perceived by members of an organisation, rather than outside observers.

The symbolic interactionist perspective discussed above shows that one way of understanding issues in claims management is to examine how actors (practitioners) actually experience the world, and how these experiences influence their actions. In his work on the experiences of sectioned mental-health patients, Goffman set out 'to learn about the social world of the hospital inmate as this world is subjectively experienced by him' (Goffman, 1969, p.7). The current research adopts a similar goal but in respect of claims management.

The theoretical perspective I adopted in this research places the origins of problematic social behaviour within the subjective meanings held by individuals that exhibit that behaviour, which requires us to view social problems through the eyes of the participants within it. Furthermore, because patterns of behaviour are subject to continuous change as a consequence of the redefinition of meaning in interaction, problematic behaviour can be understood dynamically, adding a temporal dimension to existing research. By looking at a social problem through the eyes of the participants over time, substantive theory can be constructed to explain the origins of interesting or problematic behaviour observed in the field. Perhaps more importantly from the perspective of this research, such an understanding can form the basis of the development of strategies to alter problematic patterns of behaviour, by addressing the features of social situations that lead to such behaviour in the first place. Adopting symbolic interactionism accepts the premise that the self is socially constructed and reconstructed through interactions with others within a community, a process which directly influences lines and patterns of behaviour (Blumer, 1969/1986).

Furthermore, when conflict culture in the construction industry is framed as organisational culture, and construction projects are framed as organisations (or collections of organisations), the organisational symbolism and conflict process theories become directly relevant to the study of conflict around claims. This suggests that a richer understanding of construction claims may be gained by viewing them as organisational symbols, and focusing on the experiences that practitioners associate with claims. Similarly, a causal understanding between claims and conflict-prone behaviour may be obtained through the study of the dynamic meaning practitioners attach to claims management in the real world. By examining the way conflict emerges from claims episodically, and by exploring the social mechanisms that result in transformation of

conflict episodes, symbolic interactionism offers a potentially fruitful perspective from which to study problematic behaviour in the construction industry.

The application of these perspectives to claims management has revealed two significant theoretical implications. Firstly, symbolic interactionism suggests that the conception of self is created through internalisation of the perceived views of others, a hypothesis termed as the ‘looking glass self’ (Yeung and Martin, 2003). The research will show how GCC claims managers’ perceptions of self are constructed, at least in part, from the GCC’s claims culture, and that their sense of self is dynamic and subject to change. This allows exploration of the proposition that a change in culture might influence the ways in which claims managers perceive themselves, and lead them to change their actions accordingly. Secondly, symbolic interactionism predicts that individuals will act in accordance with the labels they perceive others have attributed to them (Macionis and Gerber, 2010; Matza, 1982). This research will show that contractors deem themselves to be unfairly stigmatised and labelled as ‘claims conscious’, and actively resist that label at the beginning of construction projects. Yet despite this resistance, contractors progressively conform with the label ascribed to them as a response to the actions of the consultant, which only reinforces their ‘claims conscious’ label. Therefore, the research is designed to predict whether changes to the ways in which consultants engage with contractors may reduce the incidence of ‘claims conscious’ behaviour, leading to improvements in practice. In summary, from a symbolic interactionist perspective, explaining practitioners’ behaviour toward claims requires a detailed understanding of the meanings that practitioners attach to experiences and others with whom they engage in claims management.

### **3.10 Conclusion**

This chapter has shown how organisational culture, symbolism and conflict can be viewed through a symbolic interactionist lens. It has set out how organisational culture can influence behaviour and how, in turn, changes to organisational culture can bring about changes in behaviour. This chapter has also set out the particular dynamic process through which conflict emerges, ready for further elaboration in the context of practice.

Applied to the current research problem, symbolic interactionism provides a theoretical perspective through which to understand issues in claims management at a human level.



It offers a means to determine reasons for behaviour by understanding the subjective interpretations that practitioners make to understand their world. To reach this understanding, I set out to examine the following five aspects of behaviour within organisations, adapting the conceptions from Prus (1996):

1. The meanings (interpretations) that practitioners attach to themselves and the other practitioners and objects that they interact with.
2. The ways in which practitioners carry out their activities in an individual and social context, and how these activities are guided by the meanings of themselves and others.
3. The attempts practitioners make to influence, accommodate or resist the behaviours of other practitioners towards them.
4. The relationships that claims practitioners develop with others over time and the ways in which they perceive and attend to these relationships; and
5. The patterns of behaviour, natural histories and sequences of interactions that practitioners develop and experience over time.

In the next chapter (Chapter 4, Research Methodology), I explain and justify how these principles have been developed into a more comprehensive research methodology.

## CHAPTER 4 - METHODOLOGY

### 4.1 Introduction

This Chapter explains and justifies the methodology of this research. Chapter 1 [Introduction] explained that I undertook this research while working as a claims consultant in the GCC. This position provided a unique opportunity to generate context-specific knowledge about the GCC's claims culture, but required a methodological approach that was not rigid, formulaic or fixed. Rather, it required an approach that was suited to 'fit' into the messy reality of my practice, that was able to utilise my experience as data, and that was capable of producing insights and knowledge despite the complications that my emic perspective brought with it. In this chapter, I explore the origins and methodological challenges of insider research. I also explain, and justify, why autoethnography particularly suited my position, why I chose to adopt an *analytic* autoethnographic approach,<sup>32</sup> and why my methodology was informed by reflective practice as a research approach. This chapter therefore directly addresses Objective 4 of the research.

### 4.2 Research approach

Research about society can adopt a range of methodological approaches, including phenomenology, hermeneutics, grounded theory, action research, case study, and auto/ethnography (Costley, Elliott and Gibbs, 2010). Phenomenological, hermeneutic and grounded theory approaches seek to construct meaning from the perspectives of others through the examination of their opinions and words (Gray, 2013). Action research and case studies examine issues within a particular context from multiple perspectives, with action research focused on problem solving and change (Gray, 2013). Yet to differing extents, all of these approaches require a degree of separation between researcher and participant, resulting in practical difficulties in utilising researchers' day-to-day experiences as data.

In contrast, ethnographic approaches to research aim to document the daily routines and underlying culture of society through immersion in the lives of others (Fetterman, 1997).

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<sup>32</sup> Analytic means developing concepts and propositions that are highly abstract and transferrable (J.H. Turner, 2012)

Ethnographers rely on observations and participation to understand culture, and explain members' meaning and actions from an 'emic' or 'insider's' perspective (Gray, 2013; Whitehead, 2004).

In *autoethnography*, the researcher assumes a parallel role as a participant in the research, to examine his or her own social group from within (Anderson, 2006; Ellis and Bochner, 2000). In this research, the aim was to investigate how the GCC's claims culture influences claims management practice by exploring the work lives of claims managers. As a study of *culture*, ethnography offered the most suitable approach. However, because I not only observed others, but also drew on my own experiences as a source of data, I adopted an *autoethnographic* methodology informed by reflective practice techniques.

In the remainder of this chapter, I firstly discuss ethnographic and autoethnographic methodologies, seeking to explain and justify why I adopted a hybrid auto/ethnographic approach as the basis of the design and implementation of this research. I then address reflective practice as a complementary approach to autoethnography, and explain how I utilised it to provide a general methodological perspective in the research.

### **4.3 Ethnography and autoethnography**

In classic ethnography, the ethnographer 'goes somewhere, observes, returns and reports' (Dourish, 2006, p.3). The ethnographer, typically an outsider to a group, collects 'data' in the form of field notes, observations and participation (Wolfinger, 2002) and reconstructs and analyses that data in terms of social theory (Button, 2000). The ethnographer asks basic questions about social organisation while aiming to formulate 'empirically falsifiable and generically attuned' answers to those questions. (Loftland, 1995, p.37). Ethnographic writing forms the primary method of analysing and presenting data, which is characterised by 'thick description' aimed at depicting cultural reality as accurately as possible (Geertz, 1993). Autoethnography shares many of the defining features of classic ethnography, but the autoethnographer's own experiences are drawn upon to explain a culture or give meaning to members' actions (Fiske, 1990, p.85). However, autoethnography is a diverse research approach that has yet to establish a consistent methodological basis. As Charmaz (2006, p.397) puts it, '[w]hat stands as autoethnography remains unclear and contested.'

Whilst ethnography has featured fairly prominently within construction management literature (e.g. Pink, Tutt and Dainty, 2013), autoethnography has been almost entirely ignored. The lack of interest in the field might follow from the (incorrect) perception that autoethnography is synonymous with evocative or literary styles of research that largely ignore wider social theory (Anderson, 2006). Nevertheless, this situation creates both a challenge and an opportunity. The challenge lies in structuring a robust methodology without a readily available 'blueprint'. The opportunity lies in the flexibility this lack of specificity offers to this research. To provide this research with a theoretical justification, the following sections identify the varying epistemological roots of autoethnography, discuss the origins of autoethnography as 'insider' research, and explore the methodological opportunities and challenges that result.

#### **4.4 Autoethnographic epistemologies**

As with other forms of research, the conception of reality in autoethnography is an epistemological question that has direct bearing on the selection of data collection and analysis methods (Grix, 2010). Autoethnographers originate from diverse disciplines, and consequently, many styles of reporting and analysing have become associated with autoethnography. As Ellis and Bochner (2000, p.740) observe, '[a]utoethnographers vary in their emphasis on the research process (graphy), on culture (ethno), and on self (auto)'. Autoethnographies might range from highly personalised emotive writings (emphasising the 'auto') to theoretically structured studies of culture within the social world (emphasising the 'ethno/graphy'). These approaches reflect the kinds of knowledge each researcher seeks to create. For example, Anderson (2006) highlights a fundamental epistemological distinction between 'evocative' (auto) and 'analytic' (ethno/graphy) approaches, which respectively seek to evoke meaning and emotional understanding from personal accounts, or relate self-experiences to wider social theory. Charmaz (2006) argues that this distinction is not merely a descriptor of autoethnographic styles, but a normative statement about what autoethnography can and should be. Put simply, the dichotomy between these approaches mirrors the dichotomy between postmodern and realist epistemologies, where the former encourages personalised, emotive accounts and rejects explicit theoretical analysis, and the latter values truthful representation and an appropriate degree of theoretical abstraction.

Anderson (2006) defines analytic autoethnography as research in which the researcher is (1) a full member in the research group or setting, (2) visible as a member in reporting, and (3) committed to developing social theory. Unlike in evocative approaches, the researcher utilises his own experiences as data, but supplements those experiences with the experiences of others to seek connections to broader social theory. The objective of theoretical analysis demonstrates analytical autoethnography's alignment with the theoretical orientation of classic ethnography, which combines an ontological realism with a constructivist epistemology (Anderson, 2006).

The realist-ontological position might appear contradictory to ethnographic research, because the goal of depicting a 'reality' contrasts with the acceptance that various realities exist that are different from the ethnographer's own. Yet by combining a realist ontology with a constructivist epistemology, realist ethnographers adopt a subtler form of realism that maintains the underlying goal of truthful reporting, but modifies this goal to *represent* a reality rather than reproduce it. This is contrasted with both the hard-realist position of the natural sciences, and the hard-constructivist position associated with postmodernism. However, the classic ethnographic position pre-dates postmodernism and other 'emancipatory' forms of research, as 'the essential theoretical and methodological foundations of an interpretivist approach to the study of human group life were developed long before concerns with postmodernist agenda were introduced to the social sciences' (Prus, 1996, p.3). Put another way, the epistemological constructivism adopted in classic ethnography 'is not a claim that "realities" can be conjured out of thin air purely by acts of will and imagination by individual social actors', but that 'reality' as perceived by individuals is produced and maintained by their social situation and position in society (Atkinson, 2017, p.22). This softer form of realism, then, allows for multiple, non-contradictory representations of the same social phenomena (Hammersley and Atkinson, 2007).

The flexibility of this position can 'accommodate the insights of the other meta-theoretical positions while avoiding their drawbacks' (Bhaskar and Danermark, 2006, p.280; Easton, 2010). This means that evidence presented by existing foundational/positivist-rooted research can be built upon, by acknowledging that the generalised causal links inferred from those studies may point towards a common reality that can be influenced by changes to practice. The critical/soft realist perspective refrains

from ‘generalisation’, focusing instead on ‘retroduction’; a ‘mode of inference in which events are explained by postulating (and identifying) mechanisms which are capable of producing them’ (Sayer, 1992, p.107), leading to ‘recommendations of transformative practice’ (Owens, 2011, p.10).

In contrast, evocative autoethnographers reject the need to depict truthful accounts in an overreaching theoretical framework. In support of this interpretivist style of reporting, Ellis and Bochner (2000, p.44) argue that autoethnography should concentrate on personal ‘narrative text [that] refuses to abstract and explain.’ They argue that autoethnography does not require abstract theoretical formulations, as an appropriately written text ought to ‘show’ the reader what is happening in a social context without the need to ‘explain’ it. Denzin (1997, p.228) similarly contends that evocative autoethnographers ‘bypass the representational problem by invoking an epistemology of emotion, moving the reader to feel the feelings of the other.’ This focus on impassioned storytelling corresponds with a postmodern worldview that rejects the potential for objective explanation.

Ultimately, the choice of research problem, method, and theoretical orientation is influenced by one’s history, beliefs and objectives (Hayano, 1979). My position has developed within an applied field (construction management) and, not surprisingly, my experience draws me to research that explains social phenomena, or demonstrates implications through theoretical abstraction. I also take the position that in an applied discipline like construction management, there is value in generating knowledge that illuminates *mechanisms* of practice, which may otherwise remain hidden to practitioners. Conversely, the production of an evocative account of my beliefs, without theoretical analysis, appears to me to have limited value in providing meaningful knowledge with practical implications. I have therefore rejected the interpretive, evocative autoethnographic extreme for the purposes of this research, and instead adopted an *analytical* autoethnographic perspective (Anderson, 2006).

#### **4.5 Autoethnographic methodology**

Ethnographic researchers who examine their own societies from *within* have not only been referred to as ‘auto-ethnographers’, but also ‘endo-ethnographers’ (Van Ginkel, 1998), ‘self-ethnographers’ (Alvesson, 2003), ‘insiders’ (Barnard and Spencer, 1996), or

‘natives’ (Jones, 1970).<sup>33</sup> In contrast to the ‘participant observer’ position adopted by conventional ethnographers, insiders research as ‘observing participants’ (Alvesson, 2003, p.174). They conduct research in settings ranging from largely fragmented social groups connected by disability, cultural membership or a life experience (Anderson, 2006), or in ‘at home’ settings with clear boundaries and subculture (Alvesson, 2003), such as one’s own workplace or local community (Anderson, 2006; Innes, 2009). However, Griffith (1998) adds the qualification that an insider position cannot be identified based solely on *a priori* physiognomies such as race, gender, or ancestry. There must be *intimate knowledge* of a group brought about by experience or participation within it.

Insider researchers therefore exploit their ‘unique biography, life experiences, and situational familiarity’ (Riemer, 1977, p.474) to ‘turn familiar situations, timely events, or special expertise into objects of study’ (Adler and Adler, 1987, p.69). This means insiders need not negotiate entry into an interesting society for the purposes of research, as the researcher was either born into the society or in some other way later found themselves part of it (Karra and Phillips, 2008). For instance, Adler and Adler (1987) distinguishes two types of insider researchers: ‘opportunists’ and ‘converts’. Converts begin as outsider-researchers, but later become ‘insiders’ through the course of research. Griffith (1998) includes converts within her characterisation of insiders, in attaching insider status to any researcher who has lived in the same way as researched participants. In contrast, opportunists are born into a group, enter into a group by circumstance (e.g., by profession), or have otherwise acquired intimate familiarity with a society or culture that *precedes the conduct of research* (Jenkins, 2000). Sheutz (1944, p.502) distinguishes the opportunist’s position in the following way: ‘[The convert] may be willing and able to share the present and the future with the approached group in vivid and immediate experience... however, he remains excluded from such experiences of its past’.

Yet despite construction management’s applied nature, examples of explicitly ‘insider’ ethnographic research appear relatively infrequently within construction management literature (Pink et al., 2013). One explanation for this might be the built environment discipline’s ‘ongoing adherence to natural science methodologies and reductionist approaches’ (Dainty, 2008, p.7). As in the wider social sciences, this traditional view

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<sup>33</sup> For simplicity, I use the term ‘insider’ for the remainder for this section.

suggests that researchers must describe a society from a totally detached stranger's perspective, or as Davis (1973) puts it, as a 'Martian'. Therefore, the argument goes, only a neutral outsider can create an objective account of social interactions, because only a neutral outsider possesses the distance from research participants and setting necessary to see the 'truth' of a culture (Simmel and Wolff, 1950). Thus researchers who subscribe to this view argue that the insider is blind and ignorant to the culture of his or her own group, and therefore unable to separate ideals and perceptions from reality (Merton, 1972). They argue that only a neutral outsider is able to 'stand back and abstract material from the research experience (Burgess, 2002, p.23) to reveal truthful insights and understanding. In the following sections, I argue why this position is neither accurate nor justified.

### *Autoethnography in action*

Autoethnography has become recognised as a particular methodological approach, yet it originates from a wide body of ethnographic research in which researchers examined their own culture or society from an insider perspective (Hayano, 1979). Whilst much of this research does not explicitly classify itself as 'autoethnography', it does share many of the methodological characteristics which define autoethnography, and therefore provides a useful footing from which to extend this research.

Applying current understanding of what autoethnography is, historic authors who did not label their work explicitly as autoethnographic can be understood in terms of autobiography. Of particular inspiration to me are the non-fiction works of George Orwell. As Amundsen (2016) put it:

The notion of Orwell as an ethnographer is a natural extension of his truth-seeking instinct. In order to know the world, he needed to know other people, often in his case the people at the bottom rung of society or those that had fallen through the cracks altogether. His method frequently was to live or work with his study group and to understand as much as possible their worldview, as any proper ethnographer would. Because his studies were reflexive and dealt with issues in society more broadly, Orwell can be seen as an autoethnographer.

In anthropology, 'natives' or members of exotic societies were traditionally viewed as the research subject or 'other'. As global literacy increased, 'natives' took issue with outsiders' distortion of their culture (Kempny, 2012; Van Ginkel, 1998) and, as the first



‘insider’ researchers, began to critique outsider interpretations (Brettell, 1996; D. Jones, 1970). They exploited their insider position to ‘represent their people, usually in their own language, from native points of view’ (Kuwayama, 2003, p.8). Ethnographies by Srinivas (2003), Ohnuki-Tierney (1984) and Bernard and Pedraza’s (1989) illustrate the value of native-led research in non-western cultures. Srinivas (2003) exposed the diverse social consequences of the complex South Indian caste system, and explained the mechanisms by which Hinduism absorbs outlying pagan communities by ever closer association between deities and rituals from both Hindu and pagan traditions. Ohnuki-Tierney (1984) described in detail cultural norms and the complex rituals associated with personal hygiene and healthcare in Japan, setting a stark contrast to Western practices in conventional medicine. Elsewhere, Bernard and Pedraza’s (1989) ethnography of American-Indian society provided a detailed account of everyday life, rituals and ceremonies of Mexican Nahnu Indians, revealing meanings and social rules that were previously invisible to outsiders (Bernard, 2011).

Closer to home, there is also a rich tradition of ‘opportunistic’ autoethnographic research in sociology. In these studies, researchers typically utilise their unique position within a section of society to study familiar social situations or areas of practice (Riemer, 1977). The research opportunity might arise from employment or a special skill, a hobby or pastime, or an experience or major life event, in each case giving the researcher *a priori* intimate cultural knowledge from which to draw insights and understanding. For instance Van Maanen (1996) provides an insider-ethnographic account of Disney Land based on his tenure as a part time employee at the park. Scratching through the veneer of ‘laughter and wellbeing’ (p.11) portrayed to consumers, he reveals a work culture organised by strict rules, censorship and assumed identities, but concedes these as essential elements for maintaining the quality of a product that thousands consume each year. Ouellet (1994) also utilises his work experience as a focus for research.

In self-classified autoethnography Ouellet (1994, p.5) explores his employment as a truck driver in California to observe and analyse drivers’ work life, self-created identities and the meanings of work. He found that drivers construct meaning in their work lives in terms of masculinity, outlaw and skilled worker. He also found that concepts of occupational pride, rather than remuneration, are a primary motivating factor for many drivers, suggesting potential flaws in classic social theories of work. Applebaum (1981)

also examines blue collar work culture as an insider, but this time on United States' civil engineering sites. Applebaum (1981, p.17) acknowledges his insider status in noting that 'I was a participant before I was an observer. I was a member of the construction team before I decided to research construction workers. I was therefore in a position to know construction workers as an insider'. His study demonstrates how construction site workers maintain levels of autonomy comparable with white collar workers due (primarily) to ownership of means of production, and suggests construction trades status is organised homogeneously despite relative skill.

The preceding examples leverage research opportunities from work life, converting the everyday experiences of insiders into interesting theoretical contributions. However, insider research need not always be framed solely in work-life boundaries. Anderson (2011) provides a more personal autoethnography of his experiences of a lifetime of skydiving set against professional and personal life. His study reveals the pressures skydivers and other hobbyists face when relentlessly pursuing a pastime alongside busy professional and family life, and explores the various strategies adopted by himself and others to maintain stability between personal, professional and leisure commitments in contrast to established social theories. Common features through all of these studies are their ability to (i) reveal unique insights into an otherwise closed social world, (ii) develop a theoretical structure to explain members' culture and meaning; and (iii) extend research implications by situating findings in wider social theory.

There are, however, few examples of autoethnography in the construction management literature. Where they do exist, they tend to adopt a constructivist, evocative perspective in exploring personal experiences and issues. For instance, Grosse (2019) explored his emotional experiences running a construction company in Germany and pursuing practitioner-research as a part-time researcher. He noted: 'There is an almost total lack of autoethnography in construction management, compared to its prominence in other fields'. (Grosse, 2019, p.483). Similarly, Kanjanabootra and Corbitt (2016) used reflexive personal autoethnography to argue that both reproduction of knowledge and development of practical expertise are constrained by normative professional thinking. On the other hand, at the date of this thesis, there appeared to be only two instances where *analytic* autoethnography has been used at an exploratory level. Livesey and Runeson (2018) demonstrated how analytic autoethnography can be used in a rigorous way for theory

testing. In their study, they explored the degree to which emotional intelligence is perceived as important by practitioners. In my own early work in developing this thesis, I applied analytic autoethnography to argue that contractors' experience of claims is best understood developmentally at the level of practice (Whaley, 2016).

The implications of this discussion are that I had a unique opportunity to produce an analytical ethnographic account of the work life of claims practitioners. Like Van Maanen (1996), Ouellet (1994), Applebaum (1981) and Anderson (2006), I am an opportunistic researcher by virtue of this research being focused on my profession and employment. This position existed before I embarked on this research project – my access to the field came about not by design or intention, but by circumstance. I have gained access to an interesting and dynamic social world by chance, and I already possess years of experience and understanding of that world from which to generate knowledge and extend theory. Moreover, if definitions are relaxed, I might also identify with the 'native' researcher: I am a 'native' to the society surrounding claims management in the GCC. I possess cultural knowledge and I am conversant in a language of claims that might not be understood to 'outsiders'. I find the simplified and binary manner in which claims culture is portrayed in the extant literature problematic, and intend this research to present a truer account of a culture of which I am a member.

### *Methodological advantages and disadvantages*

In this research, I utilised my experiences of the GCC's claims culture as the central means of exploration. I aimed to theoretically reconstruct these experiences in conjunction with those of other practitioners, to explain the meaning and mechanisms underlying the claims culture from the perspective of my peer group. Because of my position as a practitioner-researcher, I already possessed *a priori* intimate cultural knowledge of the society that my research focuses on (Merton, 1972). In other words, I was already an 'insider' member of the society that I was researching. My insider position was also opportunistic, because my experiences and understanding of the GCC's claims culture came about before the decision to embark on this research. I have also illustrated that insider research is neither novel nor untested, and in fact, there is a rich research tradition demonstrating the potential to use autoethnography to generate knowledge about society that might otherwise remain hidden. Yet like all qualitative research approaches,

autoethnography is associated with various methodological advantages, disadvantages, and limitations.

A primary benefit from the autoethnographer's insider status arises from the convenience of researching in 'at-home' settings. Immersing oneself in the field is critical to ethnographic research, and autoethnographers benefit from unfettered cultural exposure that comes with living in the society being studied (Anderson, 2006). Whilst this situation creates tension between undertaking research (taking field notes, making time for reflection) and natural participation (Anderson, 2006), this problem appears no more significant than the challenge conventional ethnographers face in forcing opportunities to participate and interact in the field. Another practical advantage is the insider's knowledge of 'native' language (Hayano, 1979). In the case of non-Western researchers, this might mean dispensation from interpreters, yet the benefit also extends to understanding technical terminology or jargon specific to a society or cultural group. In my case, I have been able to combine fieldwork with paid work, mitigating the challenge of cultural immersion necessary in ethnographic research. Similarly, being conversant with claims management terminology provided a significant practical benefit. Whilst business is typically undertaken in English within the GCC, specific words and meanings are unique to practitioners who regularly manage claims. From this perspective, one reason that I decided to adopt autoethnography was that it seemed to be the best way to study the setting in such a way that meaning was not imposed on it from outside (Löwstedt, 2015)

In addition to these practical benefits, an insider position also brings obvious analytical benefits. First, the researcher has immediate access to data in the form of memories, personal experiences and narratives. Kotarba (1977, p.260) identifies three advantages in using one's experience as data: (i) experiences provide a basis for comparison with the experiences of others; (ii) experiences generate 'points of inquiry' to direct research; and (iii) experiences assist the researcher in attaining a more complex theoretical understanding of events, minimising the propensity for simplistic explanations of behaviour. Second, insiders experience a comparative lack of culture shock or disorientation when embarking on research, minimising the time needed to develop a rapport with group members and to understand their basic cultural rules (Hockey, 1993; Van Ginkel, 1998). Third, insiders might be more sensitive to the relative importance of

issues within a societal group (Merton, 1972), potentially resulting in research with clearer practical implications. Fourth, insiders might be better equipped to understand and describe meaning in the everyday lives of a society's members than an outsider. This is because insiders can more directly empathise with the experiences of members, enabling a deeper understanding of a society and its daily routines, symbols and value systems (Van Ginkel, 1998, p.256). This understanding can also lead to increased 'ability to gauge the honesty and accuracy of responses, and the likelihood that respondents will reveal more intimate details of their lives to someone considered empathetic' (Hockey, 1993, p.199; Merton, 1972, p.15). As Greenfield (2000, p.233) puts it: 'When one studies behaviour in one's own culture... one has *de facto* an insider's cultural perspective... With reference to his or her own group, the insider understands the *meanings and motives* behind in-group behaviours' [emphasis added]. My experiences have already resulted in a tacit understanding of the expectations, beliefs and ideologies held by stakeholders within claims management. This understanding may have enhanced my ability to prioritise issues of cultural relevance and to empathise with the experiences of other practitioners compared to conventional 'outsider' researchers.

However, despite the benefits of insider status in autoethnography, insiders are 'assumed to be less adept at creating the kind of objective detachment needed to properly interpret the emic *etically*, to turn humanistic ruminations into true scientific fact' (Jackson, 2004, p.34). In other words, insiders might face difficulty in translating insider perspectives to the wider world. Several aspects of the insider's status led to this assumption.

First, because insiders are not detached from the messy reality of their own culture, they might be less able to separate essential cultural mechanisms from the contradictory mixture of desires, beliefs, thoughts and feelings of members within a society (Fay, 1996; Loftland, 1995). This means a fundamental dilemma faced by insiders concerns research bias and the 'objective/subjective polarity in collecting, interpreting, and reporting information' (Hayano, 1979, p.102). Second, the same familiarity that results in the advantages discussed above may also colour the autoethnographer's perception of the world, with beliefs and ideologies emerging from prolonged membership within a society. Fay (1996) terms this challenge the insider's 'self-deception', where fear, self-protection, or guilt attached to experiences cloud the researcher's perception of the world or influence the way it is reported. Third, insiders might face difficulty in discussing or

explaining their own ‘taken-for-granted reality’ (Kempny, 2012). An event that an outsider might see as interesting or operative in explaining a culture might also be an event so familiar that an insider walks by it without a thought. Van Ginkel (1998, p.257) illustrates this problem as being not unlike ‘trying to push a car while being inside it, observing a parade whilst marching along, or being a fish and attempting to see the water’. Thus, to the insider, interesting social phenomena might be hiding in plain sight, or obscured by the mind’s obliviousness to routine or familiar things. Fourth, whilst insiders might be more sensitive to the relative importance of social issues (Merton, 1972), they might also over-emphasise the importance of certain phenomena (Karra and Phillips, 2008). A final disadvantage of the insider status is that replication or extension of research by others may be impossible. This is because the researcher’s unique position means that observations made in the field may be inimitable, and even if this were not the case, the insider’s perspective is likely to be significantly different both from those of other researchers (Riemer, 1977), and potentially from those of other members within the same group (Anderson, 2006; Hayano, 1979).

To summarise, whereas a conventional ethnographer is a ‘stranger entering into a setting and ‘breaking in’, trying to create knowledge through understanding the natives from their point of view or their reading of acts’, the autoethnographer’s struggle is ‘breaking out’ from the taken-for-grantedness of a particular framework and of creating knowledge through trying to interpret the acts, words and material used by oneself and one’s fellow organizational members from a certain distance’ (M Alvesson, 2003, p.176). Consequently, instead of learning how to ‘get in’ to the field, the insider must learn how to ‘get out’ and create an ‘ethnographic gaze in familiar social environments’ (Van Ginkel, 1998, p.258). I address how these problems were mitigated in the remaining sections of this Chapter.

#### **4.6 Reflective practice**

A primary technique I deployed to rationalise my own thoughts and experiences was reflective practice. ‘Reflection’ is a broad and ambiguous concept within management and social sciences that has numerous meanings. At its most basic, reflection is ‘reviewing an experience of practice in order to describe, analyse, evaluate’ (Reid, 1993, p.305). Experiences emerge from practice, and reflection is a process whereby experiences can be deconstructed and converted into more abstract knowledge (or theory) to inform future

practice, in a systematic way. Reflection involves ‘a hunt for additional evidence, for new data, that will be developed by the suggestion, and will either...bear it out or make obvious its absurdity or irrelevance’ (J Dewey, 1997, p.20). Consequently, when reflection is viewed as a process of converting experience to theory to inform practice, it offers potential as a framework for practitioner-led inquiry. Further, as Costley et al. (2010) highlight, reflective practice is essentially *ethnography in action*. Both reflection and ethnography look to structure and theorise observations of practice to inform or reveal new theoretical insights.

The use of reflection in intellectual inquiry is neither new nor untested. In Greek philosophy, reflection was central to Aristotle’s conception of *phronesis* or practical wisdom (Eikeland, 2008). However, this level of enquiry is so elevated that it does not appear to offer any replicable framework for reflective knowledge generation that might otherwise provide methodological direction to this research. Consequently, a more precise methodological foundation must be established to be useful for research.

For this reason, social scientists have developed two distinct modes of reflection. First, *critical* reflection is utilised to identify and deconstruct power structures, to bring about social change. Second, *analytical* reflection is utilised to solve context-dependent problems often incapable of being resolved through technical or ‘scientific’ approaches. In the following sub-sections I address both of these reflective approaches, and explain and justify why I adopted analytical reflection to compliment my broader analytical autoethnographic research methodology.

### ***Critical reflection***

Critical reflection features predominantly in critical theory, a theoretical tradition pioneered by Immanuel Kant. Critics seek to ‘interrogate and challenge received wisdom’ about existing theory and practice (Alvesson and Willmott, 2003, p.1). Critical theory is characterised by its interpretive approach and critical standpoint against existing social structures, with a particular focus on political and ideological interests (Alvesson and Sköldberg, 2009). A ‘critical’ perspective assumes that all generalised social theories are open to questioning (Reynolds, 1998). It assumes that knowledge is simply the logical outcome of human interests (Kilgore, 2001, p.56), which frees the criticist to deconstruct the social world to reveal social truths that might otherwise remain hidden.

The essential belief in critical theory is that humanity, including one's own self-view, is socially produced and therefore capable of transformation (Alvesson and Willmott, 1992). The central means of facilitating this transformation is through a process of critical reflection.

Critical theory utilises critical reflection in actively questioning social, cultural and political (i.e. power structure) customs which might otherwise be taken for granted in practice (Lyons, 2010; Reynolds, 1998). Driving this process is the empowerment of the researcher to challenge power structures. For instance, Habermas (1973, p.197) defines reflection as an 'emancipatory cognitive interest' aimed at acquiring equality. In this sense, the purpose of reflection is the analysis of knowledge, power and reflexivity to understand how social and structural assumptions are made and influenced (Hickson, 2011). Therefore, a function of the critical theoretical view is to heighten the researcher's awareness of how external forces may influence decision making in practice (Savin-Baden and Major, 2010).

Modernist thinking is the belief that human knowledge is created incrementally and successively, with each subsequent research attempt serving to focus the state of knowledge towards 'one truth' (Fook and Gardner, 2007). Postmodernist thinking challenges this belief by rejecting the view that there is an objective and knowable 'real' world that can be accurately described (Brewer, 2004, p.319). Instead, the postmodernist paradigm recognises the role of interpretation and language 'in the ongoing creation of reality' (Marshak, 2003, p.16). This perspective assumes policy makers are 'already embedded practitioners whose standards of judgements, canons of evidence, or normative measures are prescribed by his or her professional community' (Danziger, 1995, p.435). Like critical theory, postmodernism is grounded in the belief that knowledge is a social construct and dependent on its context (Agger, 1991). However unlike critical theory, postmodernism regards human knowledge as irrational and fragmented (Kilgore, 2001, p.56). A concept central to postmodernism is "deconstruction". This theoretical position challenges the binary categories that often develop within social structures (Fook and Gardner, 2007). Thus the purpose of deconstruction is to criticise modernist thinking, that is to discredit perceived social norms of right and wrong, normal and abnormal, good and bad (Kilgore, 2001), and to establish a world view that is subjective and flexible.



Criticisms of the critical theory perspective include the apparent ignorance of socio-historic factors which may be at the root of behaviours uncovered through critical reflection (Smiley, Fernie and Dainty, 2014), and the one-sided or negative view characterised in the critical theory approach (Green, 2001). It seems both of these issues can be mitigated by taking a more plural approach to research; that is by using critical theory as but one of many theoretical lenses through which to reflect.

While many of the ideas of critical reflection are relevant here, the main aim of this research was not to understand the power structures within the industry, or to expose discrimination, or emancipate the research participants from their world views. I aimed to understand the day to day lives of practitioners from their own perspective, and to build theory from those lived experiences. Further, as explained above, I adopted a realist-analytic approach to ethnography for the purpose of gathering and interpreting the research data. For these reasons, I used a more analytical mode of reflection as a means to understand my experiences against those of others.

### *Analytical Reflection*

Analytical reflection originates from the pragmatic/realist tradition in the social sciences. Here, Dewey recognised two sub-processes underpinning every operation of reflection: (a) a state of perplexity, hesitation, doubt, and (b) an act of search or investigation directed toward bringing to light further facts which serve to corporate or nullify a suggested belief (Dewey, 1997, p.16). Dewey (1997, p.62) identifies five further ‘logically distinct’ steps within the reflective operation: (i) the feeling of difficulty, (ii) location and definition, (iii) suggestion of possible solutions, (iv) development by reasoning of the bearing of the suggestions, (v) further observation and experiment leading to acceptance or rejection of the suggestion; that is ‘the conclusion of belief or disbelief.’ On the face of it, these steps might appear linear or mechanistic. However, Dewey (1997) noted that reflection is in fact ‘consecutive’, where reflective thought does not involve a neat sequence of ideas but a consequence of ideas – “a consecutive ordering [of thought] in such a way that each determines the next as its proper outcome, while each in turn leads back on its predecessors” (Dewey, 1997, p. 11). Dewey’s reflection does not consist of random or linear patterns, though, but rather each term of thought grows out of one another and supports one another. Two of the phases may telescope, some may be passed over (Dewey, 1998, p.207).

This ‘analytical’ mode of reflection features within experiential learning theories as a means through which learners bring about improvements in individual or collective practice. Reflection is utilised to reveal insights into how learning takes place, and how new knowledge might be generated through more purposeful thought and experimentation. Experiential learning theories attempt to model the process by which learners bring about changes in skills or beliefs from experience (Moon, 2013). For example, Kolb interprets learning as ‘the process whereby knowledge is created through the transformation of experience’, where purposeful reflection is a method of inductive learning (Kolb, 1984, p.38; Weil and McGill, 1989). Reflective practice, an experiential learning framework for practitioners by Argyris and Schön (1974), serves to develop theory through reflection on the principles and beliefs underpinning practice (Argyris and Schön, 1974; Fook and Gardner, 2007).

Table 7 below shows the similarities across experiential learning (Boydell, 1976; Dennison and Kirk, 1990; Dewey, 1997,1998; Gibbs, 1988; Kolb, 1984). Each theory follows a broad framework of experience, reflection, analysis and a resulting action.

*Table 7: Experiential learning and reflective practice: adapted from Lowe and Skitmore (1994)*

Theory	Experience	Reflection	Analysis	Action
Dewey, 1997, 1998	Difficulty, problem definition	Suggestions of possible solutions	Development by reasoning of the suggestions	Observation and experiment
Kolb, 1984	Concrete experience	Reflective observation	Abstract Conceptualisation	Active experimentation
Boydell, 1976	Problem	Perceptions	Making sense	Addressing
Dennison and Kirk, 1990	Do	Review	Learn	Apply
Gibbs, 1998	Description	Feelings, evaluation	Analysis	Conclusion, action plan
Schon, 1983	Knowing in action, surprise	Reflection in Action	Reflection on Action	Theory, further action and reflection

However, analytical reflective practice is distinguished from other experiential learning models by the lack of polarity between ‘reflection’ and ‘action’ (Gibbs, 1988; D.A. Kolb, 1984). As Mezirow (1990) points out, reflection can be both an ‘ex post facto reassessment’ (reflection after action) or a precursor to immediate action, and reflective practice recognises this link by differentiating between ‘reflection in [during the] action’

from ‘reflection on [after] action’ (Schön, 1983), thus blurring the line between reflection and action.

Reflective practice can be further contrasted with other experiential learning theories by its focus on ‘tacit understandings that have grown up around the repetitive experiences of a specialised practice’ (Schön, 1983, p.61), by critically examining the difference between ‘espoused theory’, and ‘theory in use’ (Finger and Asun, 2001, p.41). Espoused theories are the theories that practitioners claim they use, which may be different to the theories used in practice. In this sense Argyris and Schön (1974) advocate a ‘double loop’ learning model in reflective practice, which frees the practitioner from the experiential learning cycle and enables theory building through the process of *The Everyday Lives of Claims Practitioners*, without necessitating action as a means of theory validation (Finger and Asun, 2001). Developmental reflection therefore stems largely from personal experience and feeds into experimentation and new learning (Kolb, 1984). Reflections arise from unexpected outcomes or ‘surprises’ in practice (Dewey, 1997; Schön, 1983), revealing insights into ‘how our knowing-in-action may have contributed to an unexpected outcome’ (Schön, 1983, p.26). The surprise activates a cogitative reflective process, the outcome of which may be a new theory, the resolution of an issue, the development of a skill or a new set of ideas (Boud, Keogh and Walker, 2013).

It was these analytical-reflective techniques that I adopted when studying my own experiences in the current research. Analytical reflection offered a framework within which I could think about my experiences from a more impersonal perspective, and a means by which I justified pushing through my own emotional biases and pre-conceptions, to reveal useful insights into the mechanism of the social world which surrounded me as a practitioner of claims. It also provided a useful departure point to consider issues reported by other participants in the research, to contrast their views against my own, and to arrive at a coherent representation of the lived experience of claims management in all its variety. However, these reflective techniques did not fully solve the methodological problems associated with autoethnography, and potentially presented further challenges around formalising my experiences as ‘data’. For this reason, I also incorporated more conventional qualitative techniques into the research design, to mitigate the challenges inherent in my methodological approach. These are outlined in the final section of this chapter, below.

#### 4.7 Mitigating methodological challenges

As illustrated above, many of the methodological challenges that surround autoethnography and reflective practice arise from the researcher-participant contradiction that is impossible to avoid in insider research. Yet whilst these challenges are more prominent in autoethnography than in other research approaches, they are not challenges that are unique to autoethnography. In fact, the autoethnographer's challenges are similar to those of many qualitative researchers. As Morehouse submits, the perspective of all qualitative researchers is 'a paradoxical one: it is to be acutely tuned-in to the experiences and meaning systems of others — to indwell — and at the same time to be aware of how *one's own biases and preconceptions may be influencing what one is trying to understand*' (Morehouse, 1994, p.123, emphasis added). Taking this position, many of the facets of robust qualitative research posited by qualitative methodologists (e.g. Guba, 1981; Lincoln, 1995; Silverman, 2006) might be transferrable to mitigate the effects of methodological challenges in autoethnographic research. From a qualitative research perspective, this essentially amounts to adopting strategies that both (i) improve the perceived *credibility* of research (Guba, 1981), and (ii) account for and make explicit the researcher's unique perspective and associated biases.

Credibility in qualitative research deals with the question, 'How congruent are the findings with reality?' (Merriam, 1998). Thus credibility relates to the accuracy of the depiction of the social world forming the focus of research, a goal that is also central to all ethnographies (Geertz, 1993). Shenton (2004) suggests credibility might be demonstrated through the use of strategies such as random sampling for research participants and the adoption of well-established research methods in the social sciences. Yet autoethnography does not lend itself well to these particular strategies. Random sampling of participants is rendered difficult or impossible by the pre-existing nature of the research field (Riemer, 1977), and autoethnography is an approach subject to widespread criticism and debate within social research (Kempny, 2012). However, other strategies prominent within robust qualitative research do offer viable prospects for exhibiting credibility in this autoethnography. These include: *triangulation*, or the utilisation of multiple data collection methods to compensate for limitations in individual methods (Brewer and Hunter, 2006); *peer scrutiny* of the research project, including presentation at research conferences and constructive feedback from fellow academics (Shenton, 2004), and the single most important strategy to bolster research credibility

according to Guba and Lincoln (Lincoln and Guba, 1985), *member checks*, or attaining constructive feedback on the accuracy of research from members of the society being studied.

A further strategy to mitigate against influences arising from researchers' preconceptions and biases is, simply, explicit recognition that those influences exist in the first place (Karra and Phillips, 2008). As Malterud (2001, p.484) puts it, 'preconceptions are not the same as bias, unless the researcher fails to mention them'. Reflexivity is the practice of analysing the origins of one's own thinking (Bourdieu, 1990), which manifests itself in the acknowledgement of one's self as the lens through which one experiences the world (Fook, 2001). Johnson and Duberley (2003, p.1280) stress that ignorance of reflexivity 'amounts to an abdication of intellectual responsibility which results in poor research practices'. Reflexivity is therefore central to autoethnographic research, because doing research 'from the position of a neutral outside observer' is impossible (Askeland, 2012, p. 145). As an insider, the autoethnographer faces tension between the focus of his or her own professional lens and the need to identify with differing worldviews. This means autoethnography requires constant awareness of the impact of one's own professional beliefs and ideologies on one's reporting of a social world. Whereas both the evocative and analytic autoethnographer utilises reflexivity in the exploration of his or her personal experiences and interactions with others (Pace, 2012), the analytic ethnographer extends the use of reflexivity as an *analytical tool* to explicitly direct analysis of experiences as data (Thorne, Kirkham and O'Flynn-Magee, 2004).

Taking the above into consideration, I was directed towards research methods that corresponded, as far as possible, to established qualitative research approaches. I also considered my position within the field to design research methods that mitigated against the biases, assumptions and attitudes implicit in my professional practice (Smiley et al., 2014). As will be explained in Chapter 5 [Research Methods], to mitigate the methodological challenges inherent in autoethnography, I triangulated multiple data collection methods, I ensured separation between objective-observational and more-subjective personal data, I sought verification from members as to the accuracy of my research findings, and I committed to a theoretical analytic perspective in interpreting findings (Chang, 2008).

## CHAPTER 5 - RESEARCH METHODS

### 5.1 Introduction

This chapter explains the specific data collection and analysis methods utilised in this research. In previous chapters, this research is presented as an autoethnography of the GCC's claims culture. I have discussed the particular opportunities and challenges associated with this style of research, and positioned the research within the realist paradigm by electing to utilise an *analytic*, rather than an evocative, autoethnographic approach. Consequently, a broad methodological framework is adopted to direct the design of research methods.

### 5.2 Theoretical perspective and research design

I used the symbolic interactionist theoretical perspective to develop a research design that was capable of gathering data of suitable context to respond to the main tenets of symbolic interactions and interactionist analytical autoethnography. Blumer (1969/1986) argued that there were four primary requirements for symbolic interactionist research: respecting the essence of the subject matter and the nature of human group life, achieving intimate familiarity with the social setting, developing concepts sensitive to the social setting that can foster comparisons and contrasts, and understanding the process of interactions.

According to Prus (1996), ethnography informed by symbolic interactionism takes account of five particular aspects of a social world:

1. The meanings (interpretations) that the actors attach to themselves and the other people and objects that they interact with.
2. The ways in which the actors carry out their activities in an individual and social context, and how these activities are guided by the meanings.
3. The attempts that the actors make to influence, accommodate or resist the behaviours of other people towards them.
4. The relationships that actors develop with others over time and the ways in which they perceive and attend to these relationships; and
5. The patterns of behaviour, natural histories and sequences of interactions that the actors develop and experience over time.

Also, following Anderson (2006, p.378), the analytic framework directs the researcher to be a *participant* in the research, meaning their actions, experiences and feelings form a primary source of research data, but also calls for dialogue with informants beyond the self. This distinction is important, because seeking the opinions of others provided opportunities to verify my interpretation of my experiences, to challenge and enrich my own perspective, and to deepen my analytic insights (Anderson, 2006).

Table 8 (below) summarises the data sources, collection and analysis methods designed within this framework, and the remainder of this chapter explains the methods in further detail.

**Table 8: Summary of autoethnographic data collection and analysis methods**

Source of data		Collection methods	Analysis and presentation
Personal memory data	Reflection on experiences (Schon, 1983; Chang, 2008; Pedersen, 1994)	Collecting and organising researcher's prominent memories relating to claims management in the GCC. Including the social rituals, events, routines and cycles surrounding claims. Description based broadly on reflection on practice.	Textualisation, thematic organisation and triangulation of data utilising reflexive / inductive analysis (Corbin and Strauss, 2014). Initial themes developed from literature review and continual reflection / introspection on data. Differences between personal data and external data were explored.
Field data	Field notes (Chang, 2008; Spradley, 1980; Wolfinger, 2002)	Field notes recording my day-to-day work at four GCC construction projects, focused on either self-observation - the acts, actions and goals of self (Chang, 2008), or participant-observation, focused on the acts, actions and goals of others (Spradley, 1980).	Salient themes selected based on ability to depict members' meaning and culture (Wolfinger, 2002).
	Reflective journal (Chang, 2008; Ortlipp, 2008)	Compiled reflective journal recording my prominent experiences of events unfolding during the research, focused from contractors' perspective. Kept separately from descriptive data recorded in field notes to distinguish between observational data and more personal reflective deliberation and insights.	Ethnographic writing utilised to develop and interconnect themes within data, form theoretical generalisations as to how the culture of claims management operates in practice, and present a holistic cultural representation of the group incorporating both emic perspectives (the views of participants) as well as auto / etic perspectives (autoethnographer's views) (Creswell, 2012).
Interview data	Industry peers (L. Anderson, 2006)	Conversational interviews; three outline topics to direct open discussion. Outline topics derived from themes emerging from personal memory and field observation findings to form the basis for verification. Four interviewees selected based on researcher's access and interviewees' familiarity with claims management in the GCC.	Evaluative framework and theoretical explanation based on symbolic-interactionist perspective (Blumer, 1969/1986): an assumption that the social world is created through subjective interpretations of interactions amongst a social group.

### 5.3 Personal memories

Personal memories form the backbone of autoethnography, as the researcher has privileged access to relevant experiences for use as data (Kotarba, 1977). However, Chang (2008) highlights the difficulty in converting the myriad of experiences gained over a prolonged period of group exposure into data suitable for analysis. To manage this difficulty, she suggests ‘inventorying self’ (Chang, 2008, pp.75-76), or systematically collecting and organising prominent memories as a method of data collection.

Chang’s inventorying method shares similarities with the ‘critical incident technique’ (Pedersen, 1994) in which participants analyse critical incidents in their lives, what they learned from those incidents, and the underlying meaning to them (Pedersen, 1994, p.17). It also shares further similarities with Schon’s (1983) conception of ‘reflective practice’, which follows a process of reflection, introspection and theory building based on experiences recalled through memory. For this reason, I adapted Chang’s ‘inventorying’ approach within a framework of reflective practice. The method I adopted was broken down into two stages.

First, I ‘brainstormed’ a list of prominent memories that defined my experiences of being a claims practitioner in the GCC. I recalled memories gained over an approximately five year period between 2011 (when I started work in the GCC) to 2016 (when I began collecting data for this thesis). To aid memory recollection, I looked over personal records, including daily time sheets, emails and notebooks, to recall the locations I worked in and the people I worked with from month to month. This enabled me to identify one or two memories from each project, which I thought defined my experience and feelings at the time. These memories tended to be distinct incidents, such as my first day at work in the GCC, arguing with an aggressive contractor at cross-purposes, or feeling dismayed when a client did something I thought implausible.

Second, each memory was described in one or two sentences, so that they could be categorised, sorted and prioritised, providing an overview of my experiences. Where appropriate, I then developed a short ethnographic account describing the experience as I saw it, and as I now see it (Geertz, 1993), which I developed and incorporated into the body of this thesis. It is important to stress how helpful this process was in enabling me



to reflect on my developing feelings of work in the GCC and the implications of them. My reflections and emergent theories are presented in the body of this thesis, where I completed the reflective cycle and attempted to develop new theories, grounded in other forms of ethnographic data, to explain my experiences in ways that eluded me at the time.

The main limitations of using my memories as a source of ‘data’ related to the accuracy of memories and the potential bias introduced due to my perspective on events. While I recalled memories over a relatively short-term period (up to five years), they do not represent objective ‘facts’ because of the fallibility of memory as an information source. Memory recall suffers from at least three problems: (i) the original perception of the event may have been defective; (ii) the details may have been forgotten, or altered by imagination; (iii) the original perception may have become interwoven with suggestion from outside sources (Gardner, 1932). There was potential in all these areas for my own bias to influence the things I recalled and the details of them. For instance, as I illustrate later in this thesis, I developed a sense of mistrust towards consultants for a time, based on my past experiences. For these reasons, my memories do not represent ‘facts’, and nor would they necessarily correspond to the memories of others who shared my experiences.

Nevertheless, in an interpretive methodology, rigid objectiveness may be less important than representation of lived experience (Hammersley and Atkinson, 2007). Tentative ‘truth’ claims based on personal memories can be made so long as they stress ‘human practices rather than depending entirely on representationalist “correspondence” claims to accuracy’ (Watson, 2011, p. 207). In that sense, my personal memories do not ‘prove’ or necessarily correspond to an objective reality, but rather provide a useful representation of my own lived experience as a practitioner in relevant situations, giving an opportunity for analysis in the research from a more objective standpoint.

## **5.4 Field work**

In order to gain an in-depth understanding of the work lives of claims managers, self-reflective data was supplemented with more conventional ethnographic data collected through participant observation during my work-life as a claims manager. The extension of data collection to observations of other practitioners aligns with the analytical autoethnographic objective of exploring beyond the self, to capture a complexity of world views (Anderson, 2006).

In traditional ethnography, it is important to negotiate a relationship with participants that facilitated learning and understanding (Lofland, Snow, Anderson and Lofland, 2006; Lofland, 1995). This means that the researcher must immerse him or herself in the world of the participants. As a practitioner-researcher, I already benefited from insider status. I undertook research in circumstances where I was a complete and active member of the research setting (Brannick and Coghian, 2017).

I did not actively reveal that I was gathering research data in my day to day work. To do so would have obstructed my work, and potentially changed the way other workers viewed me. Had I actively revealed that I was undertaking research at every opportunity, I would no longer be an insider, and others' reactions to me would be coloured by what they thought I wanted to hear. Where I did mention I was carrying out research on claims, I found most practitioners focused on obvious issues such as poor-quality records and lack of training. I think this was the case because most of the practitioners I worked with had a working knowledge of the claims literature and believed these obvious issues would be of most interest to me. But I did not want to focus on those issues that have already been well documented in the literature. They were not the central focus of the current research.

### *Field notes and journal*

Field notes were utilised to record my field observations over a one-year period, albeit notes were predominantly taken during visits to sites and clients' offices. I leveraged opportunities around work to record and reflect on my experiences near-contemporaneously and over time (Schon, 1983). In total, handwritten field notes filled one A4 notepad. Notes documented my observations of both mine and other claims managers' behaviours, our actions and interactions, our goals, our work environment, and prominent events or rituals associated with claim management, including meetings, negotiations, presentations, and intra-team discussions (Spradley, 1980, p.78). Field notes were recorded opportunistically as interesting situations occurred, which in most cases coincided with site and project visits, rather than periods when I was located in the office. My day-to-day interaction with practitioners also presented opportunities for 'impromptu interviews' (Remenyi, 2012) with claims managers to discuss relevant issues. To increase the richness of data, these informal interviews were conversational, and the participants were allowed to lead the conversation and direct the topics discussed (Smith, 2007).

Because I was already a member of the participants' peer group, the topics discussed and language used were consistent with the participants' everyday interactions with other practitioners. As recommended by Remenyi (2012), I gained verbal consent before proceeding with these interviews to avoid unnecessary formalisation, and recorded their content in a detailed field note. Whilst the lack of structure in field data led to difficulties in analysis, my observations revealed interesting insights not evident in my personal memory data.

As predicted by the literature (Fay, 1996; Lofland, 1995), my familiarity with claims management meant that the discourses and behaviour observed in the field were initially perceived as 'normal', making it difficult to identify worthwhile data and salient phenomena. However, this difficulty was alleviated through reflection on my observations and reflexive consideration of how they might be interpreted by an outsider.

To motivate me to reflect on practice and to structure my reflections, I utilised a reflective journal over a one year period to summarise field notes at least each week and reflect on key events and emerging themes for further analysis (Chang, 2008).

This purposeful reflection led to an expansion of observational data to include preliminary themes, interpretations, and analyses. Because observations occurred opportunistically, the reflective journal allowed the research direction to continually evolve, with new themes emerging from situations unique to each project. That in turn led to more focused observations and awareness of interesting phenomena (Ortlipp, 2008). However, to ensure the research direction remained appropriately responsive to an emerging culture (and not only to my personal interpretations of it), reflections were subject to member checks by a senior operations director at my employer, who provided critical questioning and challenge to my interpretations, allowing for further perspectives to be considered as data collection progressed.

Finally, I should stress that the relatively increased number of examples of interviews compared to field notes that I have presented in this thesis should not be misinterpreted as suggesting that the interviews offered more value to the research findings than my observations in the field. The field work was fundamental in shaping my understanding of the social complexity of claims, by encouraging me to observe actively and reflect for an extended period. On the other hand, the interviews provided a useful summation of

many of the issues and lent themselves to presentation in this thesis somewhat more succinctly than the collections of fragmented field observations, and also avoided potential ethical issues around informed consent, which I address further under section 5.9, below.

## **5.5 Interviews**

In addition to the collection of observational and memory data, I conducted twenty pre-arranged conversational interviews of between thirty minutes to one hour in duration. The interviews were conducted in the final months of field data collection, a time at which recurring themes had already begun to emerge.

All of the interviewees were known to me before embarking on this research. Most of the participants were known to me through my employer's network of country offices: they were my former colleagues, or were employees of my clients. My familiarity with these participants meant that I had a rapport with them, making it easier to discuss potentially sensitive issues surrounding claim management. However, this also meant that participants were selected opportunistically, potentially raising questions of selection bias (Searle, 2002). Whilst this risk is acknowledged, it is balanced against the ready availability of participants and the potential for openness and ease of communication arising from the pre-existing trust between us. One problem I encountered in the interviews was that I found it difficult, in some instances, to stimulate discussions about issues that the participants knew I had knowledge of. They assumed (accurately, I expect) that I had a working understanding of their own lived experience and could empathise with them. This meant that they were sometimes more ready to offer simplistic explanations of complex social issues, and were ready to leave me to fill in the gaps with my own working knowledge and experience. I found that the most effective strategy for reducing this problem was to adopt a 'devil's advocate' line of questioning, or to invite responses to questions 'as if' they were being raised by a 'real' academic researcher.

In view of my previous relationship with participants, interviews were conversational in style and held in locations and times deemed preferable by each participant. As it turned out, all participants preferred interviews to be conducted at work during mid-day breaks. Conversational interviewing was utilised to allow participants to explore ideas, to

interactively direct the interview agenda, and to set out their views fully (Perry, 1998; A Smith, 2007).

Three general topics were introduced during the interviews to stimulate discussion: (i) the meaning of claims, (ii) social factors that influence claims management behaviour, and (iii) how claims management behaviour changes through the project cycle. Therefore, the interviews provided an opportunity for member checks of autoethnographic data (Lincoln and Guba, 1985) by ensuring that the emerging social reality was an accurate representation of claims management in the GCC. However, to avoid influencing responses, I consciously avoided leading discussions based on my preliminary findings. The interviews were recorded, and relevant sections of recordings were typed into transcripts for textual analysis. Ultimately, the research produced rich and detailed data that offered unique insights into claims management issues in the GCC.

### *The interview participants*

In order to organise the participants based on their background and perspective towards the industry, I used the groupings of ‘Contractor’, ‘Employer’ and ‘Consultant’ based broadly on the roles and functions they adopt under the construction contracts. I tried to obtain an equal balance of perspectives between these roles.

All of the participants were responsible for managing claims in GCC projects, with experience ranging from five to 30 years. The interviewees were a mixture of British and Asian expatriates, whose nationalities broadly reflected that of typical GCC construction project. Some interviewees had worked for both contractors and consultants/employers and had insights into the practices of both groups. Others had worked predominantly within employer/consultant teams or contractor teams with no substantial experience of work within the opposite group.

I found the insights of all interview participants particularly helpful in broadening my perspective on the GCC construction industry and the practice of claims within it. I was constantly challenged by their views which stimulated further reflection on my own practice, as well as providing detailed insights into their own experiences with construction contract claims.

In Table 9 (below), I have summarised the details of each research participant. These details provide some insight into why there were different perspectives held by the interview participants, by emphasising their nationality, background, experience in the GCC and their relationship with me. I have changed the names of the participants to maintain confidentiality.

*Table 9: Interview participants' profiles*

Name used in this thesis	Nationality	Background	Years in GCC <sup>34</sup>	Discipline experience	Relationship with me
Derek	British	Consultant	30	Project manager as part of engineer's team	Previous co-worker on major hotel project
Paddy	Zimbabwean/ British	Consultant and Contractor	10	Project manager as part of engineer's team, then commercial manager for contractor's team	Previously reviewed claims that I submitted, we had meetings together and shared experiences attempting to resolve claims. The interview was conducted about two years after we had both demobilised from the respective project
Geoff	British	Consultant	14	Contracts director as part of contractor's team, claims consultant working for both employers and contractors, and then operations director for project manager within employer's team	Former line-manager and director on a project.
John	Filipino	Consultant and Contractor	9	Various roles as claims planning manager within employer and contractor teams	Former colleague
Peter	British	Consultant and Contractor	10	Contracts manager as part of employer's team, but with previous (non-GCC) experience working with contractors	General acquaintance through industry contacts
Robert	British	Consultant	8	Claims consultant working predominantly for contractors and occasionally employers	Former colleague
William	Filipino	Consultant	5	Commercial manager as part of employer's team, but with previous (non-GCC) experience working with contractors	General acquaintance through industry contacts
Kevin	British	Employer	10	Employer's project representative, previously consultant QS with predominantly employer-side experience	Client representative in claim I was involved with
Kevin	South African	Employer	10	Employer's executive representative, previously consultant QS with predominantly employer-side experience	Client representative in claim I was involved with

<sup>34</sup> At the time of the interviews

Name used in this thesis	Nationality	Background	Years in GCC <sup>34</sup>	Discipline experience	Relationship with me
Mahmood	Pakistani	Employer	20	Employer's claims director, worked predominantly at employer/developer organisations in the GCC	Client representative in claim I was involved with
Lee	British	Consultant	10	Employer's claims manager with specialism in project planning and day-to-day project experience	Employee of a former client
Calvin	British	Contractor	8	Claims consultant working for both contractors and employers, specialist in quantum matters	Contact through university
Niall	British	Contractor	5	Contractor's commercial manager, responsible for day to day management of claims	Employee of a former opposing party
Zack	British	Consultant	7	Claims consultant working for both contractors and employers, specialist in quantum matters	Former colleague
Jeremy	British	Employer	8	Employer's commercial director at government client organisation, dealing with claims at executive level	Client representative in claim I was involved with
Kyle	British	Consultant	10	Employer's project representative with predominantly employer-side experience	A former colleague
Ishaaq	Egyptian	Consultant	20	Project manager normally filling the role of engineer under FIDIC contracts	Client representative in claim I was involved with
Amit	Indian	Contractor	9	Contractor's planner responsible for the day to day management of time related claims	Employee of a former client
Kaden	Filipino	Contractor	10	Contractor's QS generally responsible for the overall management of claims	Employee of a former client
Anish	Jordanian	Contractor	20	Contractor's commercial director for a telecoms company. Typically experienced in managing claims from an executive level.	An acquaintance I met at various times at training and conference events.

## 5.6 Documentary material

Documentary sources serve as useful artefacts to understand a culture and its context (Atkinson and Hammersley, 2007). There are a range of documents produced in the course of claims management, and which I was exposed to during the research. Day to day communications were made via letters, emails, progress reports, payment applications, drawings and technical documents. Much of this information was confidential and related to live projects, and thus was unsuitable for presentation in this

thesis. The material did however prove influential as I reflected on it over time and spotted trends and patterns that reinforced (or otherwise) my working theories and assumptions.

In addition to these day to day documents, contractors formalise claims through a claim “submission” – this is a standalone report which draws together relevant documents in a narrative presentation, in a similar way as a pleading would do in court. As I explain in Chapter 7, the claim submission is the central focus of claims management, and it embodies the history of the event which led to the claim and thus significant and complex meaning for practitioners. At the time of the research, I kept an archive of approximately twenty draft claim submissions that I produced during my work, from which I had redacted of confidential information for re-use later. This material was therefore not restricted by the same problems with confidentiality as other documentary sources.

As the claim submissions were prepared by me, they were inevitably coloured by my own experience and perspective of events. Nonetheless, the material was contextual and represented useful examples of real working documents which were suitable for analysis and reflection in this thesis. I called upon my personal archive to find examples of ‘typical’ documents, and I identified themes and similarities in language and structure within the documents. I undertake an analysis of several claim documents later in this thesis, to illustrate the overarching narratives commonly presented by contractors in construction claims.

## **5.7 Internet sources**

The use of internet sources is also becoming increasingly relevant in cultural and ethnographic studies, as these technologies play an ever-increasing role in our everyday lives (Ferraro and Andretta, 2011). Between 2016 and 2017, I regularly visited the FIDIC Contracts Group internet forum, hosted on LinkedIn.com. Most users of the forum were claims practitioners and many worked in the GCC. I empathised with the problems and experiences they shared with the group. I found many similarities between the debates on this group and the general representation of claims management I obtained from analysis of other data, such as issues around independence of the consultant, a perceived ‘lack of understanding’ amongst some practitioners, and unreasonable behaviour by one professional group or another. I present one such example from social media in this thesis,



to complement my analysis of how consultants perceive their conflicting roles under construction contracts.

## **5.8 Interpreting and analysing data**

Following completion of data collection, the three types of data (personal memory, field journal, and interview) were textualised and drawn together for interpretation and analysis. The data set comprised subjective interpretations of issues surrounding claims management arising from my experiences, naturalist observations of practice (House, 1977), and the views espoused by interview participants. In line with the deficiencies in existing research, a symbolic-interactionist perspective was utilised to interpret data for the purposes of analysis (Blumer, 1969/1986). This perspective provided a framework through which recurring perspectives, interpretations and themes emerging from the dataset could be identified, synthesised and analysed to draw conclusions and construct theoretical explanations (Miles, Huberman and Saldaña, 2013).

### ***Interpretation of data***

In previous chapters I explained and justified the symbolic interactionist theoretical perspective that I adopted in this research. Whilst providing a basic framework for understanding the social world, symbolic interactionism was also particularly appropriate for interpreting the autoethnographic data gathered in the current research, which focused on the subjective meaning given by claims managers to practices surrounding claims. I interpreted the actions and behaviour of claims practitioners in terms of the ways in which their subjective meanings were created through interaction in the common social contexts surrounding claims, and the influences those meanings had on their behaviour and everyday practice. Prominent meanings, social contexts, and behaviours were then identified in the textual data, less relevant data was set aside, and the remaining data was categorised thematically for further analysis (Corbin and Strauss, 2014; Silver and Lewins, 2014). I tried to identify themes based on their relevance to explain the phenomena that I observed in practice (Wolfinger, 2002). These themes covered the relevant perspective of the data (whether obtained from contractors, consultants or employers) and the nature of the experience which the data represents: such as ‘conflict’, ‘trust’ and ‘restitution’. It was these emerging themes which ultimately formed the focus of the findings developed in this thesis.

*Analysis of data*

Following the identification of emerging themes, the dataset was reviewed and re-reviewed until I felt that I had a thorough understanding of its content and underlying meanings. It is important to stress that analysis took place inductively throughout the research by reading through the combined data sorted into thematic groups, to identify potential links between subjective meanings, social context, and actions, with specific examples across data sought to confirm any potential links observed (Miles et al., 2013). As I will draw on later in this thesis, I regularly reflected on recent observations within my field notes, as a form of precursory analysis, for example. This continual, iterative triangulation of data was successful in revealing recurring phenomena in an overall social context. As I became immersed in the data, themes recurred to the point that I could develop a theoretically structured representation of claims management issues in practice (Glaser and Strauss, 2009).

As in conventional ethnography, the process of ‘writing up’ was a fundamental part of the analysis and interpretation (Madden, 2010). It was through this process that I organised my interpretations of the data within and across themes, where I identified and refined the implications, and where I developed theoretical explanations that were grounded in the data. However, complexity emerged from the ways in which these phenomena operated interdependently in the real world, requiring ongoing review and analysis of the data as the writing up phase progressed. The process of analysis through ‘writing up’ therefore continued until I was in a position to present a coherent ethnographic description of claims management and its influence on practice in this thesis.

The findings have been presented from a symbolic interactionist perspective (Blumer, 1969/1986) to explain the GCC’s claim culture in theoretical terms. This perspective has been applied on the basis that (1) claims managers act towards claims according to their subjective interpretations of the people and social situations surrounding claims, (2) these meanings emerge from interactions with other practitioners, and (3) interactions occur within the particular social and cultural context of construction projects in the GCC.

The discussion is focused on providing possible explanations of some of the issues in claims management identified in extant literature. Consequently, whilst generalisation is not the aim of this research, the meanings, identities and social reality depicted in my

analysis may have relevance for claims managers across the GCC and for any practitioner faced with managing contentious issues in tense cultural contexts.

## 5.9 Ethical issues associated with the research

The under-utilisation of auto-ethnography in a construction management setting meant that there was no “blue-print” available to address the specific ethical and confidentiality issues associated with the adopted research methods. The primary issues were associated with informed consent in relation to observational data, the risks that the research poses to me, and in ensuring confidentiality.

Initially, ethical approval for the research was gained from the University of Salford (**Appendix A**), and consent was sought from both my employer (for researching while at work) and interview participants (**Appendix B**). However, as the research also involved reflections on my own practice while at work, ethical complexities associated with using my experiences of practice as ‘data’ arose during the course of the research.

As I explained in section 5.4, above, I could not actively declare my role as researcher in all day-to-day situations, because to have done so would have obstructed my work. Nevertheless, my ongoing interactions with other practitioners informed my perspective on the research in general, and I recorded some of my experiences in field notes during the research. While many of my observations featured participants who I worked with regularly (and whose consent was obtained directly), my experiences of working with other practitioners on site potentially introduced a limited covert aspect to research, because it was not practical to obtain consent from anyone I happened to interact with all the time.

However, observational studies rarely fall into purely ‘overt’ or ‘covert’ categories but are usually situated somewhere between these norms (Roulet et al., 2017). In purely covert approaches, the researcher relies on deception or power to gain access to a group. This is often problematic because of the lack of informed consent and potential power imbalance between researcher and participant (Bulmer, 1982), particularly in settings such as healthcare or education. By contrast, in this research, because of my pre-existing insider status, I was not required to “conceal [my] true identity and purport to play some other role” (Vinten, 1994, p. 33) to gain access. Rather, I was naturally present in the field as a practitioner, which was my primary role while at work. In this way, my observations

were ‘incidental’ to my work (Mercer, 2007) and not choreographed around an agenda of scientific study. This approach minimised some of the ethical risks around lack of informed consent associated with purely covert research.

The auto-ethnographic approach I adopted also provided flexibility on how my observations were recorded and represented in the research (Lapadat, 2017). For instance, to create a distance between me and others I worked with in the field, I recorded my experiences outside of work, after the event, in the form of personal reflections or observations (Bulmer, 1982). Where I did switch from ‘practitioner’ to ‘researcher’ in the field to record specific details, I did so in a limited manner, to conduct informal interviews with consent gained verbally at the time. Most practitioners I worked with were aware of my research, but in the absence of informed consent, this strategy avoided the need for coercive surveillance or for recording discussions or observations verbatim.

Similarly, I chose to present only a limited number of anonymised field observations in this thesis, from which I removed any project- or person-specific information for the purpose of presentation. Crucially, in each case I qualified this material as representing my own perspective on events as participant-researcher, and which were thus influenced by my own biases and worldview, as separately acknowledged in the thesis. In this sense, the field material presented in the thesis is comparable to interview participants’ narrative used elsewhere, who also referred to others, but did so indirectly and from their own perspective on events. These approaches limited the scope and depth of some of the field data, but were necessary to moderate against the potential ethical risks associated with the participant-researcher aspect of the research.

However, while the auto-ethnographic approach adopted in this thesis addressed some of the complications associated with informed consent for aspects of the field work, it placed greater emphasis on me as the researcher. As participant researcher, my own contributions cannot be anonymised, leading to risks of personal harm associated with reception of the work by others, and the lack of control on the work following publication (Lapadat, 2017; Dauphinee, 2010). In particular, the empirical material reported in this thesis implicates me with problems within practice and potentially presents personal risks in relation to my professional standing in industry, and possibly future opportunities to work in the GCC. However, these risks were minimised by moderation of the scope of personal material presented in this thesis, which were selected only where necessary, to add context or to

support analysis. Further, my decision to represent the GCC's claims culture critically, truthfully, and from different viewpoints was intended to provide a balance to the work which encompasses a multiplicity of perspectives. Having taken this approach, I am able to distinguish between the perspectives I reported at the time of the field research (presented in the form of limited field notes and personal memories) and my current perspective on practice (formed in developing this thesis and reported through the work). Additionally, as the findings of this research emphasise the benefits of high professional standards in industry, they are intended to ultimately contribute to improving practice in construction management and thus may reflect positively on my professional standing, rather than negatively.

Finally, due in part to the complexities of researching while working addressed above, a principal ethical challenge arose from the need to protect highly confidential commercial information associated with projects and commercial claim negotiations. To mitigate the risks of revealing confidential information, details of location, names, and projects were excluded from this text, which focuses solely on the social experiences of me and the interviewed practitioners. The interview participants were also approached in an individual capacity and none were requested to disclose any information revealing details of specific projects or companies. Whilst this approach limited the amount of confidential information generated from the research, the research data, that is, audio recordings, transcripts and field notes, together with the personal details of the participants, have been stored in a secured, password-protected location to avoid unintentional disclosure and all will be destroyed once this thesis has been examined and concluded.

## CHAPTER 6 – RESEARCH SETTING

### 6.1 Introduction

This chapter provides an overview of the research locations in which the field research was conducted from 2016 to 2018. It gives a brief background to the Gulf Cooperation States, the geographical region in which the fieldwork was carried out. It also describes the major projects that I worked on when the field work was underway, to provide a general context to the research findings presented later. Finally, this chapter provides details of the twenty practitioners who agreed to act as interview participants, including their background and experience level.

### 6.2 Research locations

As set out in Chapter 1, the research was carried out in the GCC, a collection of six rapidly developing oil-rich states situated in the Arabian Peninsula. The region experiences hot arid weather and, apart from oil, has few natural resources to exploit.

At the time of the field research, the GCC economy was vibrant. The major cities in the GCC offered luxurious living and high spec development to those that could afford it. For this reason, the GCC construction industry is typified by the relatively large number of high value skyscrapers and infrastructure mega projects (Deloitte, 2015, 2016), which generally run for several years between commencement and completion. The region also has a highly cosmopolitan workforce (Callen et al., 2014) made up of manual and technical workers from South and East Asia (Human Rights Watch, 2006) and Western professionals (Brunn, 2011). The GCC economy is markedly cyclical (and often volatile) as a result of its reliance on real estate and the fluctuating oil price (Deloitte, 2016). The GCC construction industry is also renowned for its adversarial contract practices and high incidence of disputes (Arcadis, 2015, 2016; Pinsent Masons LLP, 2015).

Figure 13 (below) gives an indication of the GCC's demographics and high utilisation of migrant and expatriate labour.

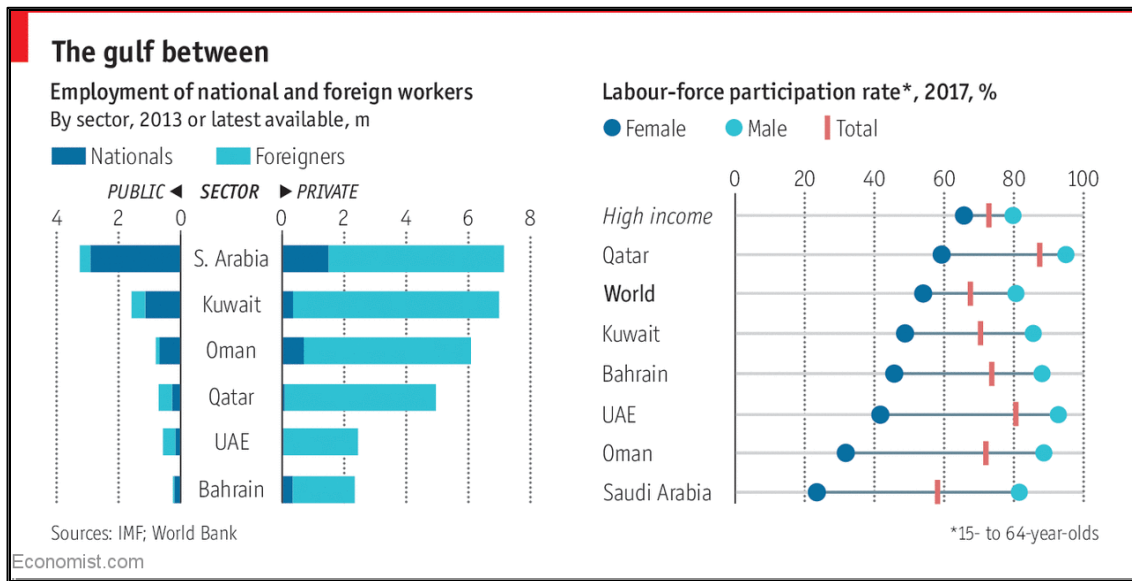


Figure 13: GCC States (Economist.com, 2018<sup>35</sup>)

Figure 14 (below) gives an indication of a typical GCC city skyline. This photo shows the central district of Doha, Qatar during the spring months, which I took while travelling to site early one morning. At that time of year, the GCC is a wonderful place to work due to the mild climate, available activities and busy work life.



Figure 14: View of GCC Skyscrapers

While I gained experience with projects throughout the GCC during the research period, most of the data was gathered during the time I spent in three GCC countries: the UAE,

<sup>35</sup> 'Why Gulf economies struggle to wean themselves off oil', Economist.com, 2018, accessed 2 March 2019 Available at < <https://www.economist.com/special-report/2018/06/21/why-gulf-economies-struggle-to-wean-themselves-off-oil> >

Oman and Qatar. However, the specific research locations came about serendipitously from my work commitments during the research phase. No specific field locations were preselected for the purpose of this research.

The field locations eventually consisted of my employer's central office (where I worked on reports and arranged matters with my clients), plus site offices on around 12 live construction projects in the regional city hubs (where I spent the majority of my time).

### **6.3 Major projects**

The projects I worked on during the research phase had values ranged from US\$100m to US\$16bn, with claim values from US\$10m to S\$30m. Of these, much of my time at the site (and much of the data presented in this thesis) was focused on the following five projects during the period from 2016 to 2017.

- (i) A transport infrastructure project (the 'transport project').
- (ii) A healthcare project (the 'hospital').
- (iii) A hotel and leisure project (the 'leisure project').
- (iv) A residential project (the 'residential project').
- (v) A sewage treatment facility (the 'sewage plant').

To provide a situational context for the findings presented later in this thesis, I explain the circumstances and my role on each of these projects in the paragraphs below. These projects are not explored on a case study basis in the remaining empirical chapters (Chapters 7 to 9). Rather, the following description is intended to provide a context that is helpful for the reader to understand the nature of claims work, and to situate my experiences and those of others as reported later in the thesis.

#### ***The transport project***

This project was a major international transport hub located close to the city centre of a major city. It was part of a US\$10bn+ redevelopment of an existing site and included the construction of a major passenger facility plus about 30 satellite buildings used to house infrastructure and for the running of the facility.



The photograph in Figure 15 (below) shows the central passenger area at a time when my client was installing high-level M&E equipment. It illustrates the vast scale of the build and the kind of conditions my client was working in during construction.



*Figure 15: Large scale scaffolding on the transport project<sup>36</sup>*

The project was experiencing three years of delay when I undertook the research (in fact, I am still visiting the project *at the date of this thesis*, when the project is in six years of delay, to close out the remaining claims). The project delays made for a tense situation at the time of the research. I was also faced with managing the claims in this context, and found it very difficult to obtain the relevant information and gain assistance from the project participants. From these perspectives, the transport project was fairly typical of my experiences in managing claims for mega projects in the GCC.

On this project, I was appointed by a specialist contractor who in turn was employed by a government ministry (via another contractor) to undertake electrical design and installations for controls and monitoring equipment. I joined the project near the beginning of the fit-out construction phase, in 2015, and remained involved with the project throughout the research. I was familiar with the contractor's personnel and the problems faced by the client at the time of the research.

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<sup>36</sup> The photos in this chapter were intentionally selected because they were unlikely to give away the research locations.

My role at this project included advising on strategy, preparing letters and correspondence in relation to the settlement of claims, and preparing claims for submissions. I experienced both the preparation and the settlement of the claims during the research phase. Most of my time was spent on preparing a major claim for late access and design inputs from third parties. I typically visited the site several times each month to gather further information and to prepare updates to the claim.

This project was interesting on many levels. The employer was a government ministry and the development (of which the project formed a part) was of national significance, both factors resulting in intense pressure to meet targets. Also, the denial by the employer of any liability for delay meant that the claims took several years to resolve. This situation created a considerable degree of uncertainty and volatile behaviour amongst the parties during the project.

### *The hospital*

This project involved the construction of a new hospital facility intended for blue collar workers. It was a US\$100m development located just outside a major city.

On this project, I was instructed as a claim specialist by a hospital services contractor. The contractor was employed to design and construct the services at the facility (another contractor was engaged by the employer to carry out the civil (building) works, and another to install the hospital technology and final fit-out of the facility). My client's largest tasks were the electrical and mechanical services of the hospital, including the construction of several plant room areas, and the distribution and installation of services throughout the building.

The project was in its early stages at the start of the research phase - I initially visited the site in 2016, when my client wished to make claims for delayed design inputs. I remained involved with the project throughout the research phase, up to the termination of my client's contract (which caused yet further claims). Up to this time, my client was carrying out significant construction works, but experienced a number of delays due to the work of the employer's other contractors.

My role developed from an initial advisory capacity, to spending prolonged periods at the site as part of the contractor's team, responding to contractual letters and preparing

notices of claim. I was eventually involved in a dispute over the termination. Just after the end of this research, my client became insolvent (partly as a result of the termination from this project).

This project was interesting because my client had limited funds to complete the project, and was relying heavily on the claim settlement as a source of cash. In fact, cash became the driving factor to many activities up to the date of termination. It was also interesting because the employer, a major developer part-owned by a government entity, would not agree to any claims or discuss the settlement of them with my client. They viewed my client as being responsible for all of the delays on the project. The morale within my client's team was very low throughout the period I worked with them.

To illustrate the conditions of the site, I took the images shown in Figure 16 during my visit to the site during the construction phase, to check on progress. They were intended to demonstrate the obstructions my client was facing during the installation of the major plant into the facility at the time. In short, the soil shown in the photos was placed directly over the area where my client needed access to progress large parts of its plant assembly work.



*Figure 16: Images of site obstructions at the hospital project*

### *The leisure project*

The leisure project involved the construction of a major tourist attraction on a reclaimed island just off the coast of a central district of the city. It was part of a US\$2bn investment scheme owned by a holding company of a national government. It consisted of the tourist attraction project I worked on, plus several major hotels and residential buildings on the reclaimed island.



Figure 17 (below) is a photograph taken while traversing the site at peak construction. The whole landscape is filled with major developments including the large engineering project at the centre of the image.



*Figure 17: The leisure project*

I began working on the project in 2016, about the time I commenced the current research. At this time, the project was in significant delay. It had originally commenced several years earlier with a one-year contractual period for construction. This period had already lapsed, and the international contractor appointed to build the scheme was already subject to maximum damages for delay under the contract.

I was appointed on behalf of the employer as part of the consultant's team to oversee and manage the claims received from the contractor, along with the client's counter claims for delay-related damages and valuation issues.

My role mainly consisted of reviewing the contractor's claims and preparing recommendation reports to the client setting out the fair value and extensions to the completion date that arose from the claimed events. In the main, the contractor's claims that I helped resolve during the research phase were deemed of poor quality and there were frequent rejections of the contractor's submissions. This situation resulted in an

adversarial relationship with the contractor's personnel who were normally hostile towards me given my role as the employer's representative.<sup>37</sup>

This project was interesting mainly because I worked within the employer's team, not the contractor's (as in the other major projects I was working on at the time of the research). Because of this, I gained an insight into the difficulties employers and engineers face due to the issues that lead to claims, and the frustration employers feel towards their team in this situation. My experience also provided a contrast to the perspectives held by contractor/claimants on those other projects I worked on. This was of practical benefit, because I was sometimes able to anticipate the contractor's next actions by empathising with their difficulties, both on an organisational and personal level, and predicting what impact the relevant event would have on the contractor's team's behaviour.

### *The residential project*

The residential project involved the construction of 200 high spec homes aimed at senior officials in a fairly remote location outside a major city. The construction comprised four phases, with the initial plan for each phase to be carried out in succession. As a result of delays to the project, all of the phases overlapped. There were over 700 people at the site at one point, due to this overlapping. It was a difficult project because of its location in mountainous terrain.

Figure 18 (below) was a photograph I took looking into the site compound near the start of the project. It gives an indication of the difficult terrain and the remote location of the project.

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<sup>37</sup> I faced shouting and verbal abuse on several occasions when attempting to gather information from the contractor's personnel.



*Figure 18: Site yard and offices of the residential project*

I was appointed by the principal contractor on the site as a claims expert, to assist with the ongoing preparation and resolution of the delay claims. The project started during the research phase (in mid-2016) and continued throughout it. When I stopped collecting data in summer 2017, the project was being fitted out, but large swathes of wall boarding were being removed as the result of a defect. We prepared around six major claims and numerous claim notices during my time at the project.

Following the start of the contract my client was in increasing delay against the contractual dates for completion. There was a need to blast large parts of the rock face away, and this process proved to be problematic because of changes in the location of the buildings after contract execution. There were also numerous design changes after my client had already completed a significant amount of work. These changes consisted of revisions to room layouts and performance specifications for mechanical equipment. My client formed the impression that the design, which was prepared by the employer-appointed engineer, was defective. It felt that it was being left with the burden (and associated cost) of sorting out the defective design at the site.

The engineer received numerous claims from my client. The engineer set out to reject most of them on both contractual and factual grounds. Where a determination was reached, that determination was typically significantly lower than the amounts claimed by my client. My client's team grew increasingly frustrated by this behaviour and I

discerned a significant degree of hostility to the engineer, based on the perception that he was simply trying to cover over its own past mistakes. On the other hand, my client remained respectful to the employer and largely adopted a strategy of keeping a dialogue open with the employer, while complaining of the actions of the engineer. I learned from this project how *emotional* motivators can have a direct impact on the way the contractor behaves towards the engineer (and employer) during a construction project.

This was an interesting project due in part to the contractor's 'divide and conquer' strategy between the employer and engineer, and the raw emotional factors that underpinned many of the contractor's actions during my time at the project.

### *The sewage plant*

This project was major new sewage treatment facility about an hour's drive from the centre of a major city. The project owner was a government-owned utilities company, but most of the day to day input from the owner was via the consultant engineer.

The project involved the construction of a brand new, US\$100m treatment plant with monitoring stations that would service around a third of the city's sewage treatment requirements. It was a technically complex project, involving a joint venture between an international civil engineering contractor and a local mechanical installations contractor. These companies acted together in a Joint Venture as the principal contractor responsible for both designing and constructing the project.

I was appointed by the Joint Venture in early 2017 to assist in resolving claims between them, and identifying those claims that could be passed to the employer. I sat at the site for several weeks undertaking the exercise, and I got to know the site team well. Despite the differences between the Joint Venture companies, their respective employees worked well together, but both regarded the employer and the engineer negatively.

Figure 19 (below) is a photograph I took when the facility was near completion. My client (the contractor) was removing scaffolding and making preparations to complete the site-wide services and access roads at the time of the photograph.





*Figure 19: The sewage plant*

This project was in relatively better shape than the other projects I have described here, but it was facing increasing delays as a result of late civil works and delayed equipment deliveries. The Joint Venture considered both these delays largely the responsibility of the engineer. I remained involved in the project throughout the research, during which time the Joint Venture reached a settlement with the client and the project reached completion.

The sewage treatment plant was an interesting project mainly because of the relative ease by which the claims were resolved. While there was still a high degree of conflict and delay, this project provided an example of a relatively rare situation where the claims were settled near the end of the project, and not several months or years after. It was also interesting because the site team was relatively more multicultural than other projects. I should stress that practically all construction projects in the GCC are completed by a range of nationalities, but typically the mix is Western, Pilipino and Indian managers. This one was different because the project team consisted of Malaysian, Japanese, Nepalese and Indian workers, which is not a typical mix of nationalities on a GCC construction project.

## **6.4 Other projects and locations**

In addition to those projects described above, I worked on several other projects and locations. Most notable of these were:

- 1) A series of hotels for a large hotel operator.
- 2) Upgrades to a major exhibition centre for the facility owner.
- 3) A Light Rail Transport system, where I was appointed by the Engineer-Procure-Construct contractor.
- 4) A major hotel and residential project for a high-net-worth GCC citizen.
- 5) Numerous other projects where I was appointed to deal with one-off issues, such as the preparation of a letter or short report.
- 6) Two arbitrations: one for an oil and gas facility, the other for a high spec mixed use development. I was appointed as an independent expert on these projects several years after the conclusion of construction.

I gained a range of insights from these projects, including further experience with working within employer teams, and an understanding of how disputes are eventually resolved, and the significant barriers to formalising a dispute for arbitration within the GCC region. However, my time was mostly spent undertaking desktop reviews and attending meetings, meaning my opportunity was to gather first-hand observational data were generally more restricted than when I was working on those projects I have described in the previous sub-section.

At the end of the research phase, I returned to the UK and took up employment in a similar field. I have been in the UK while writing this thesis. This provided a final opportunity for reflection and I was able to notice those same patterns of behaviour and meanings that I found in the Middle East. I was able to identify factors which remain common in construction claims despite geography, such as the cycle of conflict which I discuss in Chapters 7 to 9 of this thesis. I was also able to identify other similarities, such as the multicultural workforce now common in all major international cities (not just the GCC).

## **6.5 Limitations of the research setting**

The setting of the research presented in this thesis provided an opportunity to gain a unique understanding of the GCC's claims culture. However, there were three potential limitations that arose from the setting in which this research was carried out.

First, as a result of my professional occupation, I was typically mobilised to projects in financial or programme difficulty. This position presented a limitation, because I cannot claim that my experiences of the projects that I visited during this research can give a fair generalised representation of the entire construction industry, either in the GCC or elsewhere.

Second, for reasons similar to the first, the practitioners I interviewed were typically more experienced with the management of claims in difficult circumstances than the average practitioner would be. They were selected partly because of their experience with claims management, and for this reason, probably had a more detailed understanding of claims management than the average practitioner. I cannot therefore claim to have accurately represented the views of the *average* practitioner in the construction industry.

Third, and unintentionally, all of the research participants were male. This situation came about because I had acquaintances with relatively few female project managers, none of whom presented themselves as experienced claims managers, this being fairly typical in the GCC. That is not to say there are not any successful female claims managers, only that I did not have access to them in my day to day work. This is an important limitation to raise, because existing research identifies some difference in how genders deal with conflict (Brahnam, 2005). I cannot therefore claim to have presented a complete variety of views in respect of claims management issues in this thesis, which may or may not differ from a female perspective.

## CHAPTER 7 – THE EVERYDAY LIVES OF CLAIMS PRACTITIONERS

### 7.1 Introduction

In this chapter, the research findings are introduced through an analytical reflection on my own experiences in practice as a claims consultant in the GCC. I draw on evidence from both my own observations and the accounts given by the interview participants, and I address some of the key issues which emerged in Chapter 2 [Literature Review].

To provide a general context and to clarify my perspective towards the research, I firstly give a personal reflection on my everyday experiences as a claims consultant during the research phase. I then discuss some of the issues in claims management found in Chapter 2 [Literature Review], from a practitioner's perspective. These issues include the motivation for making claims, deficient practice in claims management, the influence of national culture on how claims managers see each other, and the nature of conflict that emerges around claims during a construction project. The purpose of this chapter is to provide an empirical basis to the research findings in Chapter 8 and Chapter 9, in partial fulfilment of Objective 5<sup>38</sup>.

### 7.2 The work life of a claims manager

Before and during this research, I worked as a claims consultant on some of the largest construction and engineering projects in the Middle East. I worked at three firms over a period of six years, progressing from junior to senior management level. One of these firms was independently owned, the other two were multinational consultancies. All had offices in Dubai but two had other offices in Doha, Muscat and Riyadh.

In these roles, I worked mainly in the GCC with projects up to US\$1bn in value. I occasionally worked on projects in India and further afield. My clients were developers, government authorities, large and small contractors, subcontractors and consultancies, with projects ranging from airports to sewage treatment plants, to shopping malls and hotels. I would normally work on three or four projects at a time, undertaking document

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<sup>38</sup> Objective 5: Undertake an in-depth study of claims management practice based on the researcher's work-life experience as a claims manager, and the experiences of other practitioners.

reviews, technical analyses and preparing reports, with extended periods working within the client's team on site. I would also work on formal disputes as an expert witness in arbitrations in the region, particularly in the latter stages of the research phase.

### *Why I became a claims specialist*

My motivation for becoming a claims specialist were related to economic reward, job prestige and job satisfaction. The economic motivation was simply that at the time of the research, the typical claims manager earned more than a project manager: perhaps 30% more. However, I would not have made the move into claims consulting had I not placed a degree of meaning and value on the relative prestige of the role, as I saw it then. The prestige of being a claims consultant rather than the pay was my primary motivation.

I saw claims consultancy as a more prestigious career than that of a contractor's manager because of the positive way in which claims consultants were viewed by others in the industry, which from my perspective, was largely positive. I believed that claims consultants held a relatively higher position in the social hierarchy of the construction industry than I did before moving into claims consultancy work. The construction industry consists of a complex web of contracts between developers, designers, supervisors, contractors and specialists. The social organisation of the construction industry broadly mirrors the formal contractual lines. The contracts define roles which create or enforce social groupings around each of those roles: employer, consultant, contractor, and so on. Before moving into claims consultancy work, I defined myself by my experiences as a contractor, and looked at the industry from that perspective.

But as I saw it, claims consultants belonged to a more specialist class of professions surrounding construction disputes. The construction dispute resolution industry is roughly organised into social strata and groups based on professional qualifications and experience. At the top are the arbitrators and judges, the people who ultimately decide disputes. Below them are the lawyers who represent the parties, often with strong academic qualifications. Below them are the expert witnesses, invariably former construction professionals who have specialised in dispute work. Next come the claims consultants, who act primarily before a formal dispute arises. And below them the in-house contract managers, whose employers appoint the consultants, experts and lawyers. Thus, I saw myself firmly at the bottom of this social hierarchy before moving into construction claims.

In respect of job satisfaction, I saw my own work with contractors as increasingly mundane, whereas when I participated in the preparation or settlement of a claim, I felt stimulated and I valued the experience. To me, claims presented interesting intellectual challenges and offered a more meaningful focus of work than the normal operational tasks needed to deliver a project. Faced with a choice between carrying out mundane project-related tasks such as measuring work, record keeping or attending to design changes, I had opportunities, by specialising in claims, to do more interesting and rewarding work, at least insofar as I was stimulated by learning or trying to develop new strategies to maximise claims (if I worked for the contractor) or to find reasons to reject claims (if I worked for or on behalf of the employer).

It is interesting that my conceptions can be represented in symbolic interactionist terms, in particular my perception of how the industry perceived me and my role in the social hierarchy of the construction industry. My perception of claims consultancy work was positive, and this was a motivating factor in the sense that I thought others viewed claims consultants in a more prestigious light than my then-current role as a contractor. Similarly, I placed meaning and value on the perceived skills that claims consultants possessed and I did not. These motivating factors can be understood through the generalised other theory (Mead, 1934/2015) and related concepts.

In many ways, becoming a claims consultant lived up to my expectations. I found the work of a claims consultant extremely satisfying and varied. The intellectual battles with my opponents kept my ego in check and my mind sharp. I gained new qualifications and learned skills for which there was (and still is) a great demand in the industry. A highlight of my professional career during the research was achieving expert witness registration with the Royal Institution of Chartered Surveyors. The photograph in Figure 20, below was taken at the award ceremony: I am indicated by the blue arrow.



*Figure 20: Photo of expert witness training*

Overall, I enjoyed working on complex and interesting projects, with diverse groups of people and different ways of working. With hindsight, I probably enjoyed the unpredictability and chaos of it all. It was these experiences that kept me motivated to continue working in the field, despite the serious and sometimes insurmountable challenges I faced in my day-to-day work life.

### *The social context of claims*

Before becoming a claims consultant, I rarely reflected on the moral or structural aspects of the construction industry. Perhaps through lack of experience, I was largely unaware of the social complexity that underlies the construction sector. But my experience working as a claims consultant fundamentally changed my understanding of the construction industry in both moral and structural terms. It revealed a level of complexity that I had previously overlooked or ignored.

I came to see the construction industry as a collection of obstinate parties, powerful clients, partial consultants, and contractors who are often unacquainted with the specialist skills and resources needed to manage and settle claims effectively.

It was my impression that most employers (via consultants) looked to reject claims as a matter of policy, irrespective of entitlement, and then withhold substantial payments pending final settlement of accounts. This assumption began to affect how I perceived situations and how I practised. In the following example, I expressed frustration and disbelief when receiving claim rejection letters from the engineer. I was particularly frustrated by the lack of independence on the part of the engineer (or, at least, my perception of such a lack of independence).

*Journal entry: ...we received 3x rejection letters for EOT claims previously submitted. The reviews were completely generic and demonstrated a failure to adhere to the contract and reach a decision. From the language in the letters I could tell that they had been written by... someone who was unable to understand the Engineer's obligation under the contract, or act in the remotest way independently. At least that was the perception on the letter.*

These negative experiences (and the emotions that resulted from them) impacted the way in which I acted during my workday. The following extract from my journal illustrates how personally aggrieved I felt towards the engineer during a project where I spent significant time and became embedded within the project team. This note was written in 2016, after several weeks of arguing with the engineer.

*Journal entry: We got the engineer's determinations for Zone 3 and 5. The engineer had followed a very theoretical method. Essentially, he had used a TIA, but manipulated everything. Very strange. What he did do was cock up the Zone 3 review (forgot to allow for concurrency)... So the thing is, because this guy had messed us around for so long, we take the first opportunity to mess him around.*

As can be seen from the above, I was pleased (at that time) to see a major error in one of the engineer's determinations of our claims. I should stress here that I was not appointed on an independent basis in this matter, and perhaps because of this, I became attached to the project and the issues it faced: I had effectively become a "native". The above diary entry illustrates my emotional state during that period, and gives an indication of the significant grievance I felt towards employer-appointed consultants *in general*.

One theoretical implication of this analysis is that I was able to separate "me" (Mead, 1934/2015) as I interpreted the world at the time of these experiences, and the "me" I



currently represent to myself. These are contrasts that would have otherwise eluded me and illustrate the value of reflective practice as a research method. They also point towards the importance of understanding human behaviour developmentally, with consideration to both the past and the present on the definition of self (Becker, 1953/2015).

### *Making claims*

Most claims are developed from a blank page and a general sense in the consultant's mind about what the claim will 'look like' and the key points that it needs to make. The skill of a claims consultant lies in having a detailed understanding of the current practice of claims, and foreseeing the consequences of choosing one claims management strategy over another. The best claims consultants have an in-depth understanding in three disciplines: forensic schedule analysis, quantum analysis and the law. They exploit uncertainties in all these disciplines to their client's advantage. This flexibility and knowledge attracted me to work in construction claims. My personal satisfaction from learning the skills of the claims consultant is clear from the following journal entry, which I recorded after a long day at my computer working on a claim. On this occasion, I was reflecting on analysing the complexity of critical method techniques when applied in practice.

*Journal entry: What is interesting is that the process of analysing delays is not what the textbooks make out. It is not a straightforward process, one cannot obtain perfection, and it is only after many, many iterations that something like an answer emerges.*

In short, many think claims consultants use dark arts and illusion to maximise their clients' claims. This is an unfair simplification. Claims consultants rarely have the time or information to credibly distort recorded facts in a sophisticated way, given the challenges I have set out above. While there is no 'dark art', there is nonetheless a selection of implied and explicit strategies that claims consultants utilise in an attempt to enhance their client's interest. I utilised a toolkit of strategies which I deployed at different times and in different contexts. For instance, at various times, I may have: looked to exploit uncertainties in how the law or practice applies to particular facts; made things appear more (or less) complicated than they were; chosen to present the claim in a more (or less) aggressive tone; or included, excluded or tailored claim heads to match the claim

reviewer's expectations and approach. I found the process of developing this toolkit and implementing it at different times extremely satisfying.

As time went on, I tended to follow a common script within each claim, which was reasonably typical in style of most professionally produced claims in the GCC at the time I carried out the research. In the first instance, the document would set out how the contractor had continuously suffered and had incurred some kind of substantial damage (such as project delay or additional costs) as a result. The document would then go on to link that suffering squarely with the employer and/or consultant. In most instances, it would then emphasise the lack of action from the consultant (or employer) as the main reason that the contractor was "forced" to submit the claim in the first place. To illustrate this script, in the paragraphs below, I present extracts from three claim documents that I drafted before and during the research phase<sup>39</sup>.

In the first example, the original claim was prepared after a series of delays affecting a major petro-chemical project. My client (a contractor) felt particularly aggrieved by the situation and considered that the employer's approach at the time constituted unfair treatment. My client went on to set out various examples of how badly it had been dealt with by the employer and consultant. Based on that briefing, I presented of the claim emphasising the negative events faced by the contractor, the employer's obligation to compensate for those events, and the employer's and consultant's inaction in respect of the situation as at the date of the claim.

The claim began as follows:

*The Contractor has and continues to experience substantial delays to the Works as a result of events and circumstances beyond the Contractor's control. The events that have resulted in delays to the schedule include but are not limited to late receipt of Company Design deliverables, Company Supplied equipment, and substantial quantity increases associated with Mechanical Equipment, Piping, and Structural Steel.*

As can be seen above, I tended to emulate the language from the contract within claim documents, perhaps to add to the perceived "formality" and the impact of the document.

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<sup>39</sup> I have intentionally utilised examples that did not originate from the key projects I described in Chapter 6, in an attempt to maintain confidentiality.

I also made liberal use of ‘legalese’ (terms and phraseology typically adopted by lawyers but unfamiliar to most laymen) to maximise the formal, contractual tone of the claim. Terms such as ‘submits’, ‘circumstances’, and ‘include but are not limited to’ in the above text are examples of such legalese. While I probably understood that use of legalese in business documents tends to reduce clarity (Hartley, 2000), I placed more value on the formality and impact of the document through the use of legalese than I did on its clarity.

The claim then went on to set out the details of what the contractor considered itself “entitled” as the result of the suffering it had experienced, in a contractual (formal) tone. I also emphasised the perceived inaction of the employer (who used an in-house supervising consultant) in dealing with the claims.

*The Contractor submits that as [cut-off date], it was entitled to an extension of the Mechanical Completion milestone date to account for the effect of Company delay events on the [master schedule] from [original date] to [extended date] together with associated loss and expense. However, as of the date of this submission, the Company has yet to formally approve an adjustment of the Mechanical Completion Critical Milestone dates, and has instead directed the Contractor to revise its working methods in order to achieve overall Mechanical Completion by [extended date].*

In the second example, I followed a similar script in emphasising the contractor’s suffering and the employer’s responsibility for it. This second example related to a major power station which was running over a year late. In this instance, the main contractor employed my client, a specialist subcontractor, to undertake a part of the project work. The main contractor adopted a similar role that an employer would adopt on a typical prime construction contract. My client (a subcontractor) was facing significant financial pressures and internal problems. It really wanted to use the claim as a basis for obtaining further payment, rather than a vehicle to address a specific event or issue that had occurred.

This claim opened in a similar way to the first example (above).

*The Subcontractor has experienced substantial delays and disruption to its works as a result of Contractor caused events and circumstances, the effects of which have rendered the Time for Completion for [plant] completion unachievable.*

*Accordingly this submission has been prepared in order to demonstrate the cause and the effect of Contractor Delay Events on the progress of the Subcontract Works, and to therefore substantiate the Subcontractor's right to additional time and payment under the Subcontract.*

Again, when I tried to set out the basis of the claim, I used an impersonal tone through technical and contractual language within the document to increase its 'impact'. I was also careful to refer to the inaction of the main contractor in an attempt to emphasise the suffering and unfairness experienced by my client.

*As a consequence of Contractor caused delays to the Heat Recovery Steam Generators Time for Completion, the Subcontractor has been forced to retain project overhead resources for significantly longer than has been provided for within the Subcontract Prices. The Subcontract provides for the Subcontractor to be reimbursed its time and associated costs resulting from the Contractor culpable events and circumstances.*

*For the avoidance of doubt, the Subcontractor highlights that the Contractor is yet to provide an adjustment to the Subcontract Price to account for the substantial increase the Subcontractor's indirect, project and head-office overhead costs related to the extension of Time for Completion provided by [addendum], i.e. for an additional two calendar months project duration experienced up to [cut off].*

In the third example, the claim was produced against a backdrop of significant delays on a major energy project, following issues around obtaining water and fuel connections to the site (which were the responsibility of the employer). The employer's consultant had already set out that it considered the late connections to be of minor relevance to the delays, given the recorded history of the contractor's various failings. Nevertheless, my client saw the delayed connections as an "easy win" and I pushed on with preparing the claim regardless.

Again, the claim followed the standard script of establishing the negative adverse events, the employer's responsibility for them, the inaction of the employer and the right of the contractor to significant sums as compensation. It also adopted a highly formal tone to increase its impact.

*This submission has been prepared as a consolidation of all matters of delay encountered on the project up until [cut off], it should be noted that this submission complements previous claim notices.*

*This submission clearly demonstrates that the late availability of utilities by COMPANY has not only adversely affected CONTRACTOR'S ability to achieve all of the... milestone completion dates..., which entitles CONTRACTOR to a full EOT, but has also resulted in additional Cost and consequential loss and expense being incurred, taking any CONTRACTOR'S concurrent delays into consideration, for which recompense is sought.*

*This submission addresses the delay events that have occurred between [start] and the end of [cut off], and identifies the responsible party and the effect of the delay and disruption that flowed as a result, and its consequential impact on the activities on the Project Management Schedule.*

In all of these examples, I took careful consideration of how I thought the claim would be perceived by the employer and consultant, and how I could convey the message my client wished to give. The briefings I took from clients were often underpinned by emotive feelings of injustice, where the claim was the vehicle through which the contractor sought to obtain restitution. In fact, restitution was a key theme within the research data. It emphasises the desire of practitioners to obtain justice (or revenge) for perceived wrongs, such as the unreasonable denial of a claim by the consultant or employer. The claims above were one measure by which the contractors attempt to enact that restitution.

I think I followed a similar script in each claim because I learned that my clients were most impressed by a tone and presentation that corresponded with their own experience and perspective at the time of making the claim. This reinforced the typical script I adopted for the purpose of claims. Whether or not the tone of these claims actually increased or decreased their effectiveness of obtaining a payment was, with hindsight, only of general or secondary concern. In fact, looking back, I recall very few occasions where a claim document on its own led directly to a favourable settlement. In reality, perhaps due to their conflictual and formal tone, each claim acted as a catalyst for further conflict and further claims – it had precisely the *opposite* effect of what was objectively intended from the endeavour.

In summary, on the one hand, how claims managers determine, analyse and test facts to the extent needed to present a coherent document always depends on the particular situation faced. The construction contract, the personalities of the parties, and the timing of the claim within the project cycle are all factors which are taken into account when crafting an effective claim. The journey through which one goes in preparing claims is always personal and situation specific, and never organised or linear. On the other hand, through experience with practice the claim manager develops a toolkit of strategies and approaches to increase the perceived effectiveness of each claim, including the adopting of schematic scripts to convey messages in a formal and impactful way. Implicit in these texts is the claims culture of the construction industry, which leads practitioners to act towards claims in ways which are similar across different projects.

### *The challenges I faced*

Generally speaking, and particularly in the Middle East, the process of preparing a claim necessitates continual interaction with new people of different cultures, from both the claimant's and respondent's teams. There is always the inevitable conflict between the party requesting additional payment, and the party who may have to pay it. This sets an adversarial tone to any interactions between the claimant's and respondent's teams, and in turn affects the way in which project participants engage with the claim process. Also, many of these people have a history on the project and, potentially, personal interests or dignity to protect. This applies even to members of the claimant's team. These people often provide conflicting information and there is only any real certainty in the records that were kept.

While I had a range of positive experiences during my work as a claims consultant, I also experienced a more negative side to the work, which I had not anticipated. I had extended periods of boredom, undertaking mundane or pointless tasks. I had periods of intense stress, where work consumed my life and affected my family. I had periods of depression and despair, where I wondered whether I was capable of undertaking claims work. The bleakness of the desert, the utter hell of the summer months and the endless deadlines and pressure from clients made these experiences worse. There were times when I hated my work.

From my perspective, the interests of the parties to claims appeared irreconcilable. Employers often perceived claims as a covert attempt by contractors to generate

additional, unwarranted profits, or as a means of obfuscation to conceal internal failures. Yet the various punitive contractual measures imposed by employers to protect their interests appeared to do little but cause conflict and disputes. On the other hand, contractors faced with delay and increased costs had little option but to follow prescriptive claims procedures to recover compensation rightly owed. Consultants often demanded substantial evidence to even consider a claim, an obligation made difficult due to the chaotic reality of construction projects. Even when a defensible claim was submitted, contractors faced delays in obtaining unbiased certifier decisions, due to onerous contractual provisions and employer interference. The outcome of this situation was a diversion of resources away from resolving problems towards settling claims, often at times of significant turmoil within the project.

A major challenge was trying to develop a credible claim given the realities of construction project work. I found that practitioners in the GCC construction industry were subject to a highly chaotic work life. This is mainly because of the continual challenges of securing and completing complex mega-projects with a transient and multicultural workforce. Few really understand the difficulty of carefully crafting an effective claim in these circumstances. It is a stressful and difficult process that rarely goes according to plan. In part, this difficulty arises because the process of preparing a claim often involves an analysis based on incomplete or poor-quality information, making it challenging (or impossible) to find out what actually happened in respect of the events that led to the claim. Clients are often too time pressured to offer much assistance, or are reluctant to give away anything that might be averse to its position (even for internal purposes). ‘Never trust the client’ is an early lesson most claims consultants learn when gathering information.

Communication was often a challenge. There is a range of terms and concepts used in construction claims, and many practitioners adopt different views and definitions. This often led to confusion and conflict. One of the personal memories I wrote down for this research demonstrates this issue. It stuck with me because it was perhaps the first time I realised that communication and semantics can be a challenge in day-to-day practice. In this example, at least 30 minutes was spent discussing the meaning of the term ‘cut-off date’ for the purpose of the claim.

*Personal memory: Ray asked me what the cut-off date for the claim was. I said it was 'April 2015', a pretty simple answer from my perspective. His response surprised me – 'How many times do I have to tell you that the claim is cut off in November 2016!' This started a lengthy discussion about what had been discussed. I was certain that we had discussed an April 2015 cut-off date; Ray was certain we had discussed a November 2016 date. Both of us therefore argued our position, in an increasingly adversarial way. Discussions began to include other alleged examples of both of our perceived failings to act out agreements – a major escalation of a simple matter. It was only after thinking about it that it struck me why we were arguing at all. Very simply – we were both right. I had (and always have) understood the cut-off date to be the date at which events are presumed to end. Ray had understood the cut-off date as the forecast completion date of the works after taking account of the events. This suggests that despite there being frequently used terms in claims, it's not always clear what they mean.*

This example also points to a more general tendency amongst disputing parties in construction claims to defend their position absolutely. Whereas a rational view would expect a contractor to balance up the strengths and weaknesses of a position before pursuing it, this kind of view is rarely adopted in construction claims. More often, parties focus on making or defending the claim without compromise. Whether their position is more or less likely to be objectively correct is of only secondary concern to most participants in construction claims.

The current literature reports that contractors are often deficient in their claims management practice, and that this is a primary reason for claims to fail (Enshassi et al., 2009). The assumption is that claims *should* be viewed in objective terms. This is also the frame in which the current literature proposes claims should be treated when developing 'solutions' to 'poor' claim management. It is pertinent to the remaining chapters of this thesis to briefly address this point.

On the one hand, I found that practitioners were generally aware of these issues and recognised the value of following contractual procedures strictly for the purposes of claims. As John put it:

*John: [Problems] could have been avoided if they have a good claims management system. Like for example in the airport project terminals we have*



*good – we have the claims team from the employer, we have claims team from contractor that every time in a regular time they met, and claims are submitted as per contract and the employer understands about it and that's fine....I mean, when the mechanisms in the contract is there, the project can proceed smoothly and [all parties have] clear obligations as to what one should do and what one should not do, and [the contract] should be there as a guide.*

Similarly, as Niall's account below demonstrates, contractors do understand the importance of robust claim presentation, and the potentially positive impact this may have on minimising the adverse influence of each claim on the parties' relationship.

*Niall: I think the quality of the claim has a big part of [affecting relationships]. If a claim comes in you know it is a genuine open book type claim. The contractor is more than willing to provide substantiation, compare the programmes and all these sort of thing albeit clients want to deal with it, he has got something you can actually review. If the contractor drops something on the table, numbers are there, he is refusing to sort of open books in certain areas you know the client is going to get defensive and suspicious and again it happens, it happens.*

On the other hand, although practitioners recognise the value of robust claims management, I frequently observed the issues reported in the literature while in the field. My observations corroborate the position reported in the current literature. Contractors did not generally keep good records or follow robust processes in respect of claims. As I have explained further below, they are also often disinclined to invest resources into claims management or preparation. The following account is written after a day spent at a project when preparing a claim. It illustrates the difficulties I faced in gathering information from the contractor's records given their poor and disorganised state.

*Journal entry: I was forced to assume several facts due to the lack of any details in the contractor's claim, and my lack of proximity to the site team. Whilst I issued emails to the site team from time to time, the reluctance to issue too many emails (many of which would have turned out to be irrelevant) was sustained...*

*...within the log of material submittals and material inspections, many of the descriptions were not the same - it was a mess. I was search[ing] by document references (where available), fragments of descriptions and timing of delivery to*

*reconcile the sheets. All of this was required to simply verify dates for submissions that were recorded into the programme.*

The following two accounts from my journal entry illustrate my day-to-day experiences of a live construction project.

The first example (below) illustrates my experience of the *lack* of interest my contractor client has when their resources are already stretched by the management of the project.

*The project team were under pressure with other work and seemed unable to help me when I was requesting information. I think these issues had happened so long ago it was hard for them to see the relevance of any of them. They had moved on to bigger things, and perhaps felt that the... works [being addressed in the claim] were such a small part of the whole problem that it would not be wise to assist.*

When I wrote this first example, I was located at the temporary site offices for a major project, to prepare a claim summary document and a series of claim notices. I had been at the site trying to gather information from the contractor's project team at a time when the construction work was in full progress. I did not experience any real interest in preparing claims amongst the project's team.

The second example (below) illustrates the messy and chaotic conditions practitioners operate in at the construction sites I visited.

*Going to site reminded me of how chaotic things really were. I was in a room full of dog-eared files, which I later found were the evidence on which [the subcontractor] might have needed to rely on in the event of arbitration. This was not a calm, controlled environment - it was a dirty mess.*

I found that none of these sites was in a calm or organised state at times I was present. As the example above illustrates, they were messy, disorganised and chaotic places, full of uncertainty and conflict. They were not a suitable forum for tactical planning of claims.

### **7.3 How practitioners view claims**

I was also interested to explore how practitioners view claims in their day-to-day practice. The current literature associates claims with conflict, and recognises that contractors view

claims negatively in terms of maintaining relations with the employer (Klee, 2014). But current research provides few examples of studies which consider how claims are perceived by practitioners. This is therefore a fruitful perspective from which to review the research data.

I found that practitioners give claims both symbolic and practical meaning. They associated specific (negative) consequences with claims and recognised the potential conflict that can result from making a claim under a contract. In some ways, practitioners view claims *as declarations of war*.

To explore this point, I asked Zack, a claims manager, how he thought claims were viewed in the industry. He explained his experiences by highlighting that a major concern with issuing claims is the impact they may have on the relationship with the employer.

*Zack: It's definitely negative, they're always negative. You just don't meet enough fair people out here to get things resolved properly whilst maintaining relationships. If everyone else was fair you wouldn't have a problem with relationships. The contractor always knows that when he submits a claim, it's going to p\*ss someone off.... it's like the claim is just a way of starting an argument with the employer or engineer.*

The language he uses here is illustrative of the negative frame in which practitioners perceive claims in the construction industry. In this instance, Zack demonstrated that, in principle, practitioners assume that each claim will result in conflict.

Zack was not the only one to raise the emotive meaning of claims and the negativity surrounding them, from a practitioner's perspective. This aspect was raised repeatedly by the interview respondents as a key issue in practice. Niall, a contractor's quantity surveyor responsible for managing claims at site, described the word claim as a 'dirty word' in our interview. His account, which I set out below, further illustrates how practitioners link claims to deterioration in relationships with other contracting parties.

*Niall: I think [the word 'claim'] is a dirty word you know the claim as soon as somebody says claim, so well the, you know, the impression of where it's going to go and I think it will immediately change the relationships... (unless you have a very and on both side disciplined client PM contractor who understands the purpose of the claim and who can appreciate the contract...)...As soon as you*

*hear the notice claim, straightaway everybody gets on the defensive and we are not interested or where is this going to go, people's attentions you know are diverted elsewhere, everyone is looking at the protective methods*

Niall went on to say that whatever the intention of the claim, it is likely to be perceived negatively, or 'come over the wrong way', to the party receiving it.

*Niall: I think from that if you are sitting on the employer's seat and the contractor is submitting claims immediately the employer will see that as quite aggressive behaviour and often interpret that as the client, you know, the contractor is going out of his way to submit a claim and you know steer the project down a certain path when in fact it may not be that case... then if one gets excited about it when it does come through, you know, but it probably comes over in the wrong way... so I think it starts with that notice and the way that people feel about a notice and they think that it's a contentious item....*

Zack's and Niall's experiences are derived from their roles within contracting organisations. I also looked for evidence of employers' and consultants' perceptions of claims. I found that employers also view claims as negatively as contractors. In the following account, Jeremy, an employer's commercial director at a large government entity, expressed his frustration at the typical claims process.

*Jeremy: So we do tend to get involved formally like... but it's often quite frustrating in terms of the way contractors present their claims because you know they are always 9 times out of 10 if not 10 times out of 10 massively over-inflated. And it causes a problem to pick all the wheat from the chaff and understanding the true nature of the entitlements, you know.*

Kyle, a project management consultant who works predominantly on leisure projects on behalf of major developers, expressed similar caution about construction claims.

*Everyone's fed up with the whole claims process because of its complicated nature and because it's rarely simple. The issues all get mixed up together, everyone starts falling out at each other becomes unpleasant.*

In summary, practitioners give claims a negative symbolic meaning, due to the association they make between claims and conflict. They recognise that claims can be

viewed through an emotional lens, and can have an adverse influence on relationships between contractor, employer and consultant. Practitioners do not see claims as serving solely a procedural or economic function. They view claims negatively on a human level. This points to a gap in the documented understanding of claims management, in terms of what factors cause and motivate claims. I have examined the implications of these negative perceptions of claims in Chapter 9 of this thesis, illustrating how there are negative practical consequences that practitioners associate with the submission of claims, which go well beyond their apparently procedural function.

#### **7.4 Inflated or spurious claims**

Finally, as I set out above, a common view held by employers is that claims are inflated simply to generate excessive profit. (The same may be said of employers who influence their consultants to unreasonably ‘reject’ claims to lower costs). However, that is an incomplete explanation of the reason that practitioners tend to inflate claims. I regularly witnessed inflated claims, but in my experience, while a desire to make a profit was a motivating factor, it was not the single factor or even a primary one in some cases.

The problem with the assumption that making or inflating claims is driven solely by economic factors becomes clear when one considers the situation of most practitioners on GCC projects. Very often on the larger projects, practitioners did not have a direct financial incentive to maximise profit. They received payment for their work through salaries and occasionally bonuses reflecting their personal performance. It was uncommon to link bonuses to project profit because actual profits were often not realised until the end of a project. In many companies, there were no bonuses at all. There was rarely any personal *economic* reward for making claims.

Whilst it is popular in existing discourses to claim that contractors overvalue claims as a means to generate unfair or excessive profit, it is my clear impression that this motivation is far less common than some might imagine. In fact, overvaluation of claims can occur for a variety of reasons. For instance, pressures at the site may mean a claims manager is minded to present high-level claims, inflated above the ‘true’ entitlement with budgets or duplications. This situation comes about because there is often a reluctance to invest resources into collecting records or performing detailed analyses, when there is other more urgent work to do. Furthermore, based on past experience, claims managers tend to

hold a view that the certifier will significantly reduce or ‘red pen’ the claim whatever is submitted. For this reason, the contractor would rather the consultant ‘picks through’ the claim, i.e. it performs its own assessment for the contractor to argue against, reversing the evidential burden implied from the contract. (While the contractor then gains an opportunity to raise responsive arguments against each and every criticism from the consultant, a process which can continue for months, this common tactic rarely resulted in any windfall). On the face of it, these behaviours might sound illogical. For instance, one might assume that the sophisticated contractor ought to have some reasonable idea of its position before embarking on a reverse ‘defence’ of its claim. But across many of the projects focused on in this research, and in many other projects that I have participated in, economic factors were of only general relevance. More commonly, the contractor’s claims manager tended to follow a course in which a claim was submitted that was far beyond the ‘true’ entitlement, because that was the *easiest* thing to do in the circumstances.

It is useful to briefly reflect on how this behaviour is perceived by employers or consultants. Clearly the consultant, having received an exaggerated claim, may well presume that it was an attempt to generate excessive profit, particularly in instances where there already exists an implicit level of mistrust between contractor, employer and consultant. Yet, as I will fully set out in Chapter 8 and 9 of this thesis, employers and consultants actually interpret inflated claim in a variety of ways, depending on the context. Some may interpret the inflated claim as symptomatic of the poor practice popular in existing discourses, such as defective document controls (Bakhary et al., 2014; Braimah, 2013) or a lack of skill and training (Enshassi et al., 2009); Ndekugri et al., 2008). Others may be more sympathetic to the contractor’s situation, and recognise time pressures and the need to get the job done are justifiably prioritised over claims: indeed, this may be viewed in a positive light.

My experience was that in the relatively rare instances in which contractors were driven by economic factors, it was for defensive reasons, and claims were used only as a last resort on projects incurring substantial losses. One problem was that GCC tendering often proceeded on a ‘take it or leave it’ basis, where aggressive competition between contracting companies eroded the bargaining power of contractors to agree on favourable contractual terms, such as shorter payment cycles, more limited design responsibility, or

relaxed time limits for claims. It is generally assumed within the industry that parties negotiating construction contracts are free to settle on terms that are equitable, and which appropriately apportion the balance of risk. This is truer in markets where the sophistication of contracting parties is consistent, and in which clients limit tenders to capable contractors, but that is not the situation in the GCC. Contractors did attempt to negotiate more balanced terms, in the knowledge that this is an area in which difficulties at site arise. However, employers and their consultants were typically resistant to proposed changes to conditions, particularly in respect of expanding the employer's risk. This situation meant that contractors had fewer opportunities to recover additional payment than they would under more favourable terms.

My observations were that when economic need was a motivating factor in presenting a claim, it was coupled with very substantial losses or distressed projects. I found that in these situations, contractors were often unwilling to expend more money and time in making claims, let alone developing complex strategies to present them. I wrote the following reflection in my journal after taking a brief from a major contractor client of mine. They described the project, an airport upgrade, and admitted openly that they were in a difficult economic situation on the project. In short, because of this situation, they wished to invest an insufficiently small sum of money to prepare a claim document for (yet to be specified) project delays.

*Journal entry: The client... advised that for every Rial they spend, they get 0.5 back. In other words, [the project] was a 100% loss. This was the reason they had limited appetite to carry out a proper claims analysis. Their motivation was defensive - try to avoid liquidated damages but don't spend the money needed to do so.*

Later, I wrote the following reflection in my journal on the same issue:

*Journal entry: What I think this shows is that the client was not prepared to invest resources, whether internal or external, in carrying out a robust claim. It raises interesting points as to the motivation for claims. In this case it was defensive - others might be offensive. What other motivations would there be?*

According to the normative claims management literature (e.g. Abdul-Malak et al., 2002), contractors ought to submit claims due to the occurrence of some prescribed event that

the contract identifies as a ground for making a claim (i.e. delays in the provision of drawings, instructions, access or other obligations of the employer). Yet in this example, money, rather than a prescribed event, *was* the primary motivating factor to making the claim, illustrating how limited normative approaches to claims management may be in addressing real world circumstances. Importantly, however, the claim submission was not conceived as a money-making tool in itself. It was conceived as a potential way to mitigate some of the losses being incurred on a hopeless project. These experiences correspond with the difficulties faced by UK contractors reported by Rooke et al. (2004), who identified tendering mistakes, bad planning or ineffective communication as potential reasons for claims.

However, Rooke et al. (2004) also suggested that British contractors *tactically* plan for claims. At tender stage, they reported that contractors may employ techniques such as bidding at high unit rates for a work item that is likely to increase in quantity, or excluding liability for matters which the contractor expects to be able to exploit by making claims. At the project execution stage, they reported of contractors moving plant and equipment onto a site in the expectation of an employer delay, so that additional costs may be recovered for otherwise idle plant.

Yet these examples suggest a level of cunning and sophistication amongst contractors that I have not experienced in my own practice. In fact, the opposite is true; contractors often struggle to manage the project with available resources, and rarely have time to invest in conceiving claims for strategic reasons. In the projects I experienced, there was rarely a centralised authority with an understanding of the full project timeline and disciplines to coordinate the activities needed to tactically plan for claims. Furthermore, for practical reasons, I saw little prospect of a contractor being able to implement any kind of sophisticated strategy in respect of claims in the chaotic site environment. I am unsure whether my experiences differ from those reported by Rooke et al. (2004) due to my sole focus on construction management, geographical differences (UK v GCC), differences in the time that the research was reported (2004 v 2020), or some other reason.

As a related observation, current attempts to force timely notification of claims by condition precedent clauses under GCC construction contracts seem to have little influence on contractors' motivation to approach change proactively, possibly because such clauses encourage contractors to approach risk management mainly within the frame



of contractual claims. It is interesting to note that I saw no instances where contractors were motivated to make claims (and thereby preserve profit) because of strict time limits or other controls in the contract. These controls were more normally viewed as evidence of perceived unfairness or mistrust imposed on them by the employer, issues which I explore later in this thesis.

## 7.5 Conclusion

I have tried to illustrate in this chapter how difficult the life of a claims manager can be. While the role conveys a sense of prestige and job satisfaction when looking from the outside in, and while practitioners are aware of the theoretical benefits of adopting robust claims management practices, the day-to-day practice of a claims manager is significantly less technically oriented than I would have been led to believe. The real challenge, at a day-to-day level, is in dealing with the ever-changing people and conditions of a stressed construction project. It is like being on a train without any way to get off. The current literature on claims management gives no real account of these challenges or the volatile situations they can create.

Furthermore, my observations were that claims are not viewed merely in economic terms, and therefore generating excessive profit was not the primary driver in the way practitioners acted towards claims. It was only a marginal consideration for me and, as far as I could tell, the practitioners I worked with. I also found limited evidence that contractors *can* tactically plan for claims. I have already set out some of the practical challenges faced by contractors during construction projects, which inhibit the ability of contractors to make claims in the course of the project. I have now also illustrated how contractors can be disinclined to invest resources into making claims in any event, particularly on loss-making projects.

Additionally, I provided insight into how practitioners can go ‘native’ according to their situation, by reflecting on my own experiences of working for both contractor and employer, and the direct influence this had on how I may have perceived events and acted upon them.

From all of these perspectives, the current literature does not address the full social complexity around contractors’ motivations for making claims. It appears that the subjective perceptions of claims held amongst practitioners do play a role in how they

practice day to day. However, I have not yet addressed how practitioners' perceptions of claims are connected to their actions. These are issues I examine in the next two Chapters (Chapters 8 and 9) of this thesis.

## CHAPTER 8 – ROLE GENERALISATIONS IN THE CONSTRUCTION INDUSTRY

### 8.1 Introduction

This chapter presents my findings on how each of the principal social groups under GCC construction contracts (the contractor, the employer and the consultant) view their own and other professional group identities, and how these perceptions may influence their actions towards claims and other project functions. This chapter draws on the empirical and theoretical literature presented in Chapter 2 and 3 to interpret my findings and their potential implications.

Goffman (1956/1999) demonstrated how socially constructed roles held by individuals (such as doctor, inmate, teenager) influence their self-formed identities and can influence the way they act towards others. He argued that people tailor their actions according to socially developed conceptions (stereotypes) of themselves and others. In the construction industry, these socially constructed roles can originate from standard contracts, i.e. practitioners identify themselves as either a contractor, an employer, or a consultant depending on their typical role under each contract. Yet, as I explained in Chapter 2 [Literature Review], these groups of practitioners may tend to hold divisive attitudes toward each other (Rooke and Seymour, 1995), a situation which increases the prospect of conflictual behaviour (Franks, 2003; Vorster, 1993). To consider this issue as a potential cause of conflict, the analysis presented in this chapter was intended to understand how employers, contractors and consultants perceive their own and other professional groups, and how differences in perception may play a role in creating conflict around claims, in partial fulfilment of Objective 5<sup>40</sup>.

Therefore, in describing the general perspectives and views held by the research participants in this Chapter, I have used the contractual roles of ‘Contractor’, ‘Employer’ and ‘Consultant’ as a means to define and separate three socially constructed roles to which most construction practitioners would relate. Whilst these terms are utilised generally to represent a practitioner’s experience from the perspective of its social group

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<sup>40</sup> Undertake an in-depth study of claims management practice based on the researcher’s work-life experience as a claims manager, and the experiences of other practitioners.

during a project, it is not intended that the findings presented in this chapter correspond perfectly to the personal experiences of any one particular individual. There were inevitably overlaps and inconsistencies between the participants' experiences within these groups. Rather, it is intended that they stress certain experiences common to most practitioners within the respective social work-groups (Weber, 1949/2011), in a way that they would tacitly understand and identify with. Adopting this approach provided a means of explaining, in theoretical terms, the social reality experienced by claims managers in the GCC, and how that reality influences their behaviour towards claims.

## **8.2 Contractors**

Contractors perceive themselves as an abused and subjugated group, operating in a fundamentally unjust system, where the rules are dictated by powerful employers and enforced by corrupt and dishonest consultants. Contractors' views of themselves and others are influenced by their complex perspective of the motivations of the employer and the consultant and by their interpretation of how the employer and the consultant view contractors' behaviour towards claims.

### ***Contractors' perspective on employers and engineers***

Contractors' perspective on employers in the GCC is generally defined by suspicion and mistrust. At the root of this perspective is an ingrained assumption that employers are not 'fair' or 'reasonable', are unsophisticated in their skills and approach, and would rather the contractor lose money than spend extra money themselves. Their regard for employers ranges from viewing them as an inconvenience to the normal operations of the contract, to an obstructive force that risks the overall profitability of the project.

While the accounts I received during my field work epitomise a generalised negative label that contractors attach to employers, there is a degree of complexity in how contractors perceive employers. In particular, I found evidence that contractors recognised that different types of employers may engage with claims in different ways. These classifications form part of the contractors cultural 'tool-kit' to predict behaviours based on personal experiences and external influences (Fine, 2004). Two factors were commonly used by contractors to classify employers according to their predicted behaviours.

First, contractors utilised the perceived national culture of the employer to predict how its representatives might behave. This view is illustrated in the following excerpt from an interview with Geoff, a claims manager with experience throughout the UK, Far East and Middle East:

*Alan: What do you think is different about the GCC compared to other places you've worked in?*

*Geoff: I think [the employer's behaviour and attitude] is the worst I've seen here (in the GCC). Employers aren't as sophisticated here. They're a fair few steps behind other places. They still work on the bartering system.*

*Alan: What do you mean by that?*

*Geoff: Here it's all about the 'best price' scenario – where the employer is always wanting to get something for nothing. This is the worst place I've seen for this.... So when you make the claim [as the contractor] you are asking for something for nothing, because very often the building they are getting is the same as they had wanted in the first place, nothing changed apart from the price increasing.... They would rather you lose money and keep their money.*

Geoff's assertion that GCC employers work on the 'bartering system' is a widely held view and links to the cliché that local Arab developers continue to adopt a 'Bedouin' trading culture. What this means is that contractors consider employers as most interested in bargaining with little regard for the contract that should determine the parties' relationship. For instance, this same sentiment was espoused by Michael, who criticised employers for

*'...just being driven by money. They just want to pay and get a building over here. They don't want to face any kinds of complications, especially with money.*

While the GCC is a complex, multicultural region, with employers originating from various countries and experienced at multiple levels of the construction industry, it is important to stress here the importance of national culture in the perspectives of contractors. National culture is 'tool' contractors use to group together types of employers for the purpose of predicting behaviours which are relevant to their daily work, which in

turn influences the behaviours of contractors themselves (Goffman, 1956/1999). For instance, Greg may use his ‘bartering system’ analogy when deciding which head office overhead formula to utilise when valuing a claim. These formulas produce different calculations using the same financial inputs (Anderson et al., 1990; Wallace, 2014), which a claims practitioner can exploit to either ‘inflate’ or ‘deflate’ the claim, as they see fit for its purpose. This would correspond with my own experiences, where I typically observed relatively more inflated claims on smaller or ‘local’ projects, and less inflated claims on larger or ‘international’ projects, which is a pattern that may be influenced by how the contractor perceives the employer.

Differences between national cultures are well reported in the current literature: Brits place a high value on time keeping (Hall, 1973), Arabs are more relaxed with uncertainty (Loosemore and Muslmani, 1999), and so on. Yet these studies rely on broad generalisations which do not fully address the practical implications of national-culture differences using contextual data.

The accounts presented above illustrate the practical implications of national culture generalisations from the perspective of contractors. Viewed broadly, there is evidence in these accounts that practitioners use national culture to generalise within professional groups, based on a combination of personal experiences and stereotypes. These are potentially interesting observations, because symbolic interactionism predicts that socially constructed generalisations of groups in society directly influence practitioners’ day to day actions (Goffman, 1956/1999). For instance, some researchers argue that national-culture differences can explain the high incidence of conflict reported in the international contracting sector (Bunni, 2013; Jaeger and Adair, 2013), yet it appears problematic behaviour could also stem from the generalisations practitioners *place on* other national cultures. For instance, if a contractor considers an employer untrustworthy from the outset of a project based on nationality, it may be less willing to compromise or trust the judgement of the consultant, which acts as a precursor to conflict. This role-generalisation perspective could justify a shift away from current researchers’ focus on stereotyping cultures in general, to understanding how the perceptions of those stereotypes by outside groups meaningfully influence behaviour in practice.

The second grouping commonly used by contractors to predict behaviours is the perceived sophistication of the employer’s organisation and its culture. In the following

extract from my interview with John, he identified airport authorities as being relatively ‘sophisticated’ employers. He presented this as a positive characteristic.

*John: I think the airports are like more sophisticated because they are such a massive organisation they built like so much things they don't fear of a personal attack like it's normal for them.*

John's points here suggest that contractors value sophistication within the employer's organisation, at least in respect of claims. It appears the term ‘sophistication’ is used short-hand to describe a perceived organisational culture that is more neutral or predictable than the average employers' organisation, at least in respect of claims. This corresponds with my experiences, where my impression was that the more ‘business-like’ the employer, the less likely it was to be offended by claims. For example, later in our discussion, John said the following:

*John: In the airport project terminals [projects] we have a good claims team from the employer, we have claims team from contractor that every time in a regular time they met, and claims are submitted as per contract and the employer understands about it and that's fine.*

Consequently, it appears that contractors use organisational culture as a tool to predict behaviour, because shared histories and past experience indicates that this characteristic is likely to minimise pressure on avoiding claims for fear of ‘upsetting’ the employer.

It may also be that the time-pressured nature of airport projects plays a role in the good organisational practices John set out, but John also emphasised the ease with which claims could be made, and the lack of conflict that resulted. Considering that current claims management literature tends to focus on improving contractors' claims management processes (e.g., Abdul-Malak and Abdulhai, 2017), it is also interesting how John emphasises the importance of the employers' and consultants' attitudes in promoting a well-run claims system. I will consider how employers' and consultants' behaviour influences behaviour during a project in Chapter 9 of this thesis.

Turning to contractors' perceptions of consultants, it was broadly evident that the contractor's perception of the employers also influenced the way in which it perceived the consultant. For instance, if the employer did not delegate much authority to the

consultant, then the consultant would be viewed according to its authority. However, the ways contractors reported their experiences of consultants were mixed.

On the one hand, some interview participants were mildly positive regarding the engineer in certain situations. Calvin made the following point when we discussed a recent project of his in Qatar:

*Calvin: Even when like in this project in Qatar it's just the engineer's being pretty reasonable. He's actually said, "All right, okay. You've got a claim. Please submit the claim". And then, the responder says, "Man, you haven't given us a date. You have to give us a line, so I can't give you a claim".*

I also recall occasionally working with consultants who proved to be reasonable and flexible people that were keen to avoid conflict or disputes, but I considered these encounters to be exceptions to the normal 'rules' I applied to predict consultant behaviours.

The more common response from interview participants was that contractors mistrust consultants *in general*. This position may be a reflection of how contractors view the consultant's various roles under the contract. The following journal extract shows how I perceived this conflict when discussing settlement of a claim on a major project:

*Journal entry: I could see that the engineer was uncomfortable with the prospect that the MEP design delay had resulted in any delay. He was extremely defensive when I suggested that it delayed long-lead items and it was on the critical path. He said the contractor could have gone ahead and placed the orders anyway, and even then, the contractor could 'mitigate' any delay by working later each day.*

As explained in Chapter 2 [Literature Review], the consultant acts as the employer's agent on the one hand, designer of the work on the other, but then arbiter under the contract with respect to claims. These multiple roles are viewed as fundamentally in conflict by contractors (Ndekugri et al., 2007). As the employer's agent, the consultant is viewed primarily as the advocate of the employer, working to protect them from incurring expenditures, irrespective of whether that expenditure is contractually owed to the contractor. This suspicion is made worse by the fact that GCC consultants are typically



bound to obtain the employer's consent before agreeing to or determining any contractor's claim, an obligation that is seen as effectively making the consultant the 'post box' of the unscrupulous employer. Also, as the designer of the project, the consultant is seen to have an interest in protecting their own exposure to claims from the contractor (via the employer) for deficient designs and delayed information, circumstances that form a substantial proportion of contractors' claims.

When the consultant is ultimately tasked with reviewing and determining contractors' claims, these conflicting interests are seen by the contractor to directly influence the consultant's capability to act fairly and reasonably. However, as I develop further below, this is only one of several interconnected factors that influence contractors' behaviour towards consultants and more generally.

### *Contractors' perspective on how employers and engineers view contractors*

A more complex perspective concerns how contractors believe they are perceived by employers and consultants. For example, in my interview with John, who had wide experience working with contractors, he made it clear that he expected employers to assume that any claim prepared by a contractor would be fictitious.

*John: The employer always have this idea that most of the claims are fictitious and the contractor is bringing out the claim that's the obligation to substantiate the claim. So yeah that's a challenge and that's how it works from these experiences.*

In particular, contractors are acutely aware of being labelled as 'claims conscious'. Being labelled as such means being viewed as driven by making excessive profit, being overly 'contractual', or being seen to be submitting 'too many' claims. Contractors perceive this behaviour as highly undesirable to employers and consultants. Conversely, contractors perceive that an attitude of 'getting on with the job', a reluctance to resort to 'formal' (i.e. written) correspondence, and a desire to resolve commercial issues 'amicably' and outside the contract are viewed as highly positive by employers and consultants. These views have been reported in previous studies (Rooke and Seymour, 1995), but there are interesting practical implications associated with them.

For instance, as Zack pointed out, below, contractors are vividly aware of the negative consequences that may follow a claim, irrespective of whatever might be written in the construction contract.

*Zack: One way or the other you're going to piss somebody off with a claim. They just really get on the engineer's nerves. It could be because of loss of face, even if you are saying the right thing the engineer won't want to budge. He's scared of being sacked or failing or something, even if he's delayed his own drawing or instruction, he just won't budge on anything. He will screw the contractor no matter what. And even though it might be the engineer's fault, the employer won't budge because he sees the claim coming against him, so he just rejects it anyway. It's actually weird because all of these jobs go the same way but we never learn. And we never seem to make money either.*

This desire to avoid being viewed as 'claims conscious' therefore directly influences the contractor's actions towards the employer. This point was illustrated by Niall in our interview. Here, he explains some of the strategies he adopted to minimise the impact of submitting a claim.

*Niall: I think if you have got a good relationship outside of the contract relationship, it can certainly help that, and I think you know this approach of discussing things, talking it through before you go into any print of any kind cannot maintain or improve that relationship if you end up going down this path. I think that needs to be recognised early on.*

Above all, the contractor's view is guided by an assumption that employers and consultants act towards the contractors *as if* they are looking to 'rip off' the employer, by overcharging or implementing other extra-contractual schemes to generate excessive profit. Geoff explained it this way:

*Geoff: That's because [the engineer] thinks the contractor is going to screw them 10 times out of 10. So he sets out his stall thinking that the contractor is going to try it on. So whether the engineer is right o[r] wrong he has to reject 50% of it anyway!*

It can be seen how contractors' perceptions of how other professional groups view them stem at least in part from the contractor's own perception of the employer and consultant,

examined above. Contractors assume that (i) employers are reluctant to pay any more money – the ‘best price scenario’ described by Geoff, and (ii) consultants fear becoming liable for claims for defective designs and primarily act to please the employer. These assumptions lead the contractor to perceive that both the employer and the consultant would rather not see frequent claims or overly ‘contractual’ behaviour from the contractor, preferring instead an approach that is not focused on maximising payment. I address how these perspectives influence behaviour around claims in Chapter 9 of this thesis.

### *Contractors’ perspective of themselves*

As a reflection of contractors’ negative view of employers and consultants and their perception of the inherent injustice in the GCC’s contracting system, contractors view themselves as a subjugated group that is frequently subject to abuse and unfair treatment by those in power. There tends to be an assumption that no matter what contractors do, the employer is always going to ‘win’ in the end. Geoff described this as a general feeling that ‘*everyone knows that you never get what you’re owed*’. Similarly, when I put this idea to Calvin, a claims consultant working on a difficult project in Qatar at the time of our interview, he explained the impression as follows:

*Calvin: ...it’s always in your mind that even if you make a claim, you’re against a big client like the government, so if you went to arbitration, you’re going to lose it. So what’s the point?*

*Alan: But you still have to make the claim, don’t you?*

*Calvin: Even in a project where the engineer is actually asking for an update on claims, the project team still don’t see the value in submitting one straight away, as it’s probably because they think they won’t get anything anyway. It’s always in the back of your mind.*

Calvin’s responses clearly demonstrate how disadvantaged GCC contractors consider themselves to be. They regard their situation against the employer as weak and vulnerable, because the employer is seen to form part of an overall system working against the contractor, based on a perceived level of nationalistic protection and control that they think exists within the GCC states.

But alongside this perception, contractors also maintain a self-image in which they believe themselves to be essentially ‘reasonable’ and amenable people, always willing to compromise to ‘get the job done’. They see themselves as the ‘good guy’ within the construction industry, without whom nothing would get done. The following journal entry illustrates how I have interpreted a contractor’s self-view espoused in a claim settlement meeting:

*Journal entry: ...the [contractor’s managing director] kept pushing the debate towards the ‘hard work’ that the contractor did, how it always acted in the interests of the project by replacing [a] poor performing MEP subcontractor, and the various other challenges it faced and overcome despite the absence of the engineer’s assistance and formal instructions...*

In the above example, the contractor’s managing director sought to portray a hardworking contractor subject to abuse and unfairness by the consultant. I found that these same views were regularly espoused in interactions amongst contractors and with employers and consultants: contractors portray consultants and employers as acting ‘unfairly’ and hold them as being incapable of ‘understanding’ that the contractor has suffered and is ‘entitled’ to an award of time or money. This tendency to portray ‘reasonableness’ may reflect a desire to avoid negative labels such as ‘claims conscious’ from the consultant or employer. As illustrated in the above example, contractors do tend to present themselves in a way that appears (to them) to be desirable to consultants and employers.

There might appear to be a contradiction underlying the perspectives discussed so far. On the one hand, contractors view employers and consultants as possessing interests directly conflicting with their own, and tend to expect maltreatment as a result. Yet on the other hand, they consider the very behaviour that protects them from these conflicting interests, that is, acting in accordance with the contract, is itself undesirable and obstructive from the perspective of the employer and the consultant, and should generally be avoided. However, there is no such contradiction in the eyes of the practitioner. As in other decisions taken early in the project cycle, contractors face a difficult trade-off between managing their relationship with the employer and consultant on the one hand, and project finances on the other. Not acting on contractual rights might be viewed as more economically rational at the time, because reprisals from the employer or consultant might

represent a greater risk to profit later on from the contractor's perspective. I address this issue further in Chapter 9.

In sum, the perspectives discussed above broadly define contractors' understanding of the expectations that others have about their actions towards claims. The findings suggest that contractors' social reality is constructed based on their perception of the GCC's unjust contracting system, the conflicting interests perceived to influence the actions of employers and consultants, and their assumptions regarding the ways in which employers or consultants view contractors' behaviour towards claims.

### **8.3 Employers**

In the main, it is employers who hold the key strategic and soft-power under construction contracts. This power stems mainly from their primary responsibility for approving and making payments for the defined services (and any claims) to either the contractor or the consultant engineer. From the contractor's and consultant's perspective, the employer's power can work to shape the behaviour of project participants, whether by direct influence through underpayment, or by imposing restrictions on the consultant's behaviour or exercising a veto over its actions. This means that managing the threat of late or non-payment is central to business relations with the employer for both contractor and engineer.

However, employers tend not to recognise the influence their position can have on project behaviour. They generally consider themselves to be a rational and sensible group, willing to 'pay what's due' for the work completed if presented to them in a fair and balanced way. They criticise consultants for not exercising professional judgement, and contractors for not understanding the complex organisational challenges employers face in sanctioning further payments.

#### ***Employers' perspective on contractors and consultants***

Employers generally place responsibility for problematic issues under construction contracts with the consultant or the contractor, albeit for different reasons in each case.

Employers say they expect consultants to be proactive in respect of claims but complain that few of them hold sufficient specialist skills and knowledge to equip them to act according to these expectations. Mahmood, who leads the claims management team in a

large developer organisation, covered this topic in some detail in our interview. He made two observations which, consistent with the impression I developed during the research phase, broadly represent the typical perspective of employers towards consultants and contractors, at least in the sectors of the industry that I worked on.

Firstly, he criticised engineers for being at the root of most of the problems under construction projects, because of deficiencies in the management of claims.

*Mahmood: Challenges during the project are because the engineers, the consultants are not fully versed with the best practices of claims management. They are not fully equipped with the available resources to proactively manage claims and administer them, or avoid them from the start of the project. They don't have an understanding of the principles of how claims are evaluated. They prefer to use thumb rules instead of proper processes.*

When I put it to Mahmood that consultants' views may differ, because they may consider that employers exert unreasonable control over consultants generally; his response was as follows:

*Mahmood: ....And I don't think [impartiality] is the employer's doing, it's the consultant's problem. Because the consultants don't want to act impartially, they don't have a strong body of leadership. But the employer also likes to have somebody to speak on their behalf, and they think they would like to reduce their risk. The engineer cannot overturn the black and white things, but the engineer can protect the client for the grey areas. The important thing is everybody knows the engineer is the employer's agent.*

On the one hand, Mahmood's statement here shows employers' general frustration towards consultants which is illustrated here by Mahmood's belief that consultants do not want to 'take decisions' on important matters, preferring instead to obfuscate until the employer steps in to resolve the problem, apparently relieving them of any responsibility for the outcome. On the other hand, Mahmood seemed to acknowledge that consultants do have an agency role from the perspective of employers, because they are expected to protect the employer's interests, even if only in respect of the 'grey areas'. This indicates that employers are explicitly aware of the potential advantage of conflicting roles of the consultant under construction contracts. An employer may, for instance, put pressure on

the consultant to interpret a clause in a contract a particular way that precludes an entitlement being paid for a claimed event. If it succeeds in influencing the consultant (and it commonly would), that view is presented as the consultant's own for the purpose of the contract, and can then be used to dispense with an otherwise valid contractor's claim.

Secondly, Mahmood criticised both contractors and consultants for not having the expertise or resources to manage claims effectively.

*Mahmood: They don't have understandings about the principles, how claims are evaluated, okay? They are accustomed with their... [own] rules, okay? The push commencement starting those... rules on the project, okay? So on the contractor's side, most of the contract won't have the capabilities to effectively administer contracts. They don't have those resources, those scarce resources who understand the principle of how to present claims, how to establish their entitlements, and how to substantiate those entitlements. These two stakeholders who were mainly responsible for administration of the project, mainly are lacking in terms of the experience, the required skills, to manage claims.*

And similarly, when we discussed how uncertainty surrounding claims affects the project, he made the following points:

*Mahmood: But this uncertainty really affects the project. The contractor loses interest at the end of the project. You will find this in most projects in the GCC. They lose interest, they only do 95% of the job because they're frustrated at this stage. It's probably partly because the contract[or] brought it on himself, but then partly the engineer is responsible (and employer) for not administering the contract. But then the contractor thinks 'why should I complete in the next one month, I don't know what the decision will be on my claims, let the employer deal with the snags'. So often a project goes well in terms of quality until the end, but then it collapses. And you will see [this] time and time again on all the projects.*

As can be seen from Mahmood's submissions above, some employers are highly critical of the ability of both contractors and consultants to manage claims effectively. He emphasised the practical implications of these failings, by associating them with conflictual behaviour and distressed projects. While his view may be amongst the more conservative in the range of perspectives (that is, Mahmood was openly more extreme in

criticising contractors and consultants), it also the data collected in further interviews, and my subjective experience up to the end of the research phase.

For example, when I asked Kevin, a commercial manager in a government-backed developer in the UAE, he confirmed his frustration with poorly laid out claim submissions from contractors.

*Kevin: Yeah, lots of problems we have had is that they are quick to put their claims through to us, but quite often they are quite poorly sort of laid out and poorly thought of, you know, that they haven't really spent the time they should have been putting on it altogether. The problem we have got is that there are a lot of stakeholders in this building that all have various different opinions and stuff.*

Comparable views were expressed by Luke, an executive at another division of the developer with whom Kevin worked.

*Luke: Definitely, because it is quite often, you know, claims take time to put together. The effect of the actual event itself has already happened by that, so you know you are haemorrhaging money left, right, centre because of your internals or cross reporting. You know there is a huge problem you are physically seeing it out on site, but then when it comes down to putting it on paper, more often than not the contractors' submissions are pretty hopeless and it takes two or three iterations off that to get them somewhere near half decent.*

Also, on this theme, Jeremy, a commercial director at a major employer, illustrated the common assumption held by employers that contractors inflate claims as a matter of course. He expressed frustration toward this behaviour, and suggested that it may not be the best strategy to settle a claim, from his point of view.

*Jeremy: You know, you expect it to be inflated, you expect them to be [claiming] for things they are not entitled to and just dumping all the crap on you to unpick you know. And I think -- it's unhelpful you know to be fair and as -- certainly from my perspective as the employer it would be -- preferably some people play the straight bat from the start as to what they believe their real entitlements were and just play straight -- this is the numbers we think we are truly entitled to and the time we are truly entitled to. And yes, we recognise we have got our own*



*issues and you know just be straight and – because ultimately that’s what’s going to happen anyway.*

My perception of how employers view contractors and consultants also correspond with the position explained above. When I was engaged by employers to manage claims up to end of the research phase, I recall the *déjà vu* I felt in hearing the typical employer’s briefing: generally that the contractor’s claim lacked credibility, the consultant’s recommendation was also looked at with suspicion (whether too low, too high or, most typically, indefinite), and they required a third view on the substance of the claim. These issues were typical in most enquiries for claims expert services that I received from employer organisations.

The accounts presented above are indicative of the generalisations that employers and consultants use to define contractors, which potentially influencing their behaviours towards contractors *in general*. The narratives that employers utilise to define contractors’ behaviour suggest that there is an expectation (probably rooted in shared experience) that contractors are not able to prepare effective claims. In understanding the behaviour of employers, whether a claim is objectively effective (in normative terms) may be less important than the underlying expectation that contractors *in general* are incapable of producing effective claims. What I mean by that is, when an employer defines its relationship with a contractor on the basis of these pre-conceptions, they may also influence how the employer interprets and responds to actions of the contractor, such as the submission of claims. Even if the claim is not objectively defective, the employer may draw on its pre-conceptions to justify a more hostile or dismissive reaction to the claim. Indeed, similar influences may apply to consultants and contractors in their actions towards employers.

It is also interesting that employers’ views on problematic behaviours tend to reflect the conventional wisdom implicit in current literature: that problematic behaviour results from factors such as lack of skill within contractors’ teams (e.g. Bakhary et al., 2014) or its consequences (such as deficient project systems or poor project controls (Klee, 2014)). As I explained under my reflection on the practice of a claims consultant within Chapter 7 of this thesis, while these are important factors, there are also other more contextual factors that contribute to contractors’ approach to preparing claims, but which are not widely reported in the literature (or by employers). To reiterate, these other factors include

(i) the contractor's perception that claims are viewed negatively by employers and consultants (and should therefore be avoided); (ii) the lack perceived benefit of investing time and resources into a claim in situations where the contractor expects the claim will be 'red-penned' by the consultant as a matter of course (iii) financial pressure which limits the funds and resources available to prepare the claim. It is therefore evident that the current literature potentially presents an incomplete representation of the root-causes of problematic behaviour around claims. I explore the issues that underly poor performance and illustrate their implications further in Chapter 9 of this thesis.

Another factor which influences how employers view other professional groups is national culture. For example, Luke set out the following thoughts on national culture during our interview. We discussed a range of topics around national culture, but this particular part of our interview defines the typical perspectives held by practitioners in relation to the importance of national culture and how expectations of behaviour are linked to that culture. Luke began his account by emphasising how important national culture was to the ways in which he perceived others in the industry.

*Luke: Because, now if you think about it, yeah, and I am a massive believer of this, especially in this region, forget about whether it's the claim or it's a normal run in the move sort of contract administration or just project delivery, you have different religions, you have got all sorts here, you have different cultures, we have all sorts here, you have different language skills, there are lots of them, and then you have different frames of reference in terms of these cultures, in terms of people, the stereotype about certain nationalities are more explosive than others and certain nationalities are calmer, and then there is also business cultures where we never disagree with what the client says. You know the Asian culture is very submissive and it's very respectful, so you have got all these different cultures and all these people that end up in this melting pot of where we work.*

In my examination of the contractors' perspective on the employer, which I presented earlier this Chapter, I illustrated how the nationality of the employer can influence the way in which they are perceived by contractors. The interesting practical implication here is that employers also appear to use national culture as a toolkit to predict behaviours amongst contractors and consultants, in an attempt to gain an advantage. For instance, Luke's claim that Asians were more submissive and respectful than other cultures indicates that he may tailor his actions towards Asian contractors (or consultants)

according to that generalisation. This means that an employer may be more ready to invoke delay damages if it assumes that the contractor was perceived to be ‘submissive’ and thereby less inclined to criticise the employer’s actions or formalise any associated conflict into a costly dispute. While these findings broadly correspond with the current literature on national culture, which emphasises general stereotypical behavioural trends between nationalities (e.g. Caldwell and Pinnington, 2013), it also shows how practitioners also use those stereotypes to guide their actions towards an important project function (the administration of claims).

To summarise, employers view consultants and contractors negatively, a perspective demonstrated by their views that neither consultant nor contractor are capable of dealing with claims effectively. In the case of consultants, we see how these views are present in the apparent inability of the consultant to make decisions. In the case of contractors, we have seen how these views are present in the apparent inability of contractors to prepare convincing claims due to a lack of skill. There are also potentially interesting practical implications associated with these findings, such as the employer’s awareness of its ability to influence the outcome of claims by covert control of the consultant, or the ways in which the employer (in common with the contractor) may use national culture as a means to predict behaviours and guide its own actions towards other professional groups.

### *Employers’ perspective on how contractors and consultants view employers*

Employers generally hold negative views towards consultants and contractors, and again these views are centred on their respective performances. In particular, employers tend to believe that contractors and consultants often misunderstand the employer’s requirements as to claims because they become caught up in the day-to-day running of the project.

A common complaint from employers is that contractors do not properly understand the complexity of the employer’s organisation and the layers of sign-off and audit necessary to conclude a claim, and make a payment against it. When Kevin and I explored this issue, he described his sense that consultants also play a role in making this problematic, because they are often sympathetic to contractors, given their first-hand knowledge of the issues at the site.

As Kevin put it:

*Kevin: [E]ventually [the claim] will go to our seniors, and at some point in the future it may get audited. The more you depend upon that piece of paper then to tell you the story rather than actually seeing it, probably the consultants, I am saying it from the contractor's first [attempt], they would probably be more sympathetic towards the contractor because they can physically see it. I said but the more removed you are, and it's obviously that more dependent you are upon the claim being properly substantiated, and that's the issue that we have raised. It's just that you end up with a piece of paper. I mean even myself I have seen the outcomes of some of these events, but when it comes to actually write the paper in front of you, that's a really, really poor attempt, and the claims writing standard I think out here, people just tend to think of it as a black art and all that kind of stuff, but at the end of the day you just need to tell a bloody good story from start to finish. You can do that in two or three pages for some claims or sometimes you actually do need a proper detailed 100 – 200 pages to substantiate it, but you just need to tell a good story from start to finish.*

Employers tend to assume that contractors (and some consultants) prefer to operate on a bargaining basis in respect of claims, which may be linked to a general belief that most contractors and consultants (incorrectly) view employers as ignorant of events at site and willing to barter, irrespective of the contractual requirements. This general sentiment was put in the context of claims by Mahmood:

*Mahmood: Also, the challenges – one more issue that I should highlight. Contractors are not realistic on their expectation of the claims. Let submit something that multiplied by four, and the client will divide it by four. So that unrealistic expectation back tracks. And contractors don't take account of their own delays, and expect the employer should reimburse them for everything, ignoring what happened on the project.*

I also found evidence that employers are aware to some extent that contractors and consultants recognise a power imbalance due to the employer's ability to influence the decision making on the project. This power was broadly recognised by Luke, who acknowledged and explained how employers are able to frustrate the claims process by delayed decision making or requests for more details.

*... like we keep telling the consultants guy the claim is rubbish, you need to get the right recommendation in to us and he is saying I can't recommend this*

*because it's not all there, and you are frustrated because you are getting pushed into it a little bit because you need it all on and you need to move forward....*

*....So you can get the relationship back on track by dealing with the issue. Ultimately people have an objective. Contractor would say I want to make money and I want to get out of here as quickly as possible because the quicker I'm the more money on it, done. So if you are delaying it because you are not making decisions, you are not making determinations, you know muddying the waters and being unreasonable, because you can – you can frustrate the contractor in a contract quite easily while being within your rights. The relationship is sour for sure, yeah, and the reason why it's all more fuzzy at the end is because you finished and you get to see the back of each other.*

Luke added that:

*They think the employer is a person... who wants to do deals and he is exactly what he said, he hasn't got the understanding or the knowledge to deal with the claims properly..., that's what people think. And obviously another chance that in reality an employer is no one person, it's an organisation. So that's as the general thing, you know, there's just a feeling that the employers will screw us, the employers are given an entity, we can't take it to arbitration, you know, and that's how it changes, the engineer is the post box of the employer, that he was - you know, just a mouthpiece.*

The perceptions that I have set out above may stem partly from employers' expectation of making large profits on developments in the GCC. They may not take claims management seriously because of this, and may be prepared to accept a higher level of uncertainty than the other parties under the contract.

*Mahmood: Yes and the irony is this situation keeps on happening, they never learn. But given the scale of the issues, and margin of profit round here, that is so big, even if they settle with the contractor, they just close their eyes is OK, so many clients leave the project without a claims management regime during the project. And they left things uncertain until the end of the project.*

I often worked with employers through the research phase and can empathise with the above accounts. My impression was that employers did define themselves differently

when viewed through the eyes of the contractor and the consultant. In particular, I remember feeling pressured more often by employers (relative to contractors) for definitive answers on claims as a way to ‘send a message’ to the contractor that the employer ‘would not be messed with’, an objective which generally corresponds with the views from employers, above.

### *Employers’ perspective on themselves*

I have already sketched out the perspective employers have on themselves in the analysis above. To reiterate, employers view themselves as reasonable people working against service providers who do not understand their complex requirements, particularly in respect of claims.

Some employers take action to address the perceived deficiencies in the performance of the contractor and consultant. Mahmood gave the following examples:

*Mahmood: From client’s side, we normally try to enhance the claims management side of consultant by appointing third parties/consultants to effectively administer the claims and highlight risks to the contractor. We also give more contractors more time to go through the tender at the time of the bid, to understand the risks in the contract they’re committing too. And trying to set out clear principles for administering claims, like a clear clause showing a part agreement on delay analysis methods.... And not only identifying the method of delay analysis in the contract conditions, we also enforce the engineer with those capabilities to better administer the contract, because claims are a very specialise part.*

As shown above, in Mahmood’s organisation, efforts were being made to protect against poor performing consultants and contractors by introducing measures such as third-party reviews, increased bidding time, and bespoke clauses aimed at minimising issues surrounding claims management. While these measures were designed simply to protect the employer’s interests, they also point to the general perception held by employers that contractors and consultants misunderstand the requirements of the employer, who ostensibly consider itself to be a reasonable actor on the project, including in respect of claims.

## 8.4 Consultants

Consultants perceive themselves to be mediators between the employer and the contractor, who recognise the challenges faced by both parties in carrying out complex construction work in the difficult situation of the GCC. They are also sensitive to the differing natures of employer and contractor organisations, adjusting their views according to the perceived characteristics of both parties. In contrast to the generalised view of consultants held by contractors and employers, consultants have a relatively more complex understanding of their role and influence under the construction contract.

### *Consultants' view of employers and contractors*

I found that the consultant's view of employers is more complex than the perceptions held by the other contracting parties. In particular, consultants' views of the employer seem to depend on factors such as the perceived sophistication of the employer's organisation and the ultimate source of finance for the project. These factors are important because GCC employers are sometimes backed by a single 'high-ranking' funder who normally takes a more 'hands on' role in administering the contract than an employer from a more business-like organisation. By 'high ranking', I mean an individual with significant wealth or family connections to the state's ruling family (this being a significant influence in monarchic states like those in the GCC).

From the consultant's perspective, where there is a funder of this type supporting the employer, the consultant's actual authority in decision making may be diminished. Lee explained this difference during a discussion about employer organisations:

*Lee: Yeah, there's two sides of the clients - there's the people that sign the papers and then there's the people that write the checks*

In Lee's view, the '*people that sign the papers*' are the employer's representative team, who would normally make decisions on behalf of the employer, but whose position is diminished when the employer's organisation includes a single funding source. In these cases, the consultant's advice and decisions in respect of money matters are more often ignored or overruled and decisions about financial matters are generally directed by the funder. Such advice might relate to whether to pay additional money to the contractor, in which case the funder may resist or attempt to minimise the amount paid. Less commonly,

the funder might actually insist payment is made against a certain claim above the level recommended by the consultant, perhaps as part of a settlement deal reached outside the consultant's remit.

Zack made a similar distinction when I questioned him about the relationships between employer and consultant.

*Alan: Would you say then that the employer's probably less of an issue in this relationship than the engineer? Would you say the engineer's more the protagonist of these?*

*Zack: I think it depends on the employer because there's some—this—as you know yourself, there's some that are absolutely hands-on.... And, you know, the expert job I did, the—part of the reason they're in arbitration like that was the employer was very hands-on—wanted to be involved in everything and took things, you know, took things personally, came up with his own opinions and then everyone invariably follows the employer's opinion.... And so, the engineer's really not saying what he thinks. He's saying what the employer wants him to say.*

It is interesting here how Jake assumed that I already knew the information he was trying to convey to me, which was a common problem I faced as an autoethnographer; or, as Van Ginkel (1998, p.257) put it, I was like a fish attempting to see the water. Zack continued:

*So, really it depends. And then, you also—conversely, you've got employers that are that far away from it that all they do is accept what the engineer's telling them which means they also fall out with the contractor because they think he's doing a terrible job in submitting all these serious claims when you've got—it's not—so, I think it's probably—yeah, somewhere in between.*

*It's all right being hands on when the contractor's doing a good job, where the employer helps and they can see that they're not taking the money and they're trying to actually get this thing finished. But if he's that hands-on and he's got personally involved and he's going to have to get [ready for a dispute]*



It is evident from the above that Zack related the hands-on control of the project by the employer to a diminished consultant's authority at the detriment of the project, which in Zack's case led to differences that ultimately resulted in a dispute.

Perhaps as a result of the consultant's diminished role in these situations, they may consider the employer to be next to a mere lay person, unaccustomed to the norms of the construction industry. When I asked Derek, a lifelong consultant and employer's representative, what features define the employer, he illustrated his experience with the following anecdote.

*Derek: [U]nfortunately, the employers or the owners of the funding entities of these projects don't seem to take the contract seriously. It's almost like, 'What's this? I just want him to give me my job and I'll give him \$1.5 billion.' ... It's a simplistic approach, I suppose, but sometimes it's like that here.*

Derek's 'What's this?' anecdote above illustrates how consultants can consider employers as having limited capacity to respect contractual processes relating to change. According to Derek, employers would normally expect a building to be constructed for the agreed contract price, irrespective of the complexities and level of change at the project.

During the research phase, while acting in the capacity of a consultant claim reviewer, I found myself faced with the frustration of being overridden by an employer when trying to give a genuinely independent recommendation. I wrote the following in my journal after this experience.

*Journal entry: We issue a recommendation to settle cable laying contract... Employer says "No, different from the other consultant's recommendation, we can't accept that because of "audit!" I took that to mean that the employer was not going to accept anything different to the figures that it had previously reported. So, employers aren't willing for their consultant to be independent, they are part of a big organisation, so don't really want anyone to make decisions... contractor's give staff far more autonomy (or in a way, less responsibility as you can claim for anything)*

On this occasion, I was appointed by a high-net-worth client and asked to confirm another consultants' assessment of a claim. My experience corresponds with Derek's and others,

where I considered the employer to be an unsophisticated entity with little interest in resolving the claim.

I have emphasised above the negative experiences of consultants when dealing with ‘local’ employers. Employers do of course approve additional funds on most projects, but the consultant’s perception that there will be *unreasonable* resistance to cost increases by employers is symptomatic of the consultant’s view of the employer as an unsophisticated layman who holds unwarranted control over the consultant.

On the other hand, as Zack pointed out, consultants tend to view the employer differently where they are an experienced business-like organisation. These employers are most typically government-backed developers who are run as enterprises rather than investment vehicles. In these cases, the consultant views the employer in a more impersonal way. Ishaq, who worked almost exclusively as a consultant engineer under FIDIC-based contracts, alluded to this perspective in a discussion about payment notices (which is a topic I return to later).

*Alan: Do you think sometimes contractors don't issue notice because they don't want to cause conflict with the employer?*

*Ishaq: Yeah. We have some cases because they need to gain successful business probably or future business of the kind. They try to avoid these notices aiming that the client or the employer will give them this extension of time [ignoring] the job notice... However, in such cases they are facing trouble. At the end, it is the company—the employer is the company, not one person.*

Ishaq recognises in this example what I have already set out above - that contractors see the “employer” as an unsophisticated funder who ignores the contract, thereby doing away with the need to worry about contractual limitations to making claims. But he emphasised that such an approach presents a risk to the contractor when the employer is more sophisticated, because they will tend to follow the rules of the contract more strictly than would otherwise be the case.

As explained in Chapter 7 [The Everyday Lives of Claims Practitioners], there is a tendency in the GCC for employers to restrict the consultant’s authority by contractual means, such as requiring the consultant to obtain the employer’s approval before agreeing

or determining claims. These clauses exist across most contracts, irrespective of the type of employer. Yet the effect of these provisions seems to be taken for granted by consultants – I did not find any explicit evidence of the consultant questioning their role or authority with the employer under any of the projects in which I would have been privy to such a discussion. A more important factor in respect of the level of control exerted over the consultant seems to be the nature of the organisation that represents the employer, which the experienced consultant uses to understand the limits of its own role. I have shown above how this factor is a key influence in the consultant's perception of the employer.

Turning to contractors, the consultant's perception is generally shaped by two factors: the perceived 'localness' of the contractor and the level of control exerted by the contractor's offsite management team on its site activities.

The perceived 'localness' of the contractor was alluded to by Geoff in our discussion of what distinguishes the GCC from other jurisdictions in respect of claims management.

*Alan: How does claims management in the GCC differ from other places?*

*Geoff: It all depends on the circumstance. The culture of the employer and contractor might lead to negotiation (so no claims). But then an international contractor would be more willing to make claims, where the contract would be more the focus.....*

The 'localness' aspect of the contractor relates to the size of the contractor and the nationality and culture of its management team. Typically, a local contractor is seen to be a medium-sized enterprise with a sole Arab ownership and an Arab management team, supported by South Asian (typically Indian) consultants and commercial managers. They may be connected with the employer or other stakeholders through family connections amongst the local Arab owners. Consultants tend to view these local contractors as less sophisticated than 'international' contractors, and more likely to rely on negotiation and dialogue based on their relationship with the employer to settle issues, rather than explicit contractual rights pursued through the consultant.

On the other hand, an 'international' contractor is one with joint Arab-non-Arab ownership who typically employs a mostly Western management team with a mixture of

Arab, Indian and Filipino consultants and commercial managers. Consultants tend to view these international contractors as more sophisticated and well-resourced than local contractors, who are more capable of using the contract to enforce entitlements and obligations, often resulting in fear of more claims.

Combined with the 'localness' characteristic is the consultant's experience of the contractor's site-level team and their relative decision-making power. Peter illustrated how the contractor's lack of ability to make and uphold decisions independently from its head office has a direct influence on how the consultant perceives the contractor.

*Peter: They would have an agreement about things. And then, the guy would go and report back to [head office]. And they said, "No, you can't do that". Then we'd have to go back and consider what we discussed we can't do and that, you know, and that was the start of the deteriorations. And we didn't trust him from then on, you know. We've gone through three contractor's project managers here and we haven't trusted any of them, you know. They seem to say one thing and then do another, you know.*

*Alan: So, that breach of trust sounds like it's the catalyst?*

*Peter: Oh yes, definitely. I don't think it was the claims. If I had someone here that could've gone on with a client, and perhaps respected him, and done things differently, it may have worked out. But it was a complete and utter lack of trust and that has—no, it's even worse now, you know, as we're getting in to try to do settlement, you know. There's a complete lack of trust—breach of trust as well. I mean, it—that's even happened to us where we've got upset where we'd agreed with somebody. I mean, then we get a letter in the next day that completely contradicts what we've agreed, you know. And, you know, it—I don't know. I don't know what it is other than, you know, you can't use the phrase, 'It got lost in translation' all the time, you know.*

The above discussion was made on the general topic of trust amongst the project team, which is an issue that will be explored later in this thesis. For current purposes, Peter's example illustrates how the organisational structure of the contracting organisation shapes the consultant's perception of the contractor and its personnel. As with employers, contractors sometimes have dual management structures, where the site team acts as an

administrator but important decisions are taken at head office by the contractor's executive team. Local contractors tend to retain a more administrative site team less able to make decisions, but international contractors may also face the same difficulties in decision making where a parent company wishes to take on a more hands-on role.

The distinguishing feature between these two factors ('localness' and the site team's authority) is that the consultant may be able to form a view on the 'localness' of the contractor based on how it presents itself. But the consultant may not initially know how much authority the site team may have, or this authority may change as the project progresses. Either way, these factors directly influence how consultants view contractors in practice.

To summarise, the consultant's view of the employer depends on the structure of the employer's organisation and particularly the level of authority given to the employer's staff to represent, and make decisions on behalf of, the employer, which can have a corresponding impact on the effective authority and power of the consultant. Where the consultant perceives the employer as a 'hands on' party – or in other words, one which wishes to control the consultant – the consultant views the employer as an unsophisticated controlling entity. This view generally diminishes in proportion to the business-like nature in the employer's organisation.

The consultant's view of the contractor also depends on the features and characteristics of the contractor's organisation. Consultants consider the 'localness' of the contractor to be an indicator of how the contractor will act in respect of contractual matters. But the perceived ability of the contractor's site personnel to make decisions independent from head office is another key factor in the degree to which the consultant believes it can trust the contractor, and ultimately influences the consultant's general perception of the contractor.

Consequently, the common feature that defines consultants' perceptions of the employer and contractor seems to be linked to the perceived power or authority of each party make decisions at site. This is either the employer's implicit power in decision making (as opposed to formal authority delegated authority to the consultant), or the contractor's site teams' authority in decision making as influenced by its perceived 'localness' or by the level of control delegated by head office or group level executives.

*Consultants' perspective on how contractors and employers view consultants*

Consultants' perceptions of how others view them seem also to be related to their effective authority at the site. If the consultant's *actual authority* gives effective decision-making powers or an ability to influence the day-to-day running of the site, consultants tend to believe that they are viewed as superior over the contractor, by the other parties to the contract. I emphasise the term 'actual authority' because there may be a difference between the authority provided by the contract and the actual authority given to the engineer by the employer in the day-to-day running of the site.

Consultants do not view this perceived conflict in roles in a positive light. That is because it creates an imbalance in the power relationships between consultant and contractor from the start of the project, with the consultant aware that their authority may be viewed with suspicion by the contractor. Derek put it this way when we discussed issues that surround the success of the relationship between the consultant and others:

*Derek: [T]hat relationship issue is always there from day one, because consultant, the contractor, there is a hierarchy straight away, because the consultant thinks he is here [lifts hands high], and the contractor is low. So, there is already an imbalance, if you like, with the relationship.*

This imbalance also stems from the perceived conflict within the consultant's authority when acting as both the employer's representative and the independent administrator of the contract, which I have already set out earlier in this thesis. The consultant is normally aware of the potentially conflicting duties it holds towards the employer and the contractor, and how this conflict affects the initial basis from which the contractor views the consultant. As illustrated by Ishaq in our discussion about the consultant's notionally independent role (below), the consultant's awareness of this issue may stem from experiences with contractors who challenge the consultant's decisions for being guided by the employer.

*Ishaq: We have received a lot of issues regarding this that the contractor is considering that the engineer is employed by the employer and being employed by the employer is not really a fair judgement regarding the claim. So, he thinks it is all the employer and it's his decision. Probably some engineers will do it [follow orders from the employer], yes....*

My impression during the research was that the consultant considers such criticisms to be the result of the contractual arrangement imposed by the employer, rather than caused by any defect in the consultant's performance under the contract. The consultant accepts that it will be viewed with a degree of suspicion and seems to be aware that the contractor is careful towards the consultant because of their conflicting duties.

This sense of superiority also seems to tacit impact day-to-day on the site. I worked within consultants' teams for prolonged periods of time when reviewing contractors' claims, during which I gained a sense of how the consultant constructs his perception of the contractor. My following journal entry shows how I reflected on this perception after a long day spent working within the employer's consultant's team:

*Journal entry: I was, in conjunction with the rest of the employer's consultant team, suggesting the contractor was incapable of preparing claims – incapable of building the project even...*

In common with the experiences I set out in Chapter 7, this is a further example of self-realisation that I had only taken into consideration one side's view on events at that moment. Whereas in Chapter 7 I presented an example of this behaviour from a contractor's perspective, here I show how easily perspectives can shift as individuals move between professional groups according to their present position under the contract.

The consultant also believes the employer looks towards them with a similar degree of suspicion. In this case the suspicion is driven by an impression that the employer tends to believe that commercial issues on the project regularly resulted from the consultant's ineptitude or some other failing within the responsibility of the consultant. Ishaq explained this sense in the following way:

*Ishaq: Yes, the engineer's blamed almost always. For example, the engineer—one of things that we face with the employer is that you are invited for a [discussion about delays] and the project is extended. There's another five or 10 months contract [period]. You will pay that [cost].... [This] is one of the challenges that the engineer is facing.... And he is telling the employer that, "This will be paid by the contractor due to these delays"... So, this is always making [the employer reluctant to pay] and the engineer always gets stuck. Who will*

*cover the costs during these delay periods? ... But, you know, the employer causes suffering because he's paying the [engineer].*

The following discussion which played out on social media (Libnkedin.com, 2018) during the research phase further illustrates the kinds of dilemmas consultants face in their work. In this part of the discussion, the contributor (who presented himself as a professional consultant) shows how consultants face a conflict between their duty to act fairly alongside their duty as an agent of the employer.

*[Contributor]: This is clearly an ethical dilemma. Which scenario would have far more serious repercussions? 1. Not helping the Contractor on the proper way of claiming would appear to be unfair. If you know what is right, will you keep silent? Can someone be blamed for keeping silent after witnessing a crime? 2. On the other hand, helping the Contractor will expose the Engineer to possible suspicions of collusion. From the above it appear that scenario number 2 potentially has more serious consequences. So the prudent way is Number 1 because it is in keeping with the Engineer's responsibilities under his contract with the Employer. What number 2 is asking is beyond the Engineer's contractual obligations. It is a moral obligation but not mandatory. Under certain circumstances, I would have followed my conscience but it is something that I apply case-to-case only.*

*...The Engineer should not risk being too explicit. He can provide hints at best, but not to the point of being too obvious. Somewhere at the back of an Engineer's mind, however fair he wants to be, is the intention of preserving his business relations with the Employer. Or for any future Employer for that matter (word travels fast). An outright rejection without providing any reason is definitely out of the question, whether the basis Clause is right or wrong. To sum up, the Engineer wants to avoid being suspected by his Employer of helping the Contractor. This invites suspicions of collusion from the Employer as I stated earlier. The Engineer does not want that to happen. If it does happen, he will be in trouble. If not in this specific project or contract, definitely the next.*

This contributor's account shows the consultant's sensitivity to the view of the employer and contractor, in common with the accounts given by the interview participants in the



current research. In the example given, the consultant knew that the contractor had an entitlement, and also knew they were able to reject the claim for a technical reason.

The practical implications emerging here are that conflicting contractual roles are most relevant in the ‘grey areas’, where there is flexibility for the consultant to use its influence one way or another. These findings provide useful insights into the practical role that perceived levels of consultant independence play in the construction industry. While the existence of conflicts of interest are commonly used to explain problematic behaviours (Ndekugri, Smith and Hughes, 2007; Bunni, 2013), the accounts presented in this thesis show how they are viewed from a consultant’s perspective, who has no option but to blur the line between neutral and partial behaviours. They also add further weight to the prospect that employers can and do use consultants’ conflicting roles to their advantage.

In summary, consultants recognise the potential impact of their conflicting duties under the contract, and have a sense that these perceived conflicts directly influence the way the employer and contractor view consultants. I did not, however, find evidence that the consultant recognises their role as an outright agent of the employer, nor that they have any general sense of responsibility in minimising the perceived level of conflicting interests through their day-to-day actions, which they attribute squarely with the employer.

### *Consultants’ perspective on themselves*

I have illustrated above how consultants recognise the possibility that they are viewed with mistrust by both contractor and employer. Consultants tend to consider these views to be unreasonable when they define their own role in the construction industry. Broadly speaking, consultants consider themselves to be in a difficult position under the employer, with a willingness to assist the contractor where the opportunity arises, within the confines of their relationship with the employer.

On the one hand, consultants espouse their willingness to assist the contractor in matters considered contentious by the employer. Ishaaq made the following points when we discussed how consultants engage with contractors in respect to claims.

*Ishaaq: From time-to-time you have to realise. You have to arrange meetings and try to explain to the contractor that, "We are with you. We are trying to help*

*you. However, you must understand this, so we can assist you and aid you in doing an — by having a claim".*

On the other hand, consultants recognise that the ultimate constraint placed upon them is the employer's willingness (or otherwise) to engage with the contractor on contentious issues such as claims. When Paddy, an employer's consultant on a large infrastructure project, discussed some of the challenges that consultants faced in their daily activities, he explained the situation in the following way:

*Paddy: So it's a very difficult position you know for the project manager or the engineer you know when directions like that or that kind of behaviour is driven by the client, which unfortunately it is. You know whether it's here or in the UK, I think it's an issue where you know if that project manager or engineer is paid for, their fees are being paid by the client you know then they have to do what the client wants. So that's the reality of it I think.*

As was illustrated above, consultants recognise the conflicting roles they play within the construction process. In common with the employer and the contractor, consultants seem to define themselves as ultimately reasonable people, whose full intentions and actions are often inhibited by the employer.

These common patterns of behaviour may suggest that each professional group's outlook is influenced by the *nature* of their relationship with other professional groups, rather than originating from the professional designation itself. For instance, I found that interview participants experienced across more than one professional group were able to place themselves in each group's position and give an account of their problems from that perspective. Further, evidence for the *relative* influence of professional groups can be seen in my own experiences of moving between professional groups for work engagements, where I had a tendency to go 'native'; that is, I adopted a perspective in which any challenges during the project tended to be attributed to the 'unreasonable' behaviour I ascribed to opposing groups (say, the employer and consultant), which was contrasted to the more 'reasonable' behaviour I ascribed to my own group (say, the contractor). This analysis also shows how Weick's (1995) concept of 'sensemaking' can be applied to gain useful insights into the influences of professional groups on behaviours, which is not limited in rigid pre-determined frames. Weick emphasised the important role

that *plausibility* plays in influencing patterns of behaviour, a mechanism which can be seen in the current study to operate contextually according to one's perspective, where plausibility is defined by the *nature* of one's relationship with other professional groups.

## 8.5 Conclusion

In this chapter, I have utilised the ostensibly contractual roles of contractor, employer and engineer as social groupings, to organise practitioners' experiences in a way revealing their socially-constructed representations of different practitioner groups associated with construction claims.

As a practitioner-researcher with a similar background to some of the participants, I empathised with these experiences and self-understandings, which were similar to my own. It was important to be careful to play down my own experiences, to ensure that the participants felt the need to unpack these positions, for the benefit of testing my own assumptions in a rigorous way.

The above analysis demonstrates how differently each of the principal social groups within the framework of a construction contract view themselves and others. All groups seem to see themselves as sophisticated and inherently reasonable people, but view others in generally the opposite light. I found that practitioners adopted divisive 'them and us' discourses when reflecting on the position of their own social workgroups compared to that of other social workgroups (e.g. the perspectives held by contractors towards consultants). They liked to present a conception of themselves that suggested they were victims in the industry, and that their perspective and behaviour were not novel but normal.

I found that practitioners tended to justify their own behaviour on the basis that they were trying to be 'reasonable' and 'realistic' in the face of challenge and uncertainty. They also tended to contrast their behaviour with other social workgroups and adopted generalisations of their own group, such as that other social workgroups tended to behave 'unreasonably' and 'unrealistically' when faced with challenge or uncertainty. Perhaps more interestingly, I found that practitioners perspectives were fluid and depended (at least in part) on the nature of their relationship with other practitioner groups, rather than their professional group's status in itself. For these reasons, the prominence of these 'them and us' discourses within the construction industry has complex implications.

In Table 10, overleaf, these contrasting views are summarised in a relational grid. As this table demonstrates, these conflicting views reveal a potential problem within the construction industry around how little practitioners understand or empathise with other practitioners who are deemed to belong to a different social group. Given that motivations to act correspond with the conceptions of one's own social group towards other social groups, these conflicting perspectives are likely to have some role in problematic behaviour in respect of claims. These are issues that I explore in an ethnographic context in the remaining chapters of this thesis.

# CONFLICT AND CLAIMS CULTURE IN CONSTRUCTION

Alan Whaley

*Table 10: Summary of role generalisations in the construction industry*

	Contractor	Consultant	Employer
<b>Contractor</b>	<ul style="list-style-type: none"> <li>Contractors view themselves as reasonable people.</li> <li>Tend to see themselves as the abused party, subjugated to mistreatment by both consultant and employer</li> </ul>	<ul style="list-style-type: none"> <li>Contractors view consultants as inherently biased agents of the employer</li> <li>The more control and influence the employer has on the consultant, the more negative the contractor's views become</li> </ul>	<ul style="list-style-type: none"> <li>Contractors view employers as unsophisticated and unreasonable</li> <li>Impression that employers want 'something for nothing'</li> </ul>
<b>Consultant</b>	<ul style="list-style-type: none"> <li>Consultants' views generally dependent on the perceived sophistication of contractor</li> <li>Local contractors assumed to prefer informal methods of issue resolution</li> <li>International contractors assumed to be more 'contractual' and likely to challenge consultants' authority</li> </ul>	<ul style="list-style-type: none"> <li>Consultants view themselves as reasonable people.</li> <li>They identify the conflict between their role, the unreasonable requirements of the employer and the under-resourced contractor</li> </ul>	<ul style="list-style-type: none"> <li>Consultants' view of employers is dependent on the perceived level of sophistication.</li> <li>Local employers tend to be viewed as more active agents, less willing to enforce the contract.</li> <li>However, general expectation that employers are resistant to payment of additional money as a general rule</li> </ul>
<b>Employer</b>	<ul style="list-style-type: none"> <li>Employers view contractors as low-skilled actors who misunderstand the requirements of the employer</li> <li>Assumption that contractors believe employers prefer to barter over enforcing the contract</li> </ul>	<ul style="list-style-type: none"> <li>Employers view of consultants is similar to their view towards contractors</li> <li>Particular focus on consultants' inability to understand the complex nature of employer's organisation</li> </ul>	<ul style="list-style-type: none"> <li>Employers view themselves inherently reasonable people</li> <li>Often not given the service they expect by either contractor or consultant</li> <li>Say they generally prefer to utilise the contract to resolve issues at site</li> </ul>

## CHAPTER 9 – THE EMERGENCE AND CONSEQUENCES OF CONFLICT AROUND CLAIMS

### 9.1 Introduction

In this chapter I will discuss the practical implications of the findings set out in Chapters 7 and 8, by examining how the consultant, contractor and employer act in different ways at different times during a project lifecycle. By focusing on how practitioners deal with claims, I try to emphasise recurring actions amongst construction project teams, and I explain the emerging causes or motivations for those actions in the context of a project's development and history, from commencement to completion. The main aim of this chapter is to add a temporal dimension to the research, to explore how perceptions and related actions can change during a project.

### 9.2 Changes in patterns of behaviour during a project

The discussion so far has focused on the general perceptions of contractors in the GCC towards the main participants in claims management. However, practitioners work in a dynamic social world in which patterns of behaviour are constantly adapted in response to changing circumstances in construction projects, and are influenced by the complex and often conflicting meanings that they attach to claims. This means that a static understanding of the meanings that contractors attach to claims is insufficient to explain the GCC's 'claims culture'.

The relative commonality between GCC construction projects, including their contractual and organisational structures, can lead to *recurring patterns of behaviour* across projects that are linked to socially-constructed norms of 'acceptable' and 'unacceptable' conduct, which change throughout a project. I found a range of evidence for these cycles of behaviour during the research.

For example, Peter described how a situation emerges between contractor, consultant and employer from a shared history of experiences during the project.

*Peter: The relationship between the client seems to drop drastically, you know, for the last year—18 months. The clients basically refuse to see them, you know. Before it's like once a month meeting, have a little chat. But then I think what the client got upset about was that he would talk to the contractor's project manager—perhaps come to one or two little shall we say deals with him early on? And then, when the guy went back and checked the head office, he went against, you know, what he had agreed—you know. And that upset the client really badly, you know. In our culture, your word is your bond.*

In my interview with Mahmood, we also discussed our experiences of the general sequence of behaviours that can be observed on a typical GCC construction project. He explained these as follows:

*Mahmood: the project starts in a very cordial manner. It's like a new marriage. But then various issues start emerging, like contract interpretation, or delays, and then the contractor starts issuing claims, and then the contractor starts getting frustrated because issues are not getting resolved, and the engineer ignores them, or the contractor keeps asking verbally for extensions to the time for completion and money without submitting claims, or when the client is not addressing claims.*

*.... Both sides start making things really complicated – both sides, each one trying to find a small issue to make a problem, but these issues could be resolved very quickly and they would mean nothing, but when it gets to the stage where claims aren't addressed properly, it leads to these situations. So instead of resolving the issues, the parties stick with the issues to try and get them in their favour. And unless these issues are resolved, it can lead to divorce.*

Mahmood went on to explain how these problems accumulate into a more fundamental issue between contractor, consultant and employer, actually affecting project delivery.

*Mahmood: Now this from client side it affects the client, because it negatively affects the project. The project gets delayed or the issue starts fizzing up somewhere like halfway into the project. The environment at the project starts like getting bad. It's not like a friendly, you could say, like discussions in the meeting. More disputes start getting discussed in the meetings. From the client's perspective the project delivery is the main critical item, and that gets affected.*

*Okay, due to like ineffective claims management from the consultants and the contractors okay?*

Zack provided a similar generalisation and narrative when I asked him the question, ‘Do you think people change how they manage claims through the project?’ He responded as follows.

*Zack: Yes, definitely, people don’t want to submit claims at the start of the project, even that’s when most of the major delays occur like design delays and access. People just think “we can fix this; we can recover this”. Then it just escalates and 6 months down the line you think “we can’t fix this” but then everyone has forgotten about the issue so the claim comes as a total shock. It’s like on this road project I’m on, the employer has given bits of land and we just got on with it. But now it’s like, “we can’t just work on bits and pieces”. But it’s too late, the engineer can’t see where the delay is.*

*Alan: What about later on in the project?*

*Zack: It gets worse as the project progresses. The contractor makes stupid claims or makes requests for stupid variations. Sometimes this happens just because the contractor is stupid, they just to have a go. Other times it’s because the contractor don’t know what they signed up for. For example, they think they’ve signed a traditional job even though it has loads of design in it.*

*The problem when this happens it just swamps the consultant. He gets bombarded with paperwork and probably only has a couple of days a week to look at all the issues, they just don’t have time to do it. All the claims just get shelved. The engineer just thinks things are getting stupid and rejects everything going.*

What is evident from these accounts is that the conflict and tension surrounding claims does not simply exist in itself. It is attached to the shared history and experiences of the project participants and related closely to the perceived levels of trust and cooperation negotiated between parties, which adjust on an ongoing basis. Where this trust deteriorates, claims become viewed as symbols of conflict, not causes of conflict in themselves. To illustrate more fully the implications of these observations in practice, it



is helpful to examine the relationship between practitioners' subjective interpretations of practice and their behaviour towards claims over the typical course of a project. I set out in the remainder of this chapter an account of the different behaviours that I experienced at the start, the middle and the end of major construction projects. I attempt to emphasise those behaviours that broadly define the contractor's, employer's and engineer's approach in engaging one another at each project stage.

### **9.3 Claims management at the outset of projects**

At the outset of GCC construction projects, contractors are actively engaged in procurement and preparatory work and establishing project systems and controls. The site team mobilisation is generally significantly less than at its peak during the construction phase of the project, and there is generally less administrative work to be dealt with than at the later stages of the project. However, this period is also highly sensitive to delays and disruptions. Contractors require access to the site from the employer, and completed designs, approvals, and certificates from the consultant to remain on schedule, all of which are frequently delayed.

Despite these challenges, the employer and contractor teams are also under pressure to build relationships strong enough to endure the duration of the project. Interactions between contractor, employer and consultant are thus generally amicable at these early stages of the project, with all parties acting to demonstrate their willingness to work together in the 'interests of the project.' This means that contractors manoeuvre carefully through day-to-day social interactions with the consultant and employer, generally avoiding actions that would make themselves appear 'contractual' or 'claims conscious,' such as proposing early risk management strategies, or making reference to the contract in correspondence with the employer/consultant.

One interesting observation is that collaborative contracts such as the NEC 3/4 forms, which are not commonly used in the GCC (Attia, 2012), have measures to 'surface' these potential problems in terms of risk management rather than claims. For instance, the NEC form makes it an obligation of both supervising consultant and contractor to give early warning of events under the risk management provisions of the contract, which exist separately to those dealing with compensation events (e.g. NEC3 (1993), Clause 16.1). Without such a framework in place to separate the management of risk from the perceived

problems associated with claims, the contractor's implicit strategy of conflict avoidance serves to establish an informal contract of cooperation with the employer and consultant, which is intended to provide leverage for concessions from them later in the project. In consequence, the negative perception of claims during this 'honeymoon' period of a project has a direct influence on the way in which claims are acted on:

*Memory: ...Renjith [the project manager] and I discussed whether we would raise a claim notice for the delay associated with the utility diversion [on a major retail development]. For my part, the diversion was caused by quite a clear change in conditions and was a claim that would be easy enough to prove. But Renjith was staunchly against raising any 'formal' correspondence at these early stages in the project. I suppose he was reluctant to 'upset' the engineer by appearing overly aggressive.*

This particular incident occurred immediately after mobilisation to a large retail project. I recall that a short time earlier, there had been a productive value engineering workshop, which was the primary focus of the consultant and contractor at the time. It did not occur to me (at that point) that by proactively addressing the utility diversion delay early on, perhaps via an early warning coupled with proposals for mitigation, Renjith might have improved the consultant's perception of the contractor whilst complying with the construction contract. Viewed in its context, the incident above illustrates how the desire to avoid the label of 'claims conscious' can control contractors' behaviour, leading to a reluctance to address cost and time risks promptly, despite this behaviour being neither in the direct interests of the project, nor in accordance with contractual obligations to notify of delaying events. It is interesting how the contractual framework may play an important role in leading to this situation.

The ways in which contractors act toward claims are also influenced by an expectation of negative *indirect* consequences of formally seeking contractual entitlement, which primarily manifests in fear of a deterioration in relationship between contractor and consultant. As Geoff illustrated (below), from a contractor's perspective a consultant, aware that certain claims could have been raised but were not, would be obliged to extend favours when the contractor is in need later on in the project:

*Geoff: ...it's because [the contractor] thinks they need the engineer on their side. They think there will be some give and take. Like allowing a bit of concreting to progress out of hours. But if you make a claim, you know there would be implications further down the line; the engineer isn't going to want to help you with claims being fired at him.*

As explained in Chapter 7 and 8, these perceived negative consequences are not solely associated with the reaction of the consultant to claims, however. Contractors also fear negative reactions to claims from the employer, who is seen to hold more strategic power than the consultant. Again, this concern was illustrated by Robert in a discussion we had about the performance of his site team:

*Robert: Nobody ever wants to submit a claim early on. On my current project, there is no condition precedent on time, but there is on costs. So you have to submit something at the time of the event, even if it's rough. But the site doesn't want to. I think it's because they want more work or something; they get loads of work off that client.*

What I wish to emphasise from the account so far is the way in which contractors carefully construct a generalisation of themselves at the outset of a project - that is, as fair, reasonable and hardworking people by whom claims are viewed as negatively as they are by the employer and the consultant. This creates significant tension. On the one hand, there is a desire to establish amicable relations with the consultant and to portray a positive image to the employer, but on the other, there is the need to manage risk effectively, and fulfil mandatory contractual requirements relating to claims. These competing forces are not perceived as equal from the perspective of contractors' personnel, resulting in a strong reluctance to proactively manage risks and make early notifications, despite this reluctance acting against the contractor's interests, and the interests of the project as a whole. As will be explained below, more reactive attitudes towards claim events do emerge as projects progress, but this change in behaviour is not motivated by attempts to make an excessive profit *per se*, but reflects an emerging sense of mistrust or dissatisfaction between contractor, employer and consultant.

The findings presented here contrast against the situation reported in much of the current claims management literature found during this research. Current attempts to improve

claims management practice appear to focus on improving contractual processes or project controls (e.g. Abdul-Malak et al., 2002; Motawa, 2012), potentially overlooking the external, human influencers of problematic behaviour such as those outlined in this Chapter. While ‘fear of conflict’ has been identified as a factor in poor claims management performance (Klee, 2014), the findings I have presented above provide contextual insight into how fear of conflict operates as a mechanism which links personal perspectives and patterns of behaviour in complex ways.

#### **9.4 Claims management during projects**

An increase in site production during the construction phase of projects results in a corresponding increase in pressure on the contractor’s team from a growing burden of administration and management. In addition, due to an accumulation of unanticipated events and resulting delays, disruption and escalating costs, the contract’s profitability faces increased erosion as the project progresses. In consequence, the relationship between consultant/employer and contractor progressively deteriorates. These pressures both negatively and positively influence the motivation of contractors to pursue claims against the employer through the consultant, resulting in a significant shift in behaviour from that prevailing earlier in the project.

##### *Negative pressures on submitting claims*

As illustrated in Chapter 7 [Reflections on Practice], adding to the inherent resistance to making claims that are borne from the perceived adverse consequences of being ‘claims conscious’, the chaotic demands of complex projects and burdensome reporting requirements move managers’ focus towards operational management and away from claims management. Lower-paid technical staff in particular face long working hours, where much of the available time is consumed by day-to-day project requirements:

*Journal entry: I visited site... to establish whether there were any further delays in access availability that would require action. It transpired that several areas of the site were about to stall due to lack of access. But when I asked [the contractor’s de facto claims manager] whether records had been kept documenting the extent of this situation, he responded (belligerently): ‘how can I keep all these [tables of access dates] up-to-date when I have to finish the [payment application] and process all these...variations?’*

In the above example, the contractor's claims manager faced a conflict between his primary role as the quantity surveyor, and his secondary role as the claims administrator for the project. In his primary role, his time was dedicated to the smooth running of the project – from carrying out procurement activities to valuing completed works. These were tasks that benefited all stakeholders on the project. But his secondary role was focused primarily on the interests of his company, to avoid penalties for delay and to maintain profit margins through claims. My impression was that he attached relatively more value to his primary delivery role, and acted accordingly, because delaying events had yet to significantly slow progress at the site.

As a claims consultant, I viewed his priorities as irrational – his focus on general project matters meant that key records for claims were not being kept, making it more difficult to evidence the effect of the delayed access later on. Yet I realise now that I would have probably acted the same way that he did, had I been in his position; indeed, when I practised as a contractor's quantity surveyor in England, I also saw claims as something to be avoided (and I did generally avoid them).

Niall described these pressures as follows:

*I would also say the timing of it and because if you look at the timing of when a claim arises, it tends to be at certain periods of the project where you don't have that time, you know, to prepare that claim either early on in the project let's say a handover or design release or something like that where the contractor may have a sort of getting staff as he has just started so he doesn't have the staff to put onto it and then it might be a sort of a peak period where his resource is committed to construction, procurement, all these sort of things and again that's where he may have a claim but he just doesn't have that time.*

In this example, Niall emphasised the difficulties that he faced where the situations leading to claims arose at some of the busiest times during the project. His example emphasises the practical difficulties contractors can face when the need to prepare a claim coincides with an enhanced level of activity at the site. As I illustrated in Chapter 7 and Chapter 8, these pressures may make it more likely for a contractor to pursue high-level or inflated claims, which may be (mis)interpreted as a strategy to make an unfair or excessive profit by employers and consultants.

Whilst contractors do commonly face problems with the utilisation of resources, a commonly reported issue that may place negative pressure on claims management is a lack of knowledge amongst contractors' personnel of the contractual process and of the methods necessary to properly analyse claims. As John pointed out:

*Alan: What do you think is the biggest thing that deters contractors from making claims?*

*John: It's a lack of understanding - he doesn't know what to do to make a solid claim. He doesn't understand the mechanisms of the contract, when he should issue [claim notices], and how to analyse the claim in the best way. This is especially with delay claims, even though these are the most common.*

Niall made a similar point:

*Niall: I believe it's - you could put it down to knowledge experience at hand, you know that people just don't - haven't been exposed to this and I think people try and get the impression of you know what's going on and well and actually saying that actually you know it's not a bad thing to say I don't have that level of experience to deal with the claim and even if they try and do it, it can make it worse, if not actually close and adding to a deal with it, you can actually make it worse and prolong the agreement by trying to give, you know, give the impression that they know and they are doing.*

*I think because the claims are viewed in such a way that the offer of call it training or an experience is probably not as widespread and offered as general commercial activities if you will it is okay with claims about, we don't want to talk about it in which case you are not going to give, you know offer you the experience or the training for it because it's a sort of, it's not something that people want to be involved with.*

This lack of 'understanding' (i.e. insufficient knowledge or skill) may act negatively on the contractor's motivation to submit claims or employ proactive risk management strategies, as the serious consequences of failing to raise potential claim events early and of undertaking a thorough analysis of events timeously are not fully understood, particularly amongst technical staff. These factors may also further reduce the perceived

value amongst contractor personnel of making claim submissions in accordance with the contract. Also, potentially implicit in this account is the influence of the international context of the GCC construction industry. For instance, my clear impression was that this perceived 'lack of understanding' of claims amongst contractors' practitioners was partly a reflection of their varied experience with British-style contract management. This experience was closely linked to the university system in which the individual was trained (where those from common-law jurisdictions tended to excel) and their length of service within the GCC (where those with longer service tended to be more familiar with contract practice than those with less). These observations point to the multiple ways in which perceptions are built and acted upon by practitioners.

### *Positive pressures on submitting claims*

Acting against the negative pressures described above, numerous events occur during projects that result in unrecoverable delays and increased costs. As these costs accumulate, contractors' head office executives begin to pressure the site team to recover lost money through raising claims, and the potentially serious consequences of the contractor's reluctance to appear 'claims conscious' earlier in the project begin to surface. It is in these circumstances that the importance of claims is elevated to a level where they are perceived as more important than the relationship with the employer and consultant, and become more actively pursued. Robert highlighted these pressures during our interview:

*Robert: [Submitting claims] is also triggered by pressure from the head office. No one at site wants to submit a claim. But then the head office says 'why is this job losing money but that one isn't; [do] we need to submit a claim?' Then you think you need to submit anything, even if it's something simple or not right, something quick and nasty. But then this puts pressure on the relationship with the engineer and employer, because he is seeing things coming in that's stupid. It just annoys him more and more as time goes on.*

As Robert alluded to above, the pressure to recover lost money causes the contractor to increase the rate of claims which, due in part to the escalating urgency of the contractor's position and lack of specialist claims management expertise, tend not to be properly supported. However, the increasing rate of poorly supported claims results in delays in

reviewing claims by the consultant, and ultimately, rejections, which the contractor perceives to be the consultant positioning *defensively* in the interests of the employer or itself. I found several examples of this phenomenon in the research data.

Ishaaq explained these challenges (from the consultant's perspective) in the following way:

*With all these games that's coming you have—as an engineer you have to have your resources. You have to bring more claim specialists. Even sometimes you have one guy or two guys for this job. So, you—within 28 days or within 24 days you have to reply. So, sometimes it's extending. You are not put on the contract. There's not time for replying or determining this. So, this is closing on top of that. The client is not paying for the engineer or the claim specialist.*

Peter also indicated that consultants are aware of their potentially conflicted position when discharging their claims review function under the contract.

*Peter: I always find [the contractual arrangement] quite strange because ultimately, the engineer is, you know, [the] contractor may think [the engineer] has caused the issue [that it is claiming for]. And there the engineer's got to decide on that issue and some of them don't actually like doing that. You know what I'm saying?*

Kyle reinforced this view, emphasising that consultants are sometimes reluctant to engage positively with claims in order to force the employer to make a deal, rather than put resource strains on the consultant:

*The engineer will over push and cover himself and therefore totally underpay and so you're going to end up in this situation. Now if you had a -- an engineer that assess what was fair for the contractor clearly explain to the contractor why he's not being paid as much he's asking for, but it was all justifiable and then explain to the employer where he's cut it down and show the justification and got all three together and talking about this perfect nirvana then it will be great. But it is human beings and human beings make mistakes because they make mistakes in covering themselves and saying no or just reject it all just in case there's something and let the thing run and run. And if it becomes really serious then after all relationships have all got destroyed... and it turns out that it needs to be*



*paid, he'll only encourage the employer to overrule him rather than make recommendations himself off the -- but this isn't just on one side this is all engineers.*

In consequence, the consultant's responses to claims tend to be interpreted as denial and obfuscation by the contractor. This is an interpretation that I found myself regularly making at work:

*Journal entry: We received 3x rejection letters today for [extension of time] claims [previously submitted]. The rejections were completely generic, and from the language in the letters, it seemed that they had been written as a placeholder just to meet the engineer's response time...*

These rejection letters followed a series of claims that I prepared for a contractor following the late nomination of key subcontractors. The contractor's recommended subcontractors had been unsuccessful in the tender, and the contractor then had limited involvement in the employer's negotiations with the appointed subcontractors. As can be seen by my (rather dismissive) journal entry at the time, I was frustrated by the 'generic' rejection letters from the consultant, a feeling that is only amplified from the perspective of the contractor's claims manager, particularly in cases where the claim submission is deemed to have at least some merit from the perspective of the contractor. However irrational it might sound, in the above incident, I perceived the consultant's implicit refusal to acknowledge *my* claims as a rejection of the extensive work that I undertook in preparing the submissions, and I lost face. I learned later that the employer had probably caused the consultant to delay the nomination instructions, due to last minute commercial negotiations with the nominated subcontractors. The claims were eventually resolved under a general settlement agreement between employer and contractor. On reflection, I expect that the employer's intervention was the reason that the consultant responded to the claims in the way they did, and if I had known and considered that at the time, I expect my reaction would have been less personal. I also wonder whether the delays leading to the claims might have been avoided altogether had we (the contractor) played a more active role in the nomination process before the consultant's instructions were finally issued.

However, the consultant-participants themselves confirmed that consultants sometimes take a ‘blind’, strict contractual view when reviewing claims, irrespective of whether an entitlement is due. As demonstrated in the interview extract below, this even causes conflict within the employer/consultant’s team:

*Peter: You know, we had one or two issues with him where [the engineer] didn't know they gave an instruction or they changed drawings. But because the contractor didn't apply the right clause or didn't present it correctly, they rejected it and on my end, it's worse. I said [to the employer's representatives], 'Listen, guys. You know you've changed it', you know. 'Your perspective he's presented it incorrectly', you know. 'You're going to have to award him something', you know.*

As many of the events that result in additional costs are perceived to be caused by the consultant itself, ‘rejections’ of claims (and the substantial ‘wasted’ time invested in preparing them) tend to erode the trust between contractor and consultant built at earlier stages of the project. This means that rejections of claims do not act to dissuade the contractor from submitting claims – the opposite is true:

*Journal entry: ...however [the contractor] had quite clear issues surrounding their own contribution to the delay, which I thought [would have been] found by anyone with time to review the records properly. After suggesting we expressly identify these delays in the claim (if only to demonstrate that we were transparent and trustworthy), Mohamed [the contractor's claims manager] responded: 'why would we reduce our own claim - surely the engineer should be doing that for us? He does it to everything else!'*

In the above example, a build-up of issues during the project, including reluctance by the consultant to correct design errors and delays in providing information, compounded by the contractor’s inaction when the information was eventually received, had resulted in a dramatic deterioration in the relationship between contractor and consultant. As a consequence, informal meetings were rarely held, and communications concerning claims had become limited to lengthy ‘contractual’ letters that consumed hours of the project team’s time. These tense situations result in contractors becoming increasingly reticent towards the consultant, unwilling to make concessions. More specifically, my

analysis found that contractors' reactions to rejection of claims are related to three primary impressions that warrant some further discussion.

### *How contractors react to rejections of claims*

The first impression is that the consultant's failure to positively deal with claims is a betrayal of the trust accrued at earlier stages in the project. As illustrated above, this perception manifests itself in the degree to which contractors are willing to act transparently – a marked shift away from the 'fair and reasonable' approach espoused at the earlier stages of a project.

In the following journal entry, I reflected on the change in a contractor's behaviour after the employer rejected the contractor's claims and invoked its right to levy liquidated damages for the project's delays. The contractor took revenge for this decision by restricting the supplies of toilet paper:

*Journal entry: Today I was mostly letter writing and dealing with the...contractor's resistance following deduction of delay damages. The employer's deduction of delay damages caused a major rift with the contractor. The contractor began to refuse to cooperate, for example by not starting variations, by stopping the supplies of toilet paper etc.*

I wrote that entry a day or so after the employer levied the delay damages. Although I did not make much of it at the time, one of the contractor's specific reactions was to cease the supply of consumables, such as toilet paper, which it was required to supply under its contract. The contractor's actions were perceived by me as direct retaliation for the rejection of its claims.

I also found evidence that consultants were at least broadly aware of the potential reaction from contractors that may follow when a claim is rejected. Ishaq, a consultant, made the following point when we were discussing the claims process through a project, and specifically the situation that occurs when a claim is rejected:

*Ishaq: [When a claim is rejected] He's offended sometimes during the meetings or if they consider that he is a troublemaker. 'Let's remove this guy. Let's put him aside. We need another guy.' Sometimes it's being taken personal by the contractors against the person who is doing the claim,*

In the above example, the consultant recognised that the contractor might feel a threat of being removed from the project if they acted as a ‘troublemaker’ when submitting claims.

Similarly, the participants who acted for employers identified the potential negative consequences of rejecting claims on the project. Mahmood explained it this way from an employer’s perspective:

*Mahmood: This from the client’s side really affects the client, because it negatively affects the project. The project gets delayed, or the issues start surfacing up somewhere like half-way through the project. The environment at the project starts getting bad then, it’s not like friendly anymore. It’s like discussion aren’t friendly in meetings, more disputes start getting discussed in the meeting. But from the client’s perspective, project delivery is the main focus, and that gets affected because of ineffective claims management by the consultants and the contractors.*

Peter, a project manager within an employer organisation, offered a similar view:

*Peter: ...And, you know, what I always try and do, you need them because you need their information and you need their documents as well as your own to push that upstream. And never get into conflict with your contractors unless relationships have broken down. You need these guys to help you.*

The second impression is that contractors associate claims with *restitution*. I am using the term *restitution* to emphasise the desire of practitioners to obtain justice (or revenge) for perceived wrongs, such as the rejection of documents, the refusal to acknowledge additional work, the denial of culpability for delaying event, or the withdrawal of toilet paper). In this sense, the claim embodies the additional work and effort that the contractor has invested during the project, and acts as a junction through which that effort is compensated by the employer through the consultant. Taking this view, the claim does not solely represent a means to recover additional expenses incurred on behalf of the contracting organisation. It also represents restitution for the suffering endured by the project team during the time when claim events were having an effect. The third impression is that of failure. Michael put it this way, ‘*when the claim is rejected, ... there is a huge sense of failure. It’s all about honour and reputation, and that can be tarnished really easily over here because it’s so multicultural*’. Whilst the contractor’s claims

manager anticipates negative reactions to claims, the rejection leads to internalised self-doubt about his or her ability to skilfully craft claims, and to ‘losing face,’ which can extend to reservations about whether the claim will ever get resolved under the process envisaged by the contract.

What I wish to emphasise here is that as projects progress, multiple negative events lead to an escalating spiral of urgency to submit claims by the contractor, and (what is perceived to be) baseless denial by the consultant that the contractor is entitled to any of the compensation sought in its claims. I have shown how consultants’ rejections lead to an increased tendency of obfuscation by the contractor, which itself feeds back to encourage more entrenched rejections from the consultant, and a further deterioration of the consultant’s and contractor’s relationship. The contrast between the parties’ overly amicable behaviour near the start of projects makes the change to conflict-prone behaviour even more impactful, because the elevated levels of “trust” espoused are perceived to be meaningless once commercial realities (including the need to pay additional money) are borne out. In sum, the pressures of contracting accumulate to break apart the tacit social rules that influence contractors’ behaviour at the outset of a project. They are replaced with a new set of social rules that result in behaviour defined by one-upmanship, distrust and conflict.

It is also interesting that while ‘fear of conflict’ has been identified as a general factor in poor claims management performance (Klee, 2014), it appears from these findings that this fear becomes increasingly less relevant in explaining enacted behaviour around claims as project’s progress. The importance of avoiding conflict diminishes as feelings of mistrust build amongst opposing teams as a reflection of negative shared experience. In consequence, conflict appears increasingly *plausible* in light of lived experience (Weick, 1995), and thereby practitioners can justify what might conventionally be categorised as ‘problematic’ conflictual behaviours driven by partisan attitudes, revenge and restitution. Also, while the findings presented here are focused on construction claims, it is possible that similar mechanisms may exist in any formalised relationship in which one party can take a proscribed action with a degree stigma attached to it, such as making a complaint, identifying a defect or seeking an adjustment to prices. Specifically, these proscribed actions can become exploited as tools in a wider social toolkit (Fine, 2004), which each party can call upon or tailor to enact ‘revenge’ for the wrongs of the

other party. These situations may arise in any services contract but appear most likely to emerge where there is a relatively high degree of formal and informal interaction between employees of each party.

## **9.5 Claims management at the end of projects**

The conclusion of substantial works at site rarely corresponds with the settlement of claims. This is a time in which minor outstanding work is ongoing, the employer begins to pressure the contractor for full access to the completed project, and continues until settlement of the final accounts.

I found that it was common for parties to continue negotiating the final account of a complex contract several years after completion of work at the site; for contractors to ignore contractual rights to invoke a neutral determination through arbitration; to accept the lack of momentum towards settlement as the status-quo, and to rely instead on executives and local agents to reach a settlement of claims outside the framework of the contract.

Very often in the GCC, contractors report substantial losses on their accounts by this stage in a project, placing intense organisational pressure on contractor personnel to recover lost money from the employer. However, owing to a deterioration of relationships during the project, the initial desire to cooperate with the consultant or employer is now almost entirely abandoned, and it is at this stage that contractors become most willing to pursue spurious claims:

*Journal entry: When Shaik [the contractor's claims manager] and I met today about the final account presentation for [a residential development] .... he proposed that we should concentrate on raising claim notices for 'each and every little issue than comes in from now....' He explained further that '...we need to be on the strong side of the table when we do a deal...'*

As illustrated above, I have found that claims managers adjust their behaviour towards claims in reaction to the (perceived) negative acts of the consultant. When the contractor anticipates little further interaction with the consultant, its priorities shift towards the interests of its company, and in obtaining restitution from the employer for the unscrupulous acts of the consultant. In consequence, any opportunity to claim for

additional time or money is met with overreaction and adversarial behaviour by the contractor, compromising any prospect that the claims will be resolved. At the time of the above journal entry, there was a myriad of outstanding commercial issues left to address in the contractor's final account, some of which related to additional work undertaken years earlier. My impression was that the contractor was trying to inflate the variance between the consultant's and contractor's final account, so a more favourable 'deal' might result.

Contractors also use claims at these later stages of a project to invoke negative reactions from employers/consultants, such that the claim becomes a strategic tool in negotiations. This sentiment can be seen in the following journal entry, written when I was considering whether my client, a financially constrained building services contractor, should submit a latent claim for delays to receipt of fit-out drawings from the consultant:

*Journal entry: I know that [submitting this latent claim] will be like dropping an A-bomb [Nuclear bomb] on the project....*

In the months leading up to that journal entry, there had been a history of contractual correspondence between employer and contractor, with each accusing the other of serious defaults. The employer's main contention was that the contractor's strained financial position was causing delay (which was probably justified), which the contractor blamed on the employer's unwillingness to enter into a settlement agreement. Whilst not discussed at the time, my impression was that the contractor issued the late claim in an attempt to force the employer 'to the negotiating table', due to their unwillingness to settle earlier claims. My hesitation turned out to be justified - within days of issuing the claim, the employer issued a notice of its intention to deduct penalties for the substantial delays that had been incurred by that time. I was firmly of the view (at the time) that the contractor should reject the employer's notifications and further escalate the issues into a formal dispute. Yet to my surprise and frustration, the contractor's general manager, an Arab national with decades of experience in the GCC, immediately *retracted* the claim submission. With hindsight, I recognise that his decision might have been well considered in its particular context – the penalties were never levied, and my client did eventually reach a settlement, and continued to work with the employer on other projects.

Finally, contractors tend to believe, on the basis of their experiences with previous projects, that ‘senior management’ will eventually do a ‘deal’ (i.e. come to an amicable settlement of claims through negotiation). Such ‘deals’ are typically struck in one of three ways: The contractor receives (i) an extension of time and relief from delay damages, but without payment for claimed costs; (ii) an extension of time plus a promise to look favourably on the contractor for future contracts, or (iii) if the contractor has a particularly strong position, an extension of time and award of payment that is typically substantially less than the sums claimed during the project. Claims are resolved through negotiation because of the tendency in the GCC for consultants to avoid making reasoned claim determinations during the project. This reluctance often reflects the poor quality of claim submissions from contractors, but contractors commonly perceive absent decisions on claims as evidence of influence from the employer on the consultant. The following journal entries capture my reaction to final settlement meetings, following years of trying to settle claims on a completed project.

The first demonstrates how negatively a settlement can be viewed when considered by the project participants themselves. Here, I had worked on the claim for two years, and was certain it should be settled at a high value. I was shocked when a deal was reached during the meeting, without really discussing the key issues.

*Journal entry: Following the [final settlement] meeting, the contractor’s operations director and the client’s finance director left the room for a private chat. They were gone over an hour. When they finally returned and [the contractor’s team] left, I was advised that the client was now tired of claims negotiating, and wanted to do a deal. What a waste of time the last two years were!*

On the other hand, these kinds of settlements can be viewed more positively by those with less direct involvement in the claim. In the following example, I expressed delight when a deal was cut at the end of a difficult process trying to agree on negative adjustments for variations. However, in this instance, I had not had direct involvement in preparing the case on behalf of the employer.

*Journal entry: I attended a claim negotiation meeting following the ERs determination of credits. The client’s procurement director however got straight*



*to the point on several items, agreeing '50/50' at the amazement of the client's other team members (as they were worried about the budget). A 'deal' was reached at the end, largely on principles but ignoring the science, which worked well to close the issues. The Koreans were reluctant to agree anything, but the procurement director just said 'no, you agree' and carried on to reach a proposed number during the meeting... nobody really had time to argue about it. In the end an agreement was made for most of the items, which was excellent.*

This factor also emerged from my interviews with employers' personnel. They were very open to discuss the tendency for deals to be struck in the settlement of claims. Crucially, the interview participants explained how the prospect of a deal at the end of a project could be a barrier to settling claims during a project. For instance, Peter used the 'coffee' metaphor to emphasise how the expectation of a deal can affect contractors' willingness to engage with the employer's representatives to resolve claims in the manner set out by the construction contract:

*Peter: My feeling was on this particular job there was a huge reluctance by them. I think they fell into the local contractor—who have always done things in the past with shall we say, you know, over a cup of Arabic coffee and a shaking of hands, you know.*

Mahmood also explained that in the case of many projects, the claims are concluded based on a deal struck between executives, and not on the basis of technical or legal analysis. Like Peter, he used the metaphor of such deals being struck over a cup of coffee to illustrate how high-level such deal making can be.

*Mahmood: And there's this coffee table culture here. The coffee table settlement is always there, the contractors know this will all be discussed at the end, because the person dividing by four [i.e. proposing to settle the claim at 25% of its submitted value] will think they secured a good deal. And it happens most of the time, and it's settled on the coffee table. Of course it depends on the client, they all have their own strategies, as some clients have a lot of issues with audit and have internal teams, but others take business considerations and do high level reviews.*

*Alan: Yes, I've seen people threatening to walk off, and even though they didn't have a chance, the client suddenly looked at it differently.*

*Mahmood: Yes, because the key stakeholders are uncertain about the outcome. And that lack of uncertainty leads them to this coffee table scenario, because they want to finalise it. But sometimes the client will see a number so high they cannot resolve it, don't want to go to the coffee table.*

Whilst the employer might instruct specialists for advice on the merits of a claim as the project progresses, to determine the best alternative to a negotiated settlement, this advice is rarely shared with the contractor. Therefore, the tendency to strike 'deals' means that contractors are denied opportunities to experience rigorous testing of their claims by an impartial third party. Both my own experiences, and those of my participants, above, sum up how this can be interpreted – the technical and contractual analyses presented to the consultant via my claim submissions were ultimately perceived to be of little value to the commercial outcome of the project. While this perception may not be fully justified given that the claim will likely provide a broad basis from which the deal is done, it is perhaps the lack of explicit use of the claim within the deal making process that ultimately diminishes its perceived value. Consequently, the expectation of a 'deal' diminishes the perceived importance of timely notices, sufficient evidence, and detailed analysis of claims, feeding back into the cycle of poor administration and practice in future projects.

As indicated in Chapter 2 [Literature Review], recognition of the importance of deal making in diminishing the perceived value of construction claims (or the practical implications associated with this diminished value) does not appear to be considered directly in the current literature on claims management. As I have illustrated above, the implications appear to be that contractors can become less willing to invest resources in preparing claims in the knowledge that a deal will eventually be made, which is a potentially important factor in understanding the problematic claims management behaviour that the current literature attempts to explain based on lack of skills or other operational deficiencies (e.g. Bakhary et al., 2014).

## 9.6 Conclusion

In this chapter I have illustrated how the relative commonality between construction projects, including their contractual and organisational structures, can lead to recurring patterns of behaviour across projects. These recurring patterns of behaviour tended to be cooperative and conciliatory at the earlier stages of the project and significantly more confrontational at the end of the project. This leaves the parties to the contract with significant differences and little understanding of how these problems emerged. This process is illustrated in the empirical model set out in Figure 21, on page 229, at the end of this chapter.

Crucially, the change in behaviour from cooperative to confrontational emerges during the project as a consequence of the accumulation of negative shared experiences amongst the project team, both on the current project, and informed by experiences on previous projects. Practitioners link those shared experiences to socially constructed norms of ‘acceptable’ and ‘unacceptable’ conduct, which change throughout a project. The implications were that the initial cohesive intergroup structure created by the desire to ‘get the job done’ is damaged - and ultimately abandoned – in response to the negative experiences that employer, consultant and contractors share, which leads to a breakdown of trust. In turn, this weakens the social bonds between contractor, employer and consultant cultivated at the start of the project. This is the point at which conflict manifests and becomes a problem.

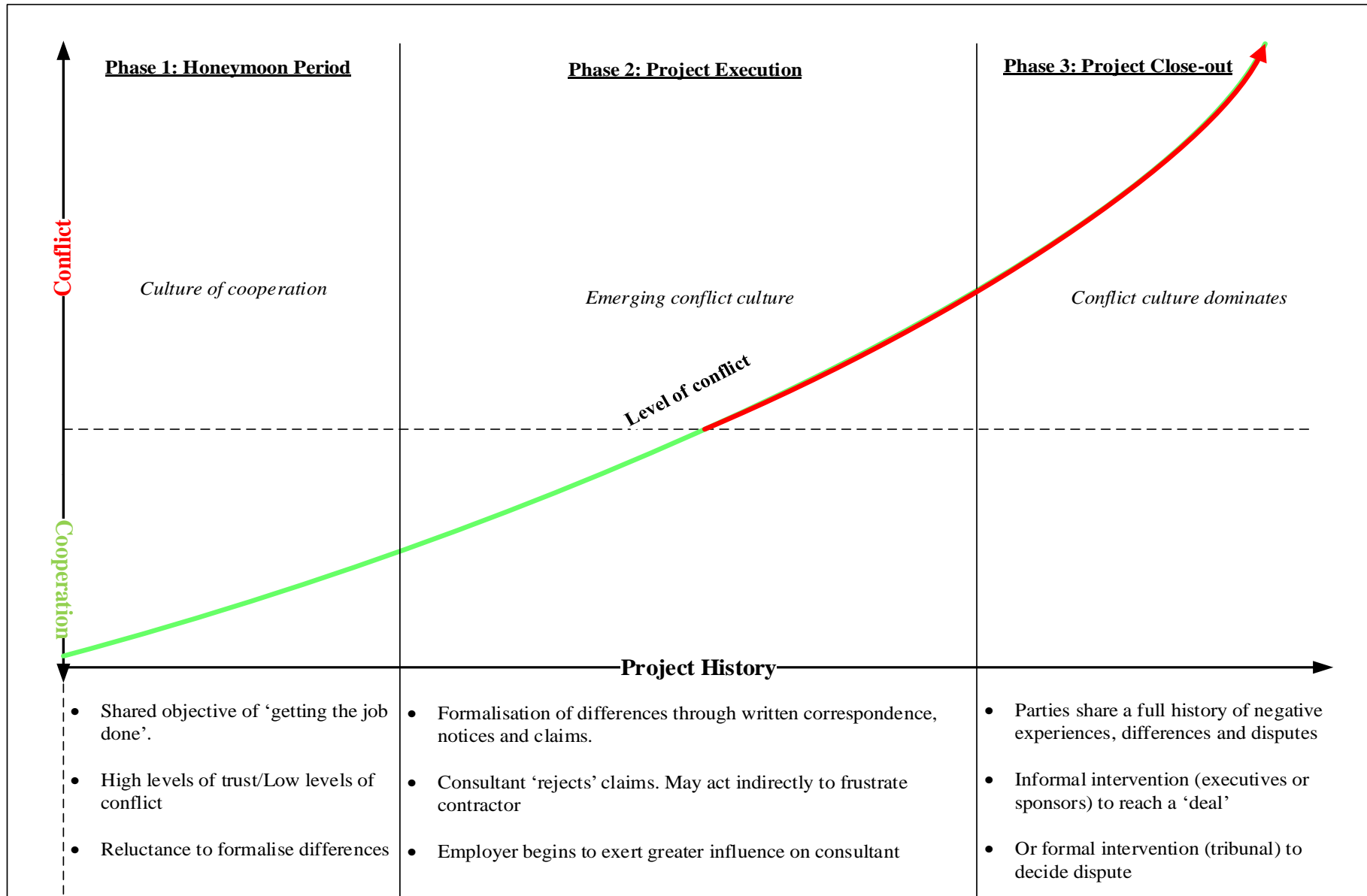
Of particular interest from a sociological perspective is the way in which these recurring patterns of behaviour emerge and evolve during the project as a consequence of the range of positive and negative events that can be identified by examining the history of the project: for example, the change in tone of formal communications; the making or rejection of claims; and the behaviours that practitioners’ impose on each other by creating an implicit link between past events (such as the making of a claim) and current behaviour (such as increasing the rate of rejections of shop drawings or decreasing the rate of approvals of non-conformances). In short, this chapter has demonstrated that claims have symbolic meaning to practitioners, as ‘declarations of war’, and that this meaning becomes more complex and combines with other interests as projects progress.

Consequently, on the basis of the findings presented in this chapter, the ‘claims culture’ in the construction industry cannot be viewed simply as a static or universal concept. It is, in fact a highly dynamic concept and a symptom of a broader ‘conflict culture’ that emerges as the result of the complex social dynamics of a construction project and the shared experiences amongst the project team. These experiences not only relate to the current project, they are also informed by experiences on previous projects. More importantly, an understanding of claims culture in a dynamic frame provides opportunities to predict what actions or behaviours cause escalations of conflict, a potentially useful avenue through which to develop means of avoiding or reducing conflict through early intervention. These implications will be explored further in Chapter 10 [Discussion].

# CONFLICT AND CLAIMS CULTURE IN CONSTRUCTION

Alan Whaley

Figure 1: Empirical model of conflict around claims: Emergence of conflict from construction



## CHAPTER 10 - DISCUSSION

### 10.1 Introduction

In this chapter, I set out the key findings of the research and discuss their implications in four stages. First, I address the research findings in light in the existing claims management literature. Second, I explore the methodological implications of the research, by discussing the opportunities and limitations associated with studying the everyday lives of practitioners using analytic autoethnography. Third, I discuss the theoretical implications of the research. Finally, I identify the key limitations of the current research and explore potential areas of future research, before setting out the key recommendations from the study.

### 10.2 Issues in claims management

The existing literature often attributes the issues surrounding claims management to deficiencies in skills and expertise amongst contractors. For instance, it is often suggested that issues surrounding contractual administration, document control and claims analysis might best be addressed through the implementation of normative process models or better project controls (e.g. Abdul-Malak et al., 2002; Motawa, 2012). Viewed in light of this existing research, there have been a number of potentially interesting observations presented in the preceding Chapters. While the current research was intended to expand existing knowledge from a more sociological perspective, it is useful to briefly discuss some of the key empirical findings of the research, in order that they can be compared and contrasted with the conclusions of previous studies on claims management. I have addressed four of the frequently reported issues within the existing claims management literature in this sub-section. These are:

- 1) The causes of claims in the construction industry.
- 2) Issues surrounding poor record keeping or project controls.

- 3) Lack of skills/knowledge in claims management.
- 4) The reluctance to face conflict around claims.

### *The causes of claims in the construction industry*

The underlying causes of claims in the construction industry have been the subject of significant focus over previous studies. As I illustrated in Chapter 2 (Table 3, pg. 47), the most reported causes of claims are primarily technical or legal issues such as design changes, interpretation of contracts, or deficiencies in contract documents. These are issues that persist today (Arcadis, 2019), and which are unlikely to change soon. Yet while statistical insights are useful in directing us to a problem, they do little to address the situations that lead to claims and the associated factors which cause problematic behaviour around them.

From the research findings presented in this thesis, it appears there are a range of socially constructed factors that may influence the types or frequencies of claims submitted by the contractor. I have shown, for example, that contractors have a choice on whether to submit a claim. The reasons a claim may or may not be submitted are, to a significant part, contextual. The key influencing factors observed in this research consisted of: (i) the stage of the project in which the potential claim event has arisen; (ii) the contractor's perception of the employer's or consultant's organisational or national culture; (iii) the contractors own organisational and national culture and (iv) the level of pre-existing conflict which is present at the time that the potential claim event arises (which I address further below).

This means that existing statistical analyses of the reported causes of claims may overlook important variables grounded in the social nature of construction industry practise. This omission could potentially influence the frequency of reporting for some causes over others. For instance, contractors may more frequently pursue claims based on 'neutral' events (such as unforeseen conditions) over other events for which either the employer or consultant is liable (such as late design information), to increase the prospect of the claim being accepted, or to avoid potential future conflict. Similarly, events which more commonly occur at the earlier stages of a project (such as late design information) could be underemphasised in survey data, because contractors actively seek to avoid claims earlier in a project. These are all observations that illustrate the potential limitations of current quantitative research efforts.

*Poor record keeping or project controls*

As I explained in Chapter 2 of this thesis (Table 4 on pg. 55), a failure by practitioners to keep ‘good’ records (e.g. claim notices, correspondence and progress records) is the most frequently reported claims management issue in the existing literature. Researchers continuously report that good records are critical to the success of claims and that contractors are ‘bad’ at keeping them (Brimmah, 2013; Fenn et al., 1997; Jergeas and Hartman, 1994). This problem is sometimes attributed to deficient systems or project controls, particularly within contractor organisations (e.g. Bakhary et al., 2014).

The potentially interesting implications of the research findings are not only that they confirm that record keeping is a problem in the construction industry, but also that they illustrate its context, underlying causes and potential consequences in practice. In particular, I have illustrated how poor record keeping might be precepted by others based on the quality of claim submissions, and I have identified a range of factors that may influence effort invested in claim related activities such as record keeping. Two such factors explored in the current thesis appear to have been given limited consideration in the existing literature.

First, the findings of this thesis illustrate the chaotic experience of managing a large construction project, where time keeping is made difficult by successions of unplanned events. This is a particular problem in record keeping, where practitioners report the difficulty of collecting records in the face of numerous other responsibilities. Yet few studies consider the practical difficulties of maintaining effective project controls while managing a project, or the tacit processes practitioners adopt to minimise workload or to avoid conflict. While it is implicit in some existing research that adopting a systemised approach to record keeping may save time (e.g. Abdul-Malak and Abdulhai, 2017), existing studies do not fully consider how such systems would be implemented and operated in practice, particularly in relation to ongoing projects. Further, they do not consider how (and perhaps more importantly, why) practitioners tend to manage claims in the way that they do. Given the complexity represented in the research findings, the next challenge in claims process research may be to examine how systems can be integrated into a live project, how those systems can operate within existing business processes and cultures, and the workload and effort needed to implement and operate them. Without this knowledge, practitioners will remain detached from the potential value



of systems-improvements. This emphasises the need for empirical testing to develop the effectiveness of proposed systems in practice.

Second, irrespective of the availability of records, I found that contractors may intentionally limit effort taken to undertake claims related activities such as collecting records or analysing their content. An important finding is that the tension created by the need to fulfil multiple roles and prioritise work by claims managers directly influences the quality of claims management. When the perceived value of claims is lower, relative to other project functions, contractors are more likely to manage claims ineffectively. Similarly, when claims are viewed as controversial and avoided so as to minimise conflict, they are seen to be of lower relative importance than other project functions, and claims management performance suffers as a result. Yet the implication of a reduction in the quality of claims can be that the consultant becomes (or is perceived to become) more adversarial by ‘rejecting’ claims. Significantly, it was found that this cycle of behaviour, a form of manifest conflict, results in more spurious claims, and more conflict.

As I explained in Chapter 7 of this thesis, this situation can occur where the claim is not intended to be substantive in its scope, but rather to signal some other intention, such as the need for more money on a financially distressed project, or to set the starting point for negotiations to reach a ‘deal’. It may also surface where there is a low expectation that preparing a ‘robust’ claim submission will make a meaningful difference to the outcome of a project, particularly in situations where the consultant is expected to ‘red pen’ a claim regardless of its content. It is interesting that this behaviour is considered *plausible* from the perspective of practitioners (Weick, 1995), which may reflect their lived experience on previous projects. It also emphasises the importance of contextually ‘framing’ proposed changes to practice in terms of the subjective priorities to practitioners in each setting (Pondy and Huff, 1988).

In summary, that practitioners attach subjective plausibility to their ‘problematic’ behaviours is a potentially interesting insight from this research. It raises the prospect that construction academics’ attempts to develop normative solutions to practice-based problems may continue to prove ineffective without properly taking into account the socially constructed world of the practitioner.

*Lack of skills/knowledge of claims management*

A third issue commonly reported in the existing literature is that problematic behaviour around claims (such as issuing late notices, keeping poor records, or making spurious claims) can result from skills or knowledge deficiencies, usually on the part of the contractor (e.g. Braimah et al., 2014). The specific nature of this problem in its social context has not been fully addressed in the research I collected for this thesis, however.

In common with existing studies, I found that a perceived lack of skill in contracts or claims management processes was central to practitioners' perspectives around the causes of defective claims and their associated problems. For instance, I found that employers did tend to refer to poor skills or lack of knowledge to explain why contractors do not normally produce credible claims. As this generalisation may influence employers' and consultants' behaviour towards contractors *in general* (Becker, 1963/2008), one implication from this research is that employers or consultants may use poor claim presentation as a reason (or excuse) to 'reject' a claim, or at least delay its settlement. In contrast, contractors generally explained the perceived lack of knowledge as a 'lack of understanding' of contracts and claims amongst their teams. My impression was that this partly related to familiarity with the British contract management style amongst practitioners in the GCC, where both nationality and length of service in the GCC may influence their understanding. The relationship between suitability of training amongst nationalities may be a useful focus of future research in the issues surrounding claims management.

A further finding of this research was that process of striking deals may reduce exposure to reasoned determinations of claims, potentially leading to loss of knowledge for application in future projects. Claims management benefits significantly from knowledge gained in previous projects, particularly where claims management processes or analysis methods have been implemented effectively, or proven successful in the past. The difficulty of knowledge sharing in this way may be because traditionally, construction organisations lack reliable communication systems and methods to gather lessons learned (Kartam, 1996), meaning project participants rely on informal communication to share experience (Senaratne and Sexton, 2011). The transient nature of the industry may also mean that management teams are recruited on a per project basis, breaking the knowledge link with previous projects. Styhre, Josephson, and Knauseder (2004) suggest that

organisational knowledge transfer is driven more by personal contact than by technical and formal systems, which may explain why written communication is so ineffective at capturing knowledge. Yet there is a wider issue here related to whether sufficient provisions can be built into the claims procedures to facilitate the capture and distribution of knowledge.

Arguably, more could be done to recognise knowledge as a means of identifying and recording potential claims events, including integrating the various project departments to capture knowledge useful to claims. The above highlights the potential importance of knowledge (as contrasted to written communication) within effective claims management. However, the value of knowledge seems unrecognised within existing claims management literature, despite its potential importance as a conflict avoidance tool, as demonstrated in this research. With a clearer understanding in this area, knowledge could be exploited more effectively in projects to improve contract compliance and claims analysis, and between projects to develop claims management expertise within organisations.

Finally, unlike much of the existing literature, this thesis has illuminated some of the *tacit* (or informal) skills used by practitioners' when engaging with claims. These are skills associated with predicting the potential future behaviours of others, or controlling one's own behaviour to influence others: for instance, delaying the submission of a claim to avoid conflict. As I have already set out above, many of the behaviours objectively labelled 'problematic' (and which are said to result from lack of skills) may actually be pre-conceived 'plausible' behaviours which reflect organisational or national culture, or the perceived level of pre-existing conflict. The implication is that existing attempts to explain problems in claims management with reference to generalised issues such as 'lack of skill' potentially ignores that observations can be mis-interpreted or simplified in academic study, leading to the oversight of the mechanisms which underly problems around claims.

In summary, the narrow effort of existing research on addressing claims management issues out of its practical context suggests that there remains an appreciable gap in academic understanding of the problems in practice. While this thesis begins to address this gap, there remains the opportunity for future research to expand knowledge on the

social factors the reinforce problematic behaviours in claims management or other applied disciplines.

### *Reluctance to face conflict*

Finally, whilst resistance to conflict has been recognised as a factor that drives contractors to avoid raising claims, existing research appears to largely attribute the problem to traits of national culture (Hassanein and El Nemr, 2008) or the relative bargaining power of the employer versus the contractor under construction contracts (Klee, 2014; Tochaiwat and Chovichien, 2005). This thesis generally confirms these factors, but I have shown that the motivations underpinning conflict resistance are far more complex. To summarise:

- Firstly, practitioners hold a range of perspectives that make them averse to conflict, including the impression that employers and consultants look unfavourably on ‘claims conscious’ contractors, a need to win favours from the consultant, and a belief that prospects of future work will be compromised by overtly contractual behaviour.
- Secondly, the desire to avoid conflict diminishes in response to perceived unreasonable behaviour from the consultant.
- Thirdly, rejections of claims can lead to more conflict, an escalation of the frequency of claims, and a reduction in their quality.

Together, these observations raise conflict from being merely a symptom of claims culture, to one of its driving features. I discuss the mechanisms which underlie the fear of conflict and the role it plays in influencing behaviour around construction claims in fuller detail later in this Chapter.

## **10.3 Studying the everyday lives of claims practitioners**

The purpose of this research was to contribute to knowledge of the conflict surrounding construction contract claims in the construction industry, through an insider-ethnographic investigation of the everyday lives of claims practitioners. In this way, the research represents an ‘ethnography of disputing’ (Barley, 1991) which addresses the historical origin of the social norms which underlies the claims culture in construction; the socially constructed identities of the main stakeholders in claims management and the nature of

their relationships in practice; and the ‘tools’ they used to influence the outcome of the claim (Barley, 1991).

There have been relatively few examples of the application of ethnography to exploring the complex everyday lives of construction claims practitioners. This study is potentially the first that explicitly adopts an insider perspective and autoethnographic methodology to understand group behaviour in the context of construction claims. The world of construction claims represented just one part of the participants’ busy work lives, but it proved to be a major part and an interesting area of focus.

This research also applied established sociological theory of group behaviour in a relevant and practical setting, and gives a potentially unique example of the application of symbolic interactionism theory to claims management practice. Staw (1985) argued that the study of symbolic meaning might have greater predictive power than the study of abstract variables, because symbolism takes account of the reality as perceived by the members of an organisation. This perspective proved useful in understanding group behaviour surrounding claims in terms of the roles (contractor, employer, consultant), settings (the construction site) and props (the claims submissions) that practitioners adopt and make use of as the basis of dialogue between themselves and others (Macionis, 2013). For instance, practitioners were found to hold complex views of other professional groups who participate in the management of claims – which directly influenced their behaviour in practice. Crucially, these behaviours changed dynamically through the project, in response to shared histories of negative and positive events. The implications are that by understanding the sequences of events associated with problematic behaviour, improvements can be made to practice in order to avoid or minimise the conflict surrounding claims in the construction industry.

The research also confirmed many of the broad observations of problematic behaviour surrounding claims reported in the construction management literature (Brimmah, 2013; Fenn et al., 1997; Jergeas and Hartman, 1994). In addition, however, the work provides a sociological depth and context to these problems that do not appear to have been addressed in other construction management research. The findings give an account of claims management practice that is characterised by work on chaotic and complex projects, with highly multi-cultural teams, and an adversarial industry culture. It has been

seen how this mix makes for a tense social context, in which claims hold significant subjective meaning to practitioners, in that they are understood as *symbols of conflict*.

#### **10.4 The meaning of claims**

At its most basic level, symbolic interactionism describes the mechanism underlying human group behaviour. From this perspective, human behaviour reflects the meaning people attribute to situations and objects; and it is this meaning, rather than the situations and objects themselves, that ultimately influences human behaviour on a day-to-day level (Blumer, 1971). Despite the opportunities for understanding human group behaviour from an integrationist perspective, existing studies on claims management have largely ignored how subjective meanings are formed in practice. It is implicit in several existing studies of claims management that conflict acts as a primary demotivator for submitting claims (Hassanein and El Nemr, 2008; Klee, 2014; Tochaiwat and Chovichien, 2005). The primary reason reported in these studies was the fear of ‘upsetting’ the employer, thereby jeopardising future work. It is assumed from these studies that practitioners attach negative meanings to claims through association with the loss of future work. Although this was a factor confirmed in this research, the study provided evidence for two further factors that play a role in forming the meaning associated with claims.

First, practitioners fear the nearer term consequences of damage to the relationships with employer and consultant during the current contract, such as restrictions on working hours or non-approval of material submission. They anticipate that the consultant or employer will view the claim negatively and react accordingly. Second, claims are viewed as a catalyst for longer-term problems, for ‘steering the project down a certain path’, or for causing the parties to posture defensively. Practitioners are acutely aware of the potential escalation of conflict that can arise from claims, and it is this longer-term tit-for-tat escalation (rather than the issues surrounding each specific claim) that practitioners fear most. This research also demonstrated that these concerns do play out in practice through the lifecycle of a project. Hence, it is likely that the negative meaning practitioners attach to claims is borne out of past experiences or ‘social contact’ (Goffman, 1971/2017, pp.69-71) during interactions in previous construction projects.

The observations so far suggest the negative meaning surrounding claims derives from shared histories, or ‘collective memory’ (Halbwachs, 1925), of construction industry

participants, which continually reinforce long-held industry views around claims, which are perceived in a deeply negative way. The reflections I provided on my own career development, and particularly the changes in my perception of the construction industry as a result of working in claims, also contribute to the current understanding of how practitioners form the world views which guide their day to day actions. I explained in this thesis how my desire to climb the social hierarchy of the construction industry was a key factor that led me to work in claims. As Cooley (1922) theorised, my conception of 'me' was influenced by my perception of how I appeared to others. I felt that I was at the 'bottom of the ladder' in terms of how people perceived me, and that claims work offered a change, to hold a title of prestige as viewed from others in the industry and a chance to gain more job satisfaction. However, as my career developed, my experience in claims work led me to become more 'cynical' about the industry. I began to see the employer and consultant as the enemy as the result of negative experiences I had with them in issues surrounding claims, which in turn affected my behaviour on future projects. These perceptions were likely rooted in my long experience working for contractor organisations. Becker (1963/2008) illustrated how the internalisation of lived experience can lead to an evolution of worldview, and this was a process that can be observed through my own career. Through years of adverse experiences and emotions while working as a claims consultant, I evolved a more partisan perspective that informed the way I interpreted and acted in response to events while at work.

These findings may also point to a potentially troubling tendency for claims (which are symptomatic of the problems within the construction industry) to be associated with positive aspects of work, potentially diverting capable workers away from more applied professions, such as project management. The extent to which 'prestige' or job satisfaction associated with claims distracts practitioners away from productive work may also be an interesting area of future research.

In summary, these findings demonstrate how the shared negative meaning surrounding claims in the construction industry is borne out of shared experiences of conflict on prior projects amongst participants. For this reason, interventions in the problematic behaviour surrounding claims in the construction industry may need to begin with addressing the histories of practitioners and the reasons for their firmly-held views. Claims management research should stop blaming procedures and processes as the root of problematic

behaviour, and begin to acknowledge the factors present in the historic-sociological framework that underpins the construction industry, such as the standard adversarial contracting systems and conflicting interests of certifiers. These issues are discussed in more detail later in this chapter.

## **10.5 Socially constructed generalisations in construction claims**

Symbolic interactionist theory predicts that human group behaviour is influenced by the socially constructed generalisations we use to represent defined groups within society (Da Silva, 2007). As Rosenthal and Jacobson (1968) and Daniels (1970) illustrated, labelling by other groups can directly influence the behaviour of the labelled group. I have addressed the influence of three forms of cultural generalisation in this thesis. These generalisations relate to perceived cultures of professional roles, of organisations and of nationalities. It is important to emphasise here that I have not looked to find behaviours intrinsic to these cultural forms, but rather I have looked to identify the influences that these generalisations have on the ways practitioners behave in practice.

### ***Professional culture***

In the construction industry, there is a great deal of commonality between project structures which arises from the rigid organisational structures imposed by standard form contracts (Hughes et al., 2007). This is what Maines (1991, p.129) described as ‘the enduring, “given” aspects or conditions within a situation’; the aspects of which will remain basically “in place” and predictable for prolonged periods of time. This research adopted this perspective in examining, initially, how members of employer, consultant and contractor organisations define themselves and each other.

There were both similarities and differences in the perceptions of practitioner group members. All participants reported negative feelings around claims, but these feelings were borne from different sources. All groups professed to be decent and reasonable people, and all groups felt themselves to be victims in the construction process. Each group also reported negative feelings surrounding construction claims, but the specific sources of negative thought arose from different generalisations. For instance, employers viewed the consultant and the contractor as causing similar problems through their lack of understanding of the employer’s organisational needs. On the other hand, contractors



viewed employers as ignorant and unsophisticated, and viewed consultants as untrustworthy and responsible for many of the problems faced at site. These findings are important because they provide a context within which to understand observed behaviour in practice.

It is not surprising, then, that the roles commonly imposed by construction contracts (contractor, employer and consultant) tend to be used by practitioners as the basis of socially developed conceptions (stereotypes) of how different practitioner groups may act. The construction industry's models of contract management represent the social structures in which practitioners operate. For this reason, construction practitioners predict the behaviour of their peers based on generalised conceptions of each other. They adopt commonly held (but widely nuanced) impressions of 'a' consultant, 'a' contractor or 'an' employer and so on. This is an important finding, because it suggests that the structure of the industry and construction contracts comprising these defined roles may explain (at least partly) how divergent perceptions of roles develop and ultimately influence behaviour. For example, in studies of work, employees' perceptions of the fairness of their organisations' decision-making process have been shown to influence behaviour and productivity (Greenberg, 1988). It may follow that modifying the definition and organisation of roles imposed on construction projects may result in changes to socially developed conceptions of other practitioners and, potentially, influence patterns of behaviour. Further research is needed to confirm this hypothesis.

Franks (2003) argued that divisive attitudes between the main construction professions (consultants, contractors and employers) are a principal cause of conflict in the construction industry. The reflections and observations on my own career represented in this thesis suggest that personal studies on the internalised identities practitioners develop for themselves may be a fruitful way to explore why particular individuals exhibit problematic behaviour or, perhaps more importantly, why individuals belonging to similar professional groups exhibit similar behaviours. I have presented in this thesis an account of how my own perspective in industry developed; for a time, my perspective became characterised by mistrust of employers and consultants, based on my experiences of working for or representing contractors. These observations add weight to the theory that group behaviour is closely linked with the extent to which group members share common, experiences in upbringing, education, training and so on (Drucker, 1974).

From this perspective, one factor that may work to correct the generalisations held by construction industry practitioners towards one another is the ‘mixing up’ of professional backgrounds within roles. Triplett (1993, p. 545) supports this view:

*If stereotypes of deviants shape the audience's reaction to behaviour, then those actors who fit the particular stereotype most closely are more likely to be labelled than those who do not fit the stereotype.*

This way of interpreting group definitions leads to several predictions about how problematic behaviour may be minimised by appropriate selection and placement of staff in projects. For instance, a consultant representative of the employer, who is known to possess a background within a contracting organisation, may be assumed by a contractor to understand and empathise with their predicaments, potentially increasing perceptions of fairness and reducing conflict. On the other hand, a practitioner with a contractor background may, for the same reason, be less likely to find employment within employer or consultant organisations. The employer or consultant may label such an individual in a negative light, based on their negative views of contractors in general, discouraging employment and diversity of experience in the industry. Further research is needed to test these predictions and their implications, but there appears to be real potential to influence project outcomes through diversifying lived experience amongst the project team. Consequently, there appears to be value in examining the career development of practitioner groups, to gain a deeper understanding of their perspectives and how problematic behaviour emerges in their practice.

### *Organisational culture*

The research also identified some of the ways in which practitioners use organisational cultures symbolically, to predict the behaviours of others and to inform their own behaviour. This is a potentially important area of research given the reported correlation between cooperative project cultures and project success (Arditi et al, 2017). Specifically, this thesis has addressed how *perceptions* of *other* organisational cultures might play a role in problematic behaviour around claims.

In general, I found that practitioners tended to associate more sophisticated organisations with reduced levels of conflict, and less sophisticated organisations with increased levels of conflict. A GCC contractor may view an airport authority as both a ‘sophisticated

client' and one which is less likely to act aversively in response to claims, for instance. Similarly, a GCC employer may view a 'local' contractor as less sophisticated and lacking in knowledge; it would (therefore) be more likely to submit spurious or inflated claims from the employer's perspective. However, I also found that a primary qualifying factor, which informs a practitioner's perspective of a *particular* organisation, is the degree to which power is centralised or de-centralised within the organisation. For instance, an employer may view an international contractor as less likely to compromise over a disputed claim due to the influence of offshore owners. Similarly, a consultant may expect an employer backed by a single local investor to be more likely to interfere with the day to day running of the site, particularly in respect of claims.

These observations point to an interesting area for future research, which examines how organisational culture is used by members of *other organisations* to inform their actions at the project level. While construction organisations tend to invest resources into marketing their services to potential clients, there is potentially value in exploring how measures to shape the perception of other construction project stakeholders towards an organisation might influence the way they act and react, particularly around conflict-causing events such as claims.

### *National culture*

In addition to addressing professional culture and organisational culture, the research has also identified some of the ways in which practitioners use national culture to inform their actions around construction claims. At the general level, I found that practitioners regularly called upon popular national culture stereotypes to make sense of their frustration around poor claims management practice in the GCC (e.g. Brits place a high value on time keeping (Hall, 1973), Arabs are more relaxed with uncertainty (Loosemore and Muslmani, 1999), and so on). They also called upon these stereotypes in conceiving plausible lines of actions towards different practitioner groups (e.g. Asians are easily offended, which might make a contractual notice more impactful; Arabs would rather do a deal than look into details, and so on). I also described how practitioners use these perceptions to gauge the 'localness' of an organisation, a concept closely related to its level of organisational sophistication and its degrees of power-centralisation (which I have addressed above).

Whether the observations I have presented above are objectively ‘correct’ is less important than the fact that they are plausible in the eyes of practitioners, and therefore meaningfully influence practice. This plausibility exists because practitioners’ perspectives on cultural forms reflect their past (personal) experience and the shared (collective) experience they hold with their peers. In turn, this plausibility is maintained because of its apparent usefulness to rationalise present experiences and to inform future lines of behaviour (Weick, 1995). While I have tentatively explored three cultural forms which practitioners use to inform their day to day practice, there appears to opportunity for future research to more fully explore their implications and to potentially identify many more.

## 10.6 Revisiting claims culture

Rooke et al.’s (2003) taxonomy of claims culture recognised that the ways in which contractors approach claims can vary. Attitudes towards claims were recognised as either ‘distributive’ (i.e. focused on the distribution of scarce resources) or ‘integrative’ (i.e. focused on negotiating mutually advantageous outcomes). Further, the nature of control exerted on the construction project were defined in terms of the ‘economic order’ (i.e. control over economic resources) or of the ‘occupational order’ (i.e. control over project functions by professional groups).

This framework proves effective for explaining a range of behaviours observed in the current research. We have observed ‘classic’ distributive economic attitudes, seen in employers’ insistence that contractors should simply follow strict contract terms, or contractors’ views that employers want ‘something for nothing’, for example. We have observed conservative integrative economic attitudes, such as contractors’ reluctance to make claims at different stages of the project, for fear of adversely affecting relationships, which might in turn compromise profit longer term from the contractor’s point of view. We have also potentially seen distributive attitudes to the *occupational* order, reflected in contractors’ perceptions that consultants tend to be biased, or that employers tend to be unsophisticated, for instance.

However, the current research also suggests that the ways in which claims are approached not only vary amongst individuals, but also vary as a consequence of the evolving social reality of construction projects. More integrative attitudes and pragmatic management

styles were found to exist most prominently during the 'Honeymoon' period at the beginning of projects, as a consequence of contractors' desire to foster cooperation with the consultant. Distributive attitudes and more commercial management styles were found to emerge more often during projects, because of adverse incidents and rejections of claims by the consultant. These rejections are perceived to be attempts to avoid liability for design deficiencies or administrative delays, or assumed to be driven by policy rather than merit.

Rooke et al. (2004) witnessed British contractors tactically planning for claims, but that is not a practice I observed in the GCC. I found GCC contractors working chaotically in an attempt to mitigate problems and keep to programme, without the time (or inclination) to conceive complex strategies for making future claims; contractors were reactive, not proactive. Rooke et al. (2004) further suggested that claims culture is principally driven by the economic structure of the construction industry. This research supports that view in showing how shifts in practitioners' attitudes emerge from patterns of adversarial interaction made common by GCC construction contracts, such as the need to make claims and have them determined by the consultant.

It is to Rooke et al.'s (2004) credit that they unpacked and began to identify the factors that motivate the behaviours that typify claims culture. But they did not present a complete picture of practice and for that reason did not fully explain the social factors or events that result in a claims culture. In short, construction management research needs to deal with the issue and complexity of culture. In common with Rooke et al. (2004), the current research has shown that culture is an observable collection of behaviours and perspectives that lead to common or recurring behaviours. Researchers may need to try harder to develop an understanding of the relationship between collective social values and the individual, rather than ignoring culture as an abstract concept.

## **10.7 The development of conflict within construction projects**

Chapter 9 of this thesis set out my findings on the development of conflict around claims. I presented an empirical model of the process whereby conflict plays out around construction claims at the end of Chapter 9 (Figure 21, p. 229). The findings set out in this thesis illustrate the development of conflict surrounding claims through three phases

of behaviour that together constitute the full range of claim culture on a construction project.

- First, there is the ‘Honeymoon’ period, characterised by amicable patterns of behaviour and active attempts to avoid conflict and sustain the relative effectiveness of the relationship between contractor and consultant, or contractor and employer. Contractors tended to avoid claims early in a project, based on the expectation that raising claims would be treated negatively by the consultant and the employer. They tended to adhere to the tacit and contractual authority held by the consultant on behalf of the employer, and it is in these situations that conflict was largely avoided.
  
- Second, there is the ‘Project Execution’ period, which is a transitional phase of behaviour where both parties display both adversarial and cooperative tendencies, depending on the particular issue being faced. The issues around which conflict arises are often associated with claims at a superficial level but are in fact more directly aligned with experiences of behaviour deemed to be untrustworthy or adversarial in itself. This pattern of behaviour can continue throughout the lifecycle of a project, enough to avoid outright disputes, but nevertheless encouraging the onset of a claims culture. However, it is in this transitional phase that changes to practice at a project level may have the most significant benefits in avoiding the confrontational phase later on. As the consultant was seen to act against the contractor’s interests as work progressed, the contractor’s motivation to avoid conflict diminished. One aspect of this reduced pressure to avoid conflict was that claim submissions became more acceptable from the contractor’s perspective. Negative reactions to claims from the consultant then resulted in a further deterioration of trust and a corresponding reduction in the contractor’s aversion to conflict, leading to *more claims and more conflict*.
  
- Third, there is the ‘Project Close-out’ phase, a confrontational phase of behaviour, where the relationships have become dysfunctional and all parties actively seek to protect their interests while exploiting the other. Ultimately, the tendency for GCC contracting parties to strike ‘deals’ with respect to claims, rather than have them determined in accordance with the contract, was found to dilute the perceived

value of robust claims management from the perspective of contractors, feeding back to reaffirm the cycle of adversarial behaviour on future projects.

From these perspectives, this thesis has presented a dynamic theory of conflict and claims culture that elaborates the dialectic between the social and the individual levels of practice. At the social level environmental conditions and shared histories lead to common patterns of behaviour, which are themselves the result of a cultural tool kit collected and used by claims practitioners to make their way through the world of claims in the GCC.

### *Conflict culture viewed from the conflict-process theory perspective*

This empirical model shares many similarities with the stages of group conflict in the theoretical conflict-process model, that is, (i) pre-existing conditions; (ii) personal experience; (iii) manifest behaviour, and; (iv) post-conflict experience (Pondy, 1967; Robbins, 2018). In the first instance, the contractual structures common in the construction industry act as *pre-existing conditions* by creating the potential for conflict. The inherently adversarial contracting structures imposed on practitioners (through custom) are based on competitive economic principles, where the contractor must make 'claims' for money and the consultant, who is both paid by the employer and expected to act independently in reviewing and certifying claims, must manoeuvre through its conflicted position. This structure leads to a perceived potential for conflict right from the start of any project. Although there is potential for conflict due to these pre-existing conditions, conflict has not yet manifested in problematic behaviour. In the empirical model presented in Chapter 9, I termed this stage the 'Honeymoon' period.

Secondly, events occur that are perceived to be unfair or unreasonable by the parties, leading to personal experience of conflict, such as rejection of claims or obstructive behaviour. This research has shown that these experiences lead to feelings that motivate revenge and restitution through claims, which can manifest in problematic conflict-prone behaviour in the third theoretical stage of conflict. When such behaviour emerges, it is adversarial and uncooperative, a situation that is fuelled by the shared project history of negative personal experience. In the empirical model I presented in Chapter 9, these two stages were part of the 'Project Execution' and 'Project Close-out'. This period

commences with the accumulation of negative personal experience, and ends with manifest conflict.

Finally, the post-conflict situation emerges, when ‘deals’ are struck, or potentially, when more formal dispute resolution procedures are involved. In the model presented in Chapter 9, this stage would fall at the end of ‘Project Close-out’.

However, the theoretical conflict process model alone is limited in its potential to identify the mechanisms that underly conflictual behaviour for three reasons. First, the theoretical model of conflict does not sufficiently explain why parties actively seek to avoid conflict at the earlier stage of projects, despite various *pre-existing conditions* that may stimulate conflict, such as the contractual roles and structures imposed on the parties. In fact, for a time, these *pre-existing conditions* actually motivate practitioners to avoid conflict, based on experience with later stages of the conflict process gained in previous construction projects. This suggests that sharing experiences of the potentially destructive nature of conflict with practitioner groups through storytelling may be an effective way to minimise the prospect of manifest conflict-prone behaviour to develop (Nugent and Flynn, 2020). Second, the theoretical conflict process model is fundamentally descriptive. It does not elaborate on the mechanisms through which problematic behaviour emerges in practice, or otherwise. Third, the theoretical model of conflict does not, in itself, assist in identifying those specific situations that affect construction projects and cause conflict-prone behaviour to emerge. A practically useful explanation for this transformation in behaviour can only really be gained by a careful analysis of observed social context and an understanding of practitioners’ personal perspectives on the situation.

### *Conflict culture viewed from the sensemaking perspective*

The process by which conflict emerges around construction contract claims can be analysed profitably within a sensemaking perspective. As I explained in Chapter 3, the theory of sensemaking attempts to describe the interpretive process adopted by organisational groups to conceive and implement actions: It consists of (i) some form of environmental change; (ii) an interpretation of the change; (iii) the selection of the appropriate course of action, and; (iv) the retention of the idea conceived from the action within the organisation’s memory and culture (Weick et al., 2005).



I have set out in this thesis an account of the common events or experiences during construction projects from which an adversarial conflict culture emerges (delays, design changes, claims, rejections and indirect actions). Each of these events are environmental changes which create stress and uncertainty within the respective party relationships, and which act as cues or triggers for the sensemaking process to begin (Mandler, 1982; Weick, 1995, 2009). This is a process of rationalisation where each aggrieved party tailors their reaction to the event based on predictions of future outcomes (e.g. reduced cashflow, obstructive behaviour, more stress, perceived failure, or reduced prospects of future work). These predicted outcomes emerge within each practitioner's overall formal and interpretive framework operating at a given time (Schön, 1983). These formal and interpretive frameworks may consist of any number of competing concepts. The formal interpretive framework is primarily represented by the rules and procedures of the construction contract, but these rules and procedures are sometimes vague and rely, in any event, on a degree of interpretation. The interpretive framework consists of a range of subjective concepts such as perceptions of national culture, professional occupation, impressions of the characteristics of the other parties' organisation, and the retrospectively perceived outcome of previous comparable events. Importantly, sensemaking theory predicts that the interpretations of each adverse event are geared towards plausibility.

Hence, future action is conceived as plausible (reasonable) action *in the circumstances*. Where the emotional experiences of practitioners are taken into account (such as feelings of injustice, unfair treatment and the need for restitution), a breakdown emerges between the formal and subjective concepts of reasonable or normal behaviour. In the first instance, each practitioner understands that conventional social norms are traditionally defined by non-adversarial behaviour. But for each adverse event, these conventional behaviours become to appear less plausible. In turn, practitioners guide their subsequent actions based on new notions of plausibility, which are tailored to suit their current perspective on the situation. If not curtailed, this ongoing process can build into a cycle of conflict, with each overlapping conflict episode sustaining an ongoing and negative sensemaking process that reinforces further adversarial behaviour (Lamertz et al., 2003).

Given its ability to break down organisational behaviour in abstract terms, it seems that the sensemaking concept can be usefully deployed to understand the origins of adversarial

behaviour as it emerges from claims in the construction industry. To illustrate this, I have reconceptualised the sensemaking process to explain the emergence of conflict around construction claims in Figure 22, below.

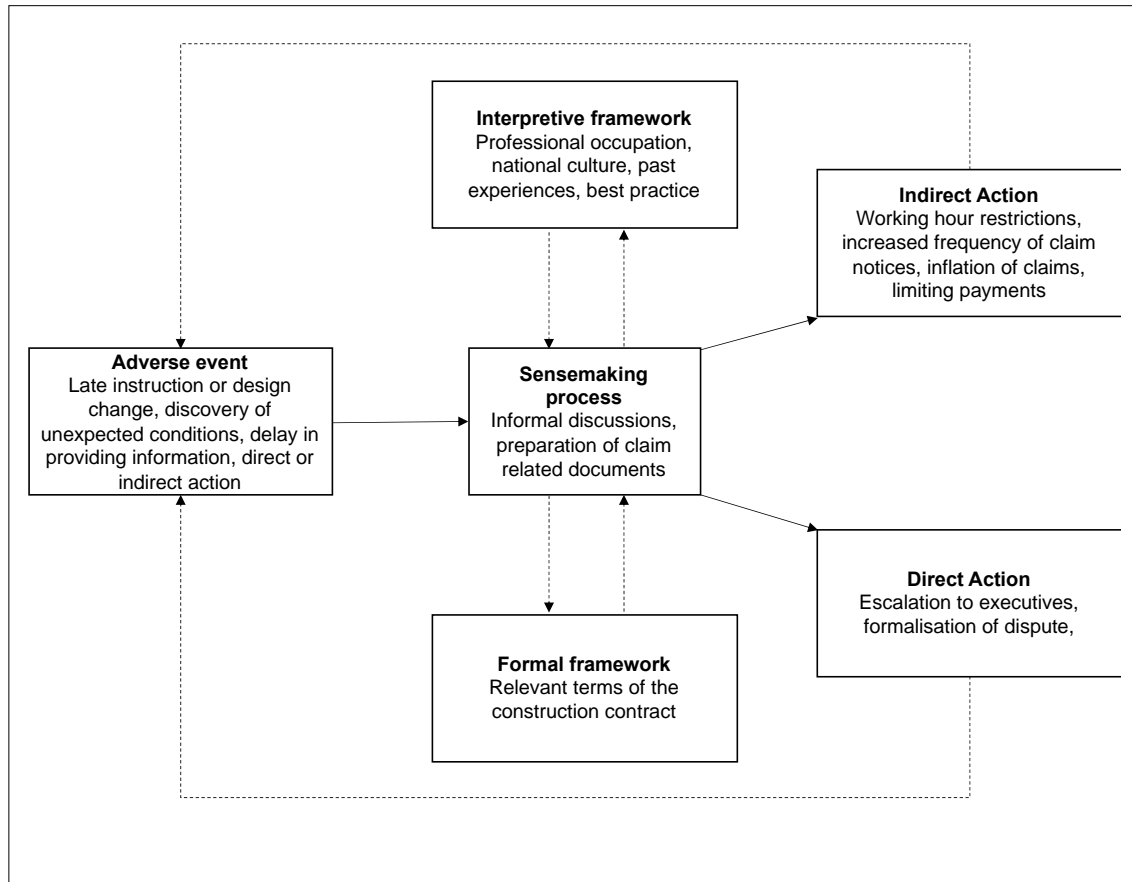


Figure 22: Sensemaking in the emergence of conflict and claim culture: adapted from Weick (1995, 2009)

As shown above, the sensemaking process recognises the various components of the emergence of conflict in a broadly interactionist frame. From this perspective, the following example is useful to illustrate how sensemaking can be applied to understand the emergence of conflict within construction claims.

In this example, a legitimate (but late) design change causes a delay to the progress of work at site. In the first instance of the design change, a contractor may informally explore the situation with the consultant and employer through verbal discussions or other informal dialogue. If the employer and consultant confirm acceptance of the change and indicate their willingness to compensate the contractor for the delay, then there is a mildly positive environmental change and the sensemaking process reinforces notions of socially acceptable cooperative behaviour. As a result, the contractor tends to react in a non-

adversarial way in dealing with the situation. However, as I have illustrated in this thesis, such non-confrontational behaviour occurs relatively rarely within practice. More commonly, the design change is met by perceived rejection or evasiveness by the consultant and/or the employer. If that is the case, the existing relationships between the parties, which are themselves formed on shared experiences of the project history, become stressed (or more stressed) and a negative environmental change occurs. In turn, the contractor is forced to reconceptualise the situation and its subsequent actions. Typically, in a construction project setting, this re-conceptualisation is guided by the rules imposed by the construction contract, which results in a formalisation of the situation through written correspondence between the respective parties. These claim related documents (the claim notices, the claim submission, the claim response, and the associated correspondence) can be viewed as “sensemaking texts” (Brown et al., 2015), where the process of “writing up” the claim documents rationalises each party's experiences into a coherent (but not necessarily objective) account of the event. These accounts invariably differ between each party as they reconstruct the “truth” in different ways based on their subjective experiences conceptualised in differing interpretive frames.

Importantly, as a sensemaking process, these rationalised experiences can shape the future direction of behaviour (Weick, 1995). Therefore, where conflict over the delay claim emerges in a formal forum, each party becomes increasingly divergent in their perspectives and begin to take indirect actions (such as more rigidly imposing working hours, limiting payments on account, or increasing the frequency of claim notices), which in each case provides further triggers and cues for negative sensemaking and resulting conflict. It is the ability of sensemaking theory to explain the stages of conflict around claims (or any form of organisational behaviour) that gives it a potentially practical relevance that has yet to be explored in construction management research.

The interpretation of conflict and claim culture presented above may be useful, for example, as a skeleton around which to draft collaborative contract terms that avoid the issues that constitute environmental changes which trigger a negative sensemaking process. Processes could be developed to control expectations and to emphasise particular courses of action as more plausible than others, through the use of incentivisation or performance scoring that recognises styles of behaviour (in addition to the more

quantitative metrics commonly used to assess performance). It may also provide a useful basis to identify the various components of the basic *causes* of conflict in construction (such as the adverse events or behaviours (addressed below) within an overarching project delivery strategy, so that they may be better avoided and managed to minimise the development of problematic behaviour. Indeed, many of the features of the NEC3/4 collaborative forms appear to be effective from a sensemaking perspective. The contracts' more formulaic claims management process is likely to make less conflictual behaviour appear more plausible if the processes are properly implemented, for instance. On the other hand, the contracts may not be able to influence how practitioners perceive acts which fall outside of the contractual framework, such as the belief that the consultant is unfair or under the control of the employer. The effectiveness of both existing and new contractual processes in avoiding conflict is an area that warrants future theoretical and empirical research.

### *Conflict culture viewed from the social control theory perspective*

Reckless (1961) and Hirschi (1969) recognised the limiting influence of meaning on human behaviour in the social control theory. In this theory, the extent to which we are compelled to commit deviant acts is aligned with the extent to which our 'inner' and 'outer' controls sensitise us to the social rules of the group (or institutions) to which we belong. As Hirschi (1969, pg. 16) put it: 'The more weakened the groups to which [the individual] belongs, the less he depends on them, the more he consequently depends on himself and recognises no other rules of conduct than what are founded on his private interests.' However, the findings of the research reveal some potential limitations of the social control theory to explain the observed behaviours in claims management.

First, the concept of 'deviance' in social control theory is overly-narrow. The social control theory mainly associates 'deviance' as a departure from conventional rules and standards (i.e., breaking the law). It does not explicitly account for the often differing perspectives of opposing groups toward a so-called 'deviant' act, which may vary between sub-group cultures (Becker, 1963/2008). In this research, we have seen how different professional groups look towards each other's acts in different ways. An inflated claim might be considered problematic or 'deviant' in the employer's perspective, but the same claim might be viewed as a rational response to the consultant's unreasonable behaviour in the contractor's perspective. An objective outsider may classify many of the

behaviours documented in this thesis as ‘deviant’, in the sense that they depart from normative concepts of ‘best practice’, but those same acts may be viewed by an insider as reasonable relative to perspective and context.

Second, social control theory over-simplifies the role of institutional attachment in human behaviour. The social control theory attributes deviant behaviour primarily to detachment from social institutions such as ‘family, ‘work’ or ‘the church’ (Arneklev et al., 1993), where membership of such institutions is predicted to increase self-control, while detachment from institutions may reduce self-control. The focus is on why people *do not* commit deviant acts, rather than why they do. In the case of claims management, formal rules around conforming behaviour are prescribed by the construction contract and the project’s operation manuals, thus detachment from these rules should be a key factor in deviance from a social-control theory perspective. There was evidence in this research that practitioners placed value on maintaining orderly relationships with the outcome of the project in mind, particularly near the start of projects. However, that behaviour may equally be an example of a conservative integrative attitude to the economic order, which ultimately places the contractor’s interests before the project’s (Rooke et al., 2003). We have also seen how so-called deviant behaviour emerges from subjective experience over time, moderated by factors such as professional group sub-culture and economic need. Claims practitioners view their behaviour as plausible on the basis of past experiences and their perceptions of current interactions (inflating a claim because it is going to get ‘red-penned’ by the consultant is a rational course of action for the contractor, for instance). Therefore, this research suggests that the influence of the project’s formal rules on behaviour is variable, because the effective, social rules which influence behaviour are largely self-created by practitioners and modified over time (Strauss et al., 1963).

Third, social control theory appears inadequate to explain behaviour after the point that ‘deviance’ has become the norm, such as in the case of a failing construction project. If attachment to normative institutions is a key factor in encouraging conformance, then that factor appears less important when detachment has already occurred. Accordingly, social control theory appears less suitable for explaining the causes of deviance in contextual or cultural terms, particularly in settings where deviant behaviour has already become normalised, which has been the aim of this research.

Therefore, for the purpose of discussing the findings of this research, I have extended the social control theory from its focus on criminal deviance, and I have broadened its scope to encompass the general factors that both influence and discourage ‘deviant’ behaviour in practice.

Applied in this way, the theory provides a useful framework within which to identify factors that may dynamically influence behaviour in claims management. Deviant behaviour can be traced to those factors that motivate people to deviate from or conform to social norms of acceptable behaviour. In the construction industry, the norms of socially acceptable behaviour that are relevant to this research relate to cooperation and the ability to minimise conflict and avoid disputes. The findings presented in this thesis provide several clues as to what the principal conformance and deviance factors might be. I have summarised within Table 11, below, the principal conformance and deviance observed in this study.

*Table 11: Conformance and deviance factors in construction conflict*

Conformance factors	Deviance factors
<ul style="list-style-type: none"> <li>• Autonomy of consultant</li> <li>• Flexibility of control</li> <li>• Sophistication of employer/contractor</li> <li>• Higher profit margins</li> <li>• High knowledge levels</li> <li>• Positive experience of previous projects</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of autonomy of consultant</li> <li>• Rigidity of control</li> <li>• Unsophistication or perceived ‘localness’ of employer/contractor</li> <li>• Cost overruns</li> <li>• Low knowledge levels</li> <li>• Negative experience of previous projects</li> </ul>

Taking these factors in turn:

This research has found that consultants with a lower level of autonomy attract greater suspicion from contractors. Similarly, consultants who exert a more rigid level of control are perceived to be ‘unreasonable’. These factors may lead to reduced levels of perceived trust between contractor, consultant and employer, increasing the likelihood of conflict

(Kadefors, 2004). For example, previous research indicates that there is a relationship between contractors' perceptions of fairness in consultants when reviewing claims and the level of conflict exhibited in contractors' behaviour (Kadefors, 2004; Spittler and Jentzen, 1992). These studies found that where fairness is perceived to be lacking in the claim review process, contractors tended to act in a more adversarial manner towards the consultant. In the same way that Holdsworth and Morgan (2007) reported that home leavers frequently referred to the perceived judgements of others as influencing their decision to leave home, contractors take into consideration the judgements of the employer towards claims as an initial factor that inhibits claims management.

The perceived sophistication of contracting parties was related to the expectation of conflict around claims. On the one hand, the more sophisticated the party was perceived, the less likely it was that conflict was anticipated to emerge around claims. This may decrease the prospect of a specific person (say, the lead consultant on a smaller project) 'losing face' (McManamy, 1994). On the other hand, those parties perceived as more unsophisticated (or as practitioners put it, as more 'local') were associated with higher levels of conflict-prone behaviour. The 'localness' aspect of organisations adds weight to Tochaiwat and Chovichien's (2005) observations that 'Eastern' cultural traditions lead to more reluctance to create conflict through raising claims.

I also found evidence that margin pressure was a deviance factor, primarily in cases of extreme cost overruns, when contractors are most willing to submit claims. This corresponds with the view that higher margins in the industry lead to fewer disputes (Fenn et al., 1997; Jergeas and Hartman, 1994). However, the research presented in this thesis shows the importance of considering a range of factors, both social and economic, for understanding the issues underlying problematic behaviour. Practitioners also associated low levels of knowledge of disciplines such as contract management and delay analysis with poorer adherence to established good practice in claims management. Existing research has shown that poorly prepared claims increase the likelihood of conflict and disputes (Aloini et al., 2012; Klee, 2014).

Finally, underlying all of the previous factors are the negative shared histories practitioners have of claims in previous projects. These prior experiences reinforce the collective memory (Halbwachs, 1925) within and amongst practitioner groups, which directly associates claims with conflict, and conflict with problematic behaviour. Schein's

model of organisational culture works on the basis that our actions are linked to values held by members of the organisation. In turn, these values shape practices and behaviour, and can be influenced as a means of avoiding or minimising problematic behaviour (Schein, 1992). This research has provided an insight into the collective memory of claims practitioners which is the basis of the values which they hold, a factor which is demonstrated as being likely to affect general patterns of behaviour irrespective of the more specific situations already discussed above.

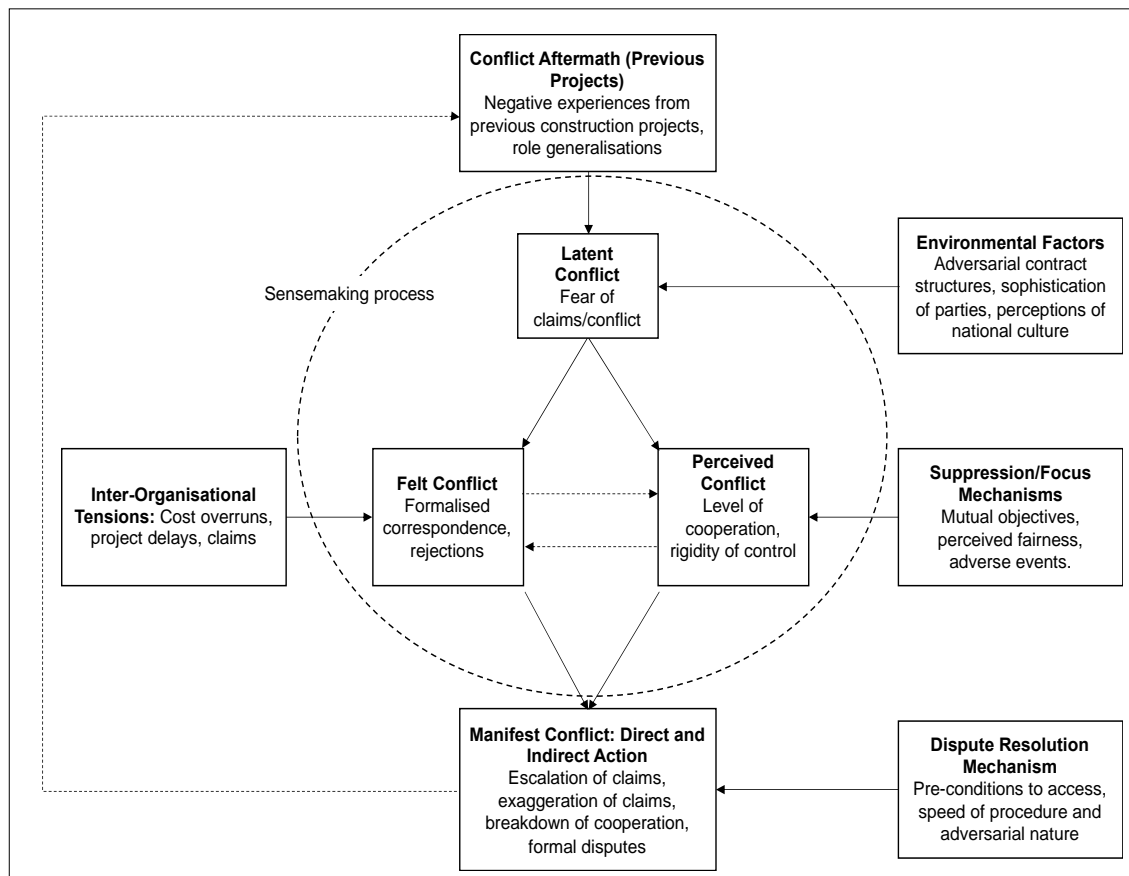
*A model of the conflict process in the construction industry*

There is much to be gained from identifying the mechanisms through which perceived conflict manifests and becomes problematic. The opportunity to identify situations with a high risk of conflict, before conflict manifests itself, may prove a fruitful way to minimise the frequently problematic behaviour around claims. While conflict-process theory provided a useful means to define episodes of conflict, the interpretation of the research findings within Weick's (1999, 2005) sensemaking theory and Reckless (1961) and Hirschi's (1969) social control-process theory gave a more causal insight into the social situations and events that result in conflict around claims. As symbolic interactionism predicts, the events and situations can lead to changes in perceptions around a situation developmentally (for example, as an individual adjusts its generalised constructions of others and society in reaction to changes in its social situation; Becker, 1953/2015, 1963/2008) or instantaneously (for example, as a gesture from one individual triggers a process of definition and reaction in another; Carter and Fuller, 2016; Goffman, 1956/1999), depending on the experience and social context.

When understood as a dynamic process, conflict surrounding claims can be traced back to more abstract categories of events and circumstances which are common in the construction industry. The conformance and deviance factors identified above may serve as indicators of areas in which practice can be improved through changes to process, employment policy or contractual structure. To illustrate this relationship further, in Figure 23, below, I have adapted the conflict-process model (Pondy, 1967) to incorporate those interactionist mechanisms of conformance, deviance and sensemaking that correspond with the meanings practitioners attach to claims, and the consequent actions that frequently result in conflict and adversarial behaviour in the construction industry.



I have conceived the conflict process that surrounds construction claims as operating in a dynamic context where a continual process of interpretation or sensemaking plays out in reaction to ongoing changes in internal and external environmental factors. While the depiction of conflict presented below is intentionally simplified, the model provides an insight into how sensitive conflict prone behaviour is to underlying project conditions and the subjective interpretations of participants involved in conflict. Crucially, the model recognises that manifest conflict can only emerge where practitioners develop a sense of plausibility around conflict prone behaviour based on their interpretations of experienced and perceived conflict, which are triggered by adverse events during a project and rationalised through an interpretive and dynamic sensemaking process.



**Figure 23: Model of conflict and claim culture in the construction industry: adapted from Pondy (1967)**

The findings of this thesis could assist in identifying which of the many dispute avoidance policies adopted within the construction industry may be most effective. For instance, minimising conflict by improving the perceived ‘fairness’ in the way the consultant approaches claims are addressed within some international contracts by way of a dispute adjudication board procedure. The board is empowered to act quickly in giving binding

decisions without the pressure imposed by the employer (FIDIC, 1999, Cl. 20.2). This procedure is frequently praised for its ability to control conflict (Corbett, 2009). It was probably borne out of trial and error, but the reasons for its effectiveness are clearer in the light of the above model. However, there are potentially other, less established techniques that may prove similarly effective, if focused on improving perceptions of fairness and control of adverse events. I discuss some of these potential measures in the next section of this chapter

A primary focus of this research was to develop theory to explain the social mechanisms through which claims culture emerges in and/or has an influence on practice. The development of the above model leads to the prediction that conflict in construction can potentially be effectively tackled by focusing on the precursors to manifest conflict: latent conflict (i.e. background conditions that may lead to conflict), perceived conflict (the perception that conflict may occur) or felt conflict (actually experienced conflict).

First, attempts can be made to reduce the degree of latent conflict by recognising the symbolic representations practitioners hold towards claims or other sources of conflict. According to the above model, latent conflict in the construction industry is produced by experience of conflict on previous projects and role generalisations, which create a fear of conflict. In turn, the degree of latent conflict depends on environmental factors such as the traditional adversarial contract structure, or the sophistication and nationality of the parties.

Latent conflict may potentially be reduced by upfront, early-project techniques. These may include countering the negative experience or role generalisation held by practitioners through storytelling techniques such as case study (Nugent and Flynn, 2020); or by modifying the environment, by adopting less adversarial contract structures and processes, for example. This research also suggests that focus should be given to smaller, less sophisticated organisations, where conflict around claims is likely to be more prevalent and problematic than it would be between larger or more mature organisations. In addition, any form of training of project participants targeted at breaking down the common negative conceptions held by practitioner groups towards claims may increase cross-functional understanding and foster greater levels of cooperation and reduced conflict.

If, or to the extent that, latent conflict cannot be eradicated (which is likely to be the situation in almost all cases), then the focus may shift to techniques to manage the levels of perceived and felt (experienced) conflict, which are the immediate conditions before manifest conflict emerges. Felt (experienced) conflict may be more directly associated with the behaviour choices of practitioners themselves. Construction industry conflict is felt most directly by practitioners through written communications. Therefore, protocols for controlling the nature of communications, such as the use of pro-forma, may be effective in reducing emotion around claims and associated conflict experiences.

However, according to the above model, perceived conflict is influenced by the presence of mutually shared objectives, the level of perceived fairness, or experiences of adverse events during the project. Mutuality of objectives and perceived fairness can be addressed through incentivisation instead of penalty regimes (Zhu and Cheung, 2020). Similarly, the level of conflict that arises from adverse project events appears less likely to lead to conflict if a more staggered dispute resolution procedure is adopted (Ng et al. 2007). Left unamended, the dispute adjudication board under a FIDIC contract would be empowered to act quickly in giving binding decisions without the pressure imposed by the employer (FIDIC, 1999, Cl. 20.2), a procedure is praised for its ability to control conflict (Corbett, 2009). Additionally, measures to increase the autonomy of the consultant, such as adopting a joint appointment structure or a separation between design and supervision functions, may have appreciable effects on perceived conflict (Ndekugri et al., 2007).

These are all hypotheses that would benefit from further, more focused study out in the field within the framework of the model presented above. However, they demonstrate the contributions of the conceptualisation of construction industry conflict as a dynamic interactive process that develops episodically during projects.

## **10.8 Recommendations for improvements to practice**

The discussion of the findings so far has revealed several emerging theoretical and practical implications when viewed in light of the existing academic literature. It is important to stress, however, that GCC practitioners already have access to some of the theoretical ‘solutions’ to problematics behaviours through the commonly used FIDIC forms of contract. The problem is that they choose not to utilise them. Therefore, to produce potentially useful practice recommendations from this research, it is necessary

to consider how these implications might be exploited in the real world of GCC contracting.

This sub-section discusses the findings of the research in terms of the actions and interventions that practitioners might be able to implement on their construction projects to potentially improve the problematic features of construction industry culture. I offer recommendations associated with utilising Building Information Modelling technology, improving knowledge of common law practices, introducing more collaborative contractual practice, changing attitudes within professional groups, government policy intervention and the self-regulating nature of the GCC construction market.

### *Utilising Building Information Modelling*

Existing research on technology in construction claims has tended to focus on automating claims administration or similar functions through decision support models (e.g. Tan and Anumba, 2013; Niu and Issa, 2012). I have already explained in section 10.2 that these models may not be effective in addressing problematic behaviour around claims, because practitioners often view behaviours such as poor record keeping, late notices or inflated claims plausible and reasonable depending on the context. They also do little to avoid claims in the first place.

In view of these findings, it appears that technology might be more effectively deployed in two ways, to either: (i) avoid the events that lead to claims arising in the first place, and/or (ii) negate the need for problematic administrative activities (such as record keeping or delay analysis) through automated data capture.

A technology potentially capable of assisting in both objectives is Building Information Modelling ('BIM'), which can integrate three-dimensional design models with time and cost data. Existing research suggests that BIM is particularly effective in minimising claims associated with design errors or constructability issues when adopted in the pre-construction phase (Charehzehi et al., 2017). When integrated with other data systems, BIM also offers transparent information sharing which has potential to improve knowledge and collaboration amongst the project team (Gardezi et al. 2013). The UK Government's BIM Level 3 implementation standard and more recent 'Digital Twin' paradigm (Boje, Guerriero, Kubicki, & Rezgui, 2020) promise technologies which integrate BIM models with live progress information (Braun et al. 2015) or resource usage

data (Greif et al., 2020). Access to such data might reduce subjectivity in claims assessment by negating the need to keep and analyse the detailed records that are frequently overlooked in practice, and may flag delays and other problems earlier than would be the case under the contractual machinery. In turn, the frequency or size of claims and thus the hostile behaviour associated with them may be reduced.

However, the practical opportunities to utilise BIM may be limited in the current GCC market. The benefits of BIM are associated with the extent to which it is integrated and accessible with all teams; without such integration, BIM can be a cause of claims rather than a solution to claims (El-Shami, 2018). Yet BIM remains relatively underutilised in the GCC (Croft, 2017) and did not feature significantly in any of the projects examined in the research. Similarly, BIM also offers most potential on larger projects with more sophisticated parties (El Hawary and Nassar, 2015), but many of the problems in practice observed in this study were associated with medium sized projects with less sophisticated parties. Furthermore, live project data integration technologies remain largely at the conceptual stage, and further research is needed before practical applications appear in the market (Boje et al., 2020). Finally, BIM may not prove useful in dealing with all claim events, such as those caused by unexpected site conditions or third party delays (El Hawary and Nassar, 2015). For these reasons, BIM may not offer an immediate or complete solution to problematic behaviours associated with claims.

Therefore, it is recommended that BIM and related technologies might be used most effectively when implemented early in the project, to avoid design related problems that lead to claims; or during the project, to replace problematic activities such as record keeping and analysis with automated data capture. In both uses, the timing and extent of BIM implementation and integration appears to be the key factor in its effectiveness.

### *Common law contract training*

The findings of this research also indicate that notions of ‘good’ practice held by practitioners were closely linked to traditional common-law contract administration principles, which favour more strict compliance with contractual rules relating to matters such as claim notices and entitlement to payment (Ramsey and Furst, 2012). In section 9.4 of the thesis, I associated the common complaint of a ‘lack of understanding’ of claims procedures to the traditional British contracting framework adopted in the popular FIDIC

form of contract. This problem may be more prevalent in the GCC due to the international and transient nature of the GCC workforce (Callen et al., 2014).

However, as I explained in Chapter 2, the common-law contract framework sits uneasily in the civil-law tradition followed in the GCC, which is perceived to treat contractual compliance more flexibly in comparison to the common law courts (Crawley, 2011). Similar differences in attitude toward compliance with formalised rules have been reported in national culture studies (Loosemore and Muslmani, 1999). The implications from this study seem to be that legal ambiguity perceived over enforceability of contract terms may de-motivate practitioners from following formal contractual rules in a manner consistent with ‘good’ practice, because the consequence of deviating from these rules is unclear or distant. Therefore, it is possible that the relatively relaxed attitudes to contractual compliance observed in this research might be partly linked to practitioners’ level of training in FIDIC type contracts, an issue which might be more common where practitioners originate from countries with a civil-law tradition.

To address this problem, it is recommended that contractors, consultants and employers should more actively train new recruits to the GCC on the common-law principles associated with the administration of FIDIC style contracts, including how these principles are interpreted in a civil-law context. This could limit the ambiguity around how and when the contract should be operated by project teams, which may reduce the frequency of delayed or unreasonable claims later in the project and the problematic behaviours that result.

### *Introducing more collaborative contractual practice*

It is evident from the discussion so far that many of the sources of conflict around claims within the GCC construction industry originate from the traditional contracting practices of the GCC. An alternative solution to addressing adversarial behaviours in the construction industry may be the adoption of collaborative contract forms, such as the NEC contracts used in the UK (Fenn, 2012). I have already used the model above to predict some potential contractual changes which could, in theory, effectively reduce levels of latent, perceived and experienced conflict around claims.

However, there is limited independent research that provides concrete, practice-based evidence that changes to behaviour can be brought about by changes to contractual

processes in the GCC. In fact, previous attempts to adopt NEC forms of contracts in the GCC as part of a major government-backed residential development were, according to commentators, not wholly successful. After the project stalled, the UAE developer shifted its focus back to traditional lump sum contracts because, it concluded, they offer better value for money (Building, 2020). This was an experience which did little to encourage the wider use of collaborative contract practices in the region (Attia, 2012). A comprehensive internet and literature search conducted for this thesis search did not reveal any further examples of the implementation of the use of collaborative contracts in the GCC.

It appears then that the *intrinsic* benefits of collaborative contracts for the GCC market may be overstated, unless they are viewed as part of a wider collection of interventions to promote changes in industry behaviour (Rooke and Seymour, 1995; Rawlinson and Root, 1996). For instance, Rawlinson and Root's (1996) study of cultural differences between Hong Kong and the UK found that UK and Hong Kong based practitioners did not view conditions of contract as a primary factor in influencing project-level behaviour. Instead, they found that pre-existing attitudes brought into the project by its participants were appreciably more important than contract forms in promoting non-adversarial behaviour.

From this perspective, as I mentioned above, one aspect that researchers often overlook is that GCC practitioners *do* have access to broadly collaborative contracting processes within the popularly used FIDIC based forms, yet these processes are frequently deleted by GCC practitioners, making even FIDIC contracts more adversarial than the contract drafters intended (these include amendments to limit consultant independence, delete fast-track dispute resolution mechanisms and to reduce time limits for raising claims are all common in the GCC). It seems that imposing a new contract form on the existing market without some other intervention would be unlikely to change recurring behaviours. Further, if that approach were taken in isolation of other strategies, it seems likely that GCC practitioners would so heavily amend a new form of contract (to reflect traditional contracting practices), that many of its potential benefits could be missed. Therefore, rather than implementing an entirely new form of contract within the GCC, a more realistic, shorter-term, recommendation may be for employers and consultants to

resist the temptation to modify or remove broadly collaborative processes which are already available under FIDIC contracts.

Yet even such a modest change in practice is likely to be resisted by employers and consultants, given that much of their authority and advantage over contractors derives from limiting contractors' rights through contract modifications (Hewitt, 2013). In fact, the findings of this research predict that there is risk in attempting to implement new or novel contractual structures without first altering practitioners' attitudes. For instance, I found that breaking espoused commitments to collaborate near the start of the project was a key factor in escalating conflict around claims later. It is possible that these effects could be magnified if the commitment to collaborate was contractually mandated but then broken during the course of a project. Furthermore, I have found that contractual structures are not the only features of the GCC construction industry that cause problematic behaviours. The negative and positive impressions that practitioners have of each other based on national culture or relative 'sophistication' appear not to be directly related to conditions of contract, for instance.

In Chapter 2 of this thesis, I addressed the lack of interest amongst GCC practitioners in the use of collaborative contracts such as the NEC3 and 4 forms. I also emphasised the value in understanding whether these collaborative processes could assist in minimising conflict and any limitations for their use in the GCC. While the findings presented in this thesis suggest that changes to contractual structures would address some of the problematic behaviours under GCC construction projects, it is also unlikely that GCC practitioners could simply 'adjust' to a fundamentally new contractual framework like that of the NEC forms. In consequence, the findings of this thesis do not identify collaborative contracts as a panacea to problematic industry culture in the GCC. Instead, I recommend that changes to contractual practice would be most effectively made progressively, by introducing more modest adjustments to contractual structures already in place within the GCC. Retaining the original processes within the FIDIC forms could positively influence behaviour without needing to fundamentally change existing project structures. However, to be effective in the longer term, it appears that simultaneous effort may need to be focused on changing attitudes within industry, and on government policy. I address both considerations below.



*Changing attitudes within professional groups*

I have illustrated in this thesis how attitudes within professional groups are influenced by experiences from previous projects. The implications are that professional groups tend to build shared histories over time, which they use to predict the behaviours of other professional groups and to tailor their own behaviour (Triplett, 1993). Accordingly, addressing attitudes amongst professional groups appears to be an important pre-requisite to achieving meaningful changes to practice over the longer term. I offer three recommendations here, one of which is targeted at the wider industry, and the other two at practitioners operating at the project level.

First, at the industry level, one issue which appears to influence professional attitudes is the background of training and professional qualifications held by practitioners (Rooke and Seymour, 1995; Franks, 2003; Drucker, 2013). For instance, Rooke and Seymour (1995) predicted that the collaborative contract conditions would be unlikely to change industry behaviour in the UK unless professional-culture differences between quantity surveyors, engineers and lawyers were addressed. This issue appears to be particularly relevant in the GCC, given the heterogonous mix of nationalities and the associated professional qualifications held by its management-level workforce.

That being said, the majority of practitioners in the GCC tend to train as generalists (in civil engineering) and specialise later. They therefore do not possess the long socio-cultural traditions that attach to professions in the UK. As I have illustrated in this thesis, it appears that professional attitudes in the GCC today are, to a notable extent, influenced by the function of practitioners' organisations under the project (whether employer, contractor or consultant) rather than by their professional qualification on its own. This factor may partly reflect the absence of coherent professional traditions within the GCC (when compared, say, to the UK), which might otherwise be used as a common factor to focus practitioner-groups on improvements to practice. Consequently, an effective way to influence practitioner attitudes in the GCC over the longer term may be to promote wider subscription to professional bodies who explicitly promote or require non-adversarial practices, such as the internationally focused Royal Institution of Chartered Surveyors ('RICS'). For instance, according to RICS rules (RICS, 2020a), each RICS member is required to:

- *Not take advantage of a client, a colleague, a third party or anyone to whom you owe a duty of care.*
- *Not allow bias, conflict of interest or the undue influence of others to override your professional or business judgements and obligations.*
- *Act consistently in the public interest when it comes to making decisions or providing advice.*

The continual increase of the RICS's professional membership in the Middle East (RICS, 2020b) indicates that the foundations for influencing professional attitudes in the GCC are already under construction. The findings of this thesis appear to emphasise the important role professional institutions can play in influencing attitudes and their resulting adversarial behaviours in industry.

Second, turning to measures to address problematic professional attitudes at the project level, the findings of this research indicate that the practical challenge lies 'resetting' or adjusting practitioners' expectations of others, to minimising the influence of negative shared histories framed in terms of adversarial FIDIC based contracts. This would probably best be achieved by intra team culture-focused training or team building near the start of a project. As I indicated above, one way of doing this may be through the use of storytelling, which has proven to be an effective means to influence organisational culture in other settings (Nugent and Flynn, 2020). In the context of a construction project, storytelling may be best framed in terms of a real-world case study presented to members of the project's team. The case study could focus on a real example of emerging conflict and its consequences on a previous project. This approach could be made more effective if it focused on the differing perspectives held by the team in relation to common adverse events emphasised in the case study. The exploration of these problems from different perspective could stimulate ideas around measures which might have minimised the conflict or reduced its effects. In turn, these theorised measures could be developed into project-specific measures created by the project team with reference to their particular social and cultural mix. Although this process might be most effectively deployed early in the project, it could also prove effective at any stage of a project where conflict has emerged. This is essentially an applied form of reflective practice or action research implemented to address an important real-world problem (Schön, 1983). With the wide

use of collaborative contract forms in the UK, South Africa and Hong Kong, there is a rich reservoir of experience for practitioners and academics to draw upon to illustrate the potential economic and relational benefits associated with less adversarial behaviour.

Third, I have also shown in this thesis how implicit commitments to act collaboratively earlier in a project (say, of a contractor who actively avoids issuing conflict-causing claims) are taken seriously by GCC practitioners and influence the ways in which they act. This influence lasts until a perception builds that those commitments have been broken (say, by a consultant rejecting a claim). While these commitments can be problematic if they ultimately lead to escalations in conflictual behaviour, there is opportunity to leverage the power of early-project commitments by encouraging practitioners to more openly discuss their objectives, to explore what the implications might be if commitments are breached, and then to implement their own, project specific measures to promote cooperative behaviour.

I therefore recommend that practitioners consider the use of intra-team training and early-project commitments in appropriate contexts, to minimise problematic conflictual behaviour later in projects

### *Government policy intervention*

Ultimately, any change or improvements to contracting practice in the GCC construction industry must be driven by government policy over the longer term. For instance, the prevalence of the NEC collaborative form of contract in the UK was the result of recommendations to government from the seminal Egan (1998) and Latham (1993, 1994) reports. Similar government-led interventions resulted in the wider use of NEC forms in Hong Kong (Rowlinson and Root, 1996). It is crucial, then, not to conflate the reasons for cultural shifts in other markets (which are normally driven government policy intervention) with their effects on the way projects are managed (for instance, with the wider use of collaborative contracts). This means that governments have a central role to play in improving construction industry practice.

The findings of this research also suggest that that efforts to improve practice should be placed on smaller, less sophisticated organisations, where conflict around claims is likely to be more prevalent and problematic than it would be between larger or more mature organisations. Yet these could be precisely the same organisations that are less likely to

have access to teams of internationally qualified employees who are motivated to make consensual changes to their practice at the project level, and who are therefore in most need for government backed interventions in the wider industry. Again, government intervention appears key in promoting changes to practice.

The significant role GCC governments play in awarding construction contracts (whether directly, or through government backed developers) means that their lead could be transformative to industry. Yet the challenge is that the autocratic government structures in the GCC may not lend themselves to progressive policy changes, unless they are framed in economic or productivity terms. Perhaps a more effective approach to gaining government support in the GCC would be for the private sector, with support from academia, to show the real economic and relational benefits which emerge from less adversarial construction industry behaviour.

*The GCC construction industry as a self-regulating system*

Finally, I wish to qualify these recommendations in one important respect: the GCC construction industry is not *fundamentally* dysfunctional. It produces some of the largest and most complex buildings in the world. It also creates world-leading companies and provides relatively sustainable employment for a diverse workforce, most of whom immigrated to the GCC due to the relatively better working conditions and job prospects than their home countries could offer. Practices which appear shocking or problematic from a Western perspective are normal and even expected in the GCC perspective.

Therefore, in many ways, the GCC construction industry might be seen as a self-regulating system, where reasonably competent practitioners have created their own, tacit solutions to the unique cultural, operational and economic challenges that define the GCC market over many years of practice. It is easy to play down the complex tacit skillset which GCC practitioners call on to deliver construction projects, when compared to objective notions of ‘good’ practice formed in Western markets.

Perhaps it is time to have more respect for geographical differences in practice which are born from shared histories and cultures specific to contracting markets, particularly those that are effective in serving their overarching purpose. Rather than trying to impose external solutions on the GCC construction sector, it appears that improvements might be

most effectively made by influencing behaviour from within the existing cultural and organisational contexts of the GCC construction industry.

### *Summary of recommendations*

In summary, I make the following seven recommendations for minimising the adversarial behaviours around construction claims which are common in the GCC construction industry. These recommendations have been developed from the understanding of how conflict and claims culture manifests and influences claims management practice as presented through this thesis.

1. Where project limitations allow, BIM and related technologies should be implemented early in the project with the objective of avoiding design related issues which often cause claims. Similarly, the integration of BIM with real-time project data during construction should be considered to increase project knowledge and reduce the burden of record keeping and other problematic activities in claims management.
2. To reduce ambiguity around contractual terms and motivate ‘good’ contract practice, international construction management recruits to the GCC should be trained in FIDIC contract procedures, including their implications in the civil-law framework.
3. Efforts should be made to introduce more collaborative contracting practices in the GCC. However, collaborative contracts are not a panacea for resolving conflict around claims in the GCC construction industry; the social context of claims is multi-faceted and complex. Before making attempts to introduce collaborative contracting practices in the GCC, policy makers should first tackle conflictual professional attitudes in industry and on projects. A failure to do so could, in fact, increase conflict.
4. Influencing the outlook of professional groups towards others is key to improving conflictual behaviour around claims. This means that professional institutions should have an increasingly important role to play in the GCC by promoting a more homogenous and less adversarial professional outlook amongst practitioners. Practitioners should also promote modern professional accreditation amongst

project teams in the GCC, given its potential to influence positive behaviours by promoting a more collaborative construction industry philosophy.

5. At the project level, employers, consultants and contractors might effectively influence attitudes and behaviours through explicit behavioural intervention measures from the outset of projects, such as intra-team conflict avoidance training and through the formalisation of early-project commitments. If deployed to emphasise the differing and evolving perspectives amongst project participants in relation to common adverse events associated with claims, these measures would have a firm theoretical justification in acknowledging how human behaviour is influenced by perceived notions of ‘them’ and us’, and by contextual plausibility.
6. To maximise the prospect of longer-term industry improvements, it is essential for GCC governments to intervene with policies aimed at transforming construction industry behaviour. Implementing changes to government-backed projects, as has proven successful in other jurisdictions, appears to be a necessary starting point for lasting industry change given the specific problems faced by less sophisticated employers and contractors as reported in this thesis.
7. Practitioners should not underestimate the capability of the GCC construction industry to deliver world class projects in difficult contexts using a complex cultural toolkit developed over years of practice. It is neither necessary nor desirable to import structural changes wholesale from other jurisdictions. The most effective changes to practice are likely those that are developed progressively by practitioners *themselves*, in a manner that is sensitive to the GCC’s unique mix of practitioners and its industry culture, and to the specific context of each project.

These recommendations are not intended to be revolutionary, nor are they intended to promise immediate or ground-breaking improvements to practice. They are, however, theoretically orientated and empirically grounded recommendations that could potentially lead to real and meaningful improvements to practice over the longer term.

## **10.9 The relevance of current literature to practice**

Finally, while there is a range of practical implications presented in this research, also implicit in the findings of this thesis was the practitioners’ knowledge of current academic

literature surrounding claims management practice (albeit practitioners did not seem satisfied on where this research has led). It is potentially useful to address this point briefly.

In short, when questioned on the reasons for problematic behaviour in claims management during the interviews conducted for this thesis, the practitioners' initial response was to refer to issues such as poor record keeping, project controls or lack of training. Similarly, they understood the concept of 'culture' from a distinctly national perspective. They showed great interest in the differences in influence of national culture in respect of behaviour surrounding construction claims, and in construction management more generally. These are all areas which the current academic literature covers repeatedly and from similar standpoints. Crucially, unless I directed discussions to some extent, practitioners' did not readily offer up explanations of more complex social issues that I wished to explore based on interactionist sociological theory, such as their perceptions of claims, their views on other professions, or the development and causes of conflict and other problematic behaviours during a project.

These observations point towards two interesting findings on the relevance of current academic research within practice. First, that current academic research *does* penetrate into practice and *does* inform practitioners' understanding of their social world. Practitioners are at least tacitly aware of current academic thought on the issues concerning claims management practice in the construction industry – this means that current literature *is* relevant to practice to some extent. Second, and more interestingly from the academic perspective, practitioners' understanding of current research may, in fact, limit their own thinking about their social world, as they may assume that the repetition of issues explored within such research is an indicator of its exhaustive scope. Such an assumption may then discourage practitioners from undertaking purposeful reflection on their own social context and the ways in which they behave in practice. The need to diversify theoretical perspectives in construction management literature has been raised before. Seymour et al. (1997) made a similar argument in respect of the absence of theory that informs academic research in construction management. The research presented in this thesis adds to that argument by demonstrating that limitations in the theoretical scope of current construction management research may also limit the potential for it to improve to practice.

## 10.10 Summary

This chapter has discussed the research findings to emphasise a range of unique contributions it offers both to construction management literature and to wider sociological and organisational theory. I initially set out how effective an autoethnographic approach to studying issues in construction management can be. While this research gave a specific focus to construction industry conflict and claims, the insider-research approach has been shown to have much potential in representing practice issues in a rigorous way, which may go towards reconciling the needs of theory and practice in the construction industry.

An analytical and sociological interpretation of the research findings was then presented, by drawing on symbolic interaction and organisational culture theory. I demonstrated how role generalisations in the construction industry led to latent (pre-existing) conflict by reinforcing socially developed conceptions (stereotypes) associated with negative experience around construction claims. I went on to show how changes to behaviour can be encouraged by addressing the symbolic meaning associated with construction claims. The discussion was developed further by representing theoretically the development of conflict in the construction industry through the conflict-process model. This mechanism was further elaborated through the application of symbolism in social deviance theory. I concluded that construction conflict must be understood in dynamic and developmental terms, in order to appreciate the nature and relevance of competing factors that suppress or incite conflict during a project. These conceptualisations provided a basis on which to define those particular common events and situations that lead to conflict in construction, and the perceptions and experiences through which conflict can manifest itself as a result. I also set out some initial recommendations on how conflict might be better avoided or minimised, based on the research findings.

Finally, I discussed some of the other theoretical and practical implications of the research. I revisited the common depiction of claim culture in the light of the research findings, to reemphasise the contribution of this thesis to the current understanding of conflict and claims culture in the construction management literature. I also addressed the reported issues in claims management practice based on my observations and evidence collected for the purpose of this thesis, to provide a much-needed elaboration and sociological context to those issues, and specifically the situation in the GCC. In



summary, this research has produced an interesting range of findings that begin to make sense of the complex social world in which claims are made, and the general mechanisms that drive conflict around claims, which are inherent in most construction projects.

## CHAPTER 11 – CONCLUSION

### 11.1 Introduction

This is the final chapter of the thesis which sets out an overall conclusion to the study. It provides a brief summary of the research findings, sets out some of the key recommendations that emerged in Chapter 10, and identifies the range of contributions to knowledge that are presented by this thesis. It also addresses the limitations of this research and the opportunities for future research in the field of construction conflict and claims, before providing a short personal reflection on the research process and its impact on my personal and professional life.

### 11.2 Research summary

The overall aim of the research was to *gain an understanding of how conflict and claims culture in the construction industry manifests and influences claims management practice*.

The research attempted to contribute to knowledge of claims management through an exploration of the claims culture prevalent in the GCC. Of particular interest was how claims managers experience claims, why claims management is so often deficient, and how recurring patterns of behaviour in claims management are reaffirmed over multiple projects. In meeting this aim, the research has illuminated an area of practice that is often met with suspicion and misunderstanding.

Whilst existing literature takes an academic view of issues surrounding claims, I utilised my work life experience to provide an empirical account of practice from the viewpoint of contractors struggling to manage claims within real construction projects. I also applied a theoretical structure to the findings, and by doing so, related this research to wider social theory. The framework I have developed in this thesis conceptualises problematic behaviour around claims as the result of participants' interpretations and response to recurring negative experiences and ineffective contractual structures within the industry.

The research was organised around five objectives that each contributed to meeting the overall aim.

- Objective 1 was addressed in Chapter 2, where I explored salient issues in construction conflict and claims management. I found that construction conflict is ascribed to a range of causes, yet there is little understanding about how (from a social perspective) conflict develops in practice and emerges as a reinforcing set of problematic behaviours.
- Objective 2 was also addressed in Chapter 2. I examined current literature on construction claims, which was found to adopt a largely normative perspective on claims management issues in practice. I also found that current research recognises that contractors frequently fail to manage claims effectively due to poor submission control, lack of skills, and reluctance to face conflict, but fails to address the particular social context in which those issues are faced. The discussion of the literature provided justification for the interactionist perspective of this research.
- Objective 3 was addressed in Chapter 3, where I set out in detail the perspective and associated theories of human behaviour that I adopted to design and interpret the research. I used the analysis in Chapter 3 as the basis of the research design described in Chapter 4.
- Objective 4 was addressed through Chapters 4, 5 and 6. Here, I examined the methodological literature to explain and justify the auto/ethnographic approach and methods used in this research. I also reviewed the main opportunities presented from insider auto/ethnographic research and discussed the issues and risks inherent in this approach, and the ways in which I mitigated them.
- Objective 5 consisted of the primary data collection for the research, which drew together my personal experiences, participant observations, interviews and other materials as a basis for discussion of the theoretical and practical implications of the findings. I presented the detailed findings of the research in Chapters 7, 8 and 9.
- Finally, Objective 6 was addressed through the detailed discussion of the findings in Chapter 10. I interpreted the findings in the light of the empirical and theoretical literature reviewed in Chapters 2 and 3, from which I developed a model to explain

the social mechanisms whereby claims culture emerges and has an influence on practice. I also addressed a range of other real-world issues emergent within the findings of this research.

### 11.3 Overall findings and conclusions

The practical value of ethnographic research, Button (2000) argues, is in providing policy makers with information on how practitioners practise in the real world. In construction management, the stakeholders are contract drafters, procurement specialists, and project managers with interest in reducing lost productivity and disputes by promoting more collaborative working.

This research has provided a potentially novel example of a methodological approach that is effective in gaining insights into the world of practice using analytical, insider research led by practitioners. Also, by analysing lived experiences of claims management from an interactionist perspective, the account that I have presented in this thesis is both contextual and empirically grounded. This research has demonstrated that the construction industry's conflict and claims culture can be understood in terms of the meanings that practitioners' attach to claims through interpretation and interaction during construction projects. The research has found that, above all, claims are viewed as *symbols of conflict*, a perspective that fundamentally defines the GCC's construction industry culture.

I wish to stress three main conclusions from the findings presented in this thesis.

1. First, claims managers attach meanings to claims based on their perceptions of the employer and the engineer, how they perceive the engineer to perceive them, and their perceptions of themselves.
2. Second, the meanings claims managers attach to claims can lead to recurring patterns of behaviour that are constantly adapted to the changing circumstances of projects. These patterns of behaviour are consistent with the depiction of 'claims culture' in existing literature, but were found to emerge from the industry's adversarial contract practices, from the complex interactions made common from contracting practice, and the ignorance amongst practitioners of the challenges and motivations of others.

3. Third, these patterns of behaviour are intrinsically linked to socially constructed norms of acceptable and unacceptable conduct embedded in the sociological history of the construction industry. It is the dynamic creation and recreation of these norms at a project level through a process of interpretation that most influences claims management behaviour in practice.

More particularly, construction conflict and claims culture can be understood in terms of the meanings that practitioners attach to claims through interpretation and interaction during construction projects. The ways in which practitioners act towards claims were found to be influenced by tacit social norms emerging from their view of their own social workgroup and others. For instance, in the case of contractors, impressions were formed by; (i) contractors' views of employers as unsophisticated and profit driven and of the consultant as biased and focused on self-protection; (ii) the contractors' views of themselves as subjugated and operating within an unjust contracting system; and (iii) how contractors believe they are seen by the employer and consultant. Yet these negative general perceptions were combined with a general ignorance towards the other practitioners' challenges and motivations, leading to potential misinterpretation of gestures and actions and reinforcing negative perceptions, e.g. the contractor's generalised negative view of employers/consultants. Most significantly, the meanings that practitioners attach to claims were found to evolve throughout projects, resulting in changes to social norms that directly influence their approach to claims management. For instance, we have seen how practitioners mediate for factors such as economic conditions in the context of their experience, making what may first appear to be irrational economic decisions plausible in the context of the action. This research has shown that by describing the development of conflict as a dynamic, developmental process, and by unpacking the mechanisms that underlie it, conflict avoidance techniques may be targeted more effectively on the underlying causes of conflict, and real changes to practice may be possible as a result.

The research has also illustrated several concerning issues in GCC claims management that lead to the prevalent, self-maintaining and adversarial claims culture that is endemic in the GCC. These issues include defensive contract drafting by employers; a perception by contractors that employers are unsophisticated and profit driven; that consultants hold fundamentally conflicting interests; and that both employers and consultants view

contractors as inherently 'claims conscious' and untrustworthy. Whether or not these observations are objectively true is less important than the fact that they are perceived to be true by practitioners. Thus, the account in this thesis also raises questions as to whether practitioners' perspectives on claims management can be challenged by policy makers as a way to reduce conflict, given the various complexities and contradictions between their perspectives and their actions towards claims.

Further, the challenges discussed above may lead outsiders to question why contractors appear so willing to participate in the construction industry. A primary factor may be the continued accessibility of the construction sector to both regional and international contractors. In comparison to other developing markets, for instance, the ease of doing business in the GCC is comparable to developed economies (The World Bank, 2017), making the GCC an attractive market to establish new business. Another factor may be the reluctant acceptance by contractors of the status quo. Whilst cash flow during projects is significantly pressured by a failure by parties to settle claims - a position that may be intolerable in other markets - deal making at the end of projects may create opportunities to win future work at more favourable rates. In short, the construction industry as it exists today may be viewed as a self-regulating system, and the negative experiences of practitioners within the system as simply a consequence of it. Nevertheless, the dysfunctionality of the construction sector should not be considered sustainable. For instance, major regional and international contractors have faced substantial losses and restructuring in recent times, partly as a result of the challenges in recovering payments and claims (MEED, 2019). The rise of Coronavirus is likely to be transformative in the GCC construction industry going forward (Meed, 2020).

Together, these conclusions present a basis on which to develop a theoretical explanation of the claims culture seen in the day-to-day interactions between practitioners in construction projects, and the impact that the claims culture can have on practice. Consequently, I argue that by influencing how claims managers perceive claims and the issues surrounding them, conflict can be reduced and real changes to practice might be possible. Changing the perception of claims in the industry could feedback and transform how claims are approached, leading to a positive cycle of improvement to practice that goes beyond claims management.

## 11.4 Key recommendations

The discussion of the findings led to several suggestions for improvements to practice, derived from empirical observations in the field. The key recommendations were that more effort needs to be made to understand the nature of human behaviour in construction conflict, and that modifications to contractual structures (such as redefining the role of the consultant) have potential to significantly reduce conflict around claims. By taking into account the complex ways in which practitioners perceive their social situation, more effective means of promoting cooperative behaviour may be developed, thereby reducing conflict and minimising costly disputes.

Three overarching recommendations follow from this research:

- First, all stakeholders in the construction industry should recognise the profound influence that administrative structures can have on the ways in which claims are approached by practitioners. This thesis has illustrated how practitioners allow their behaviour towards claims to be influenced by their perceptions of conflicting interests amongst the employer's team, and the lack of access to neutral third parties with authority to determine claims and decide on disputes, for example. These are fruitful areas to tackle to minimise conflict.
- Second, all stakeholders should be aware that the perceived stigma attached to claims frustrates the project management process, by making practitioners reluctant to manage change proactively, resulting in delays, additional costs and *more claims*. Current attempts to force timely notification of claims by condition precedent clauses under construction contracts seem to have little influence on contractors' motivation to approach change proactively, possibly because such clauses encourage contractors to approach risk management mainly within the framework of contractual claims, and possibly because they simply increase the perception of unfairness. Therefore, more effort might be made to implement explicit risk management strategies, irrespective of the requirements of a particular contract. Approaching time and cost risks proactively could both minimise the frequency of claims, and enhance the contractor's role in the eyes of the employer and the consultant, providing a positive context to address issues later in the project. Whilst requiring investment, these strategies could have

significant value in avoiding non-productive management time, increasing cost certainty, and minimising the likelihood of disputes.

- Third, one other solution might be for the use of more collaborative contracts, such as the NEC3/4 suite of contracts. However, previous attempts to adopt these contracts in the GCC were not wholly successful, and did little to encourage the wider use of collaborative contract practices in the region (Attia, 2012). Thus, practitioners might more effectively address the negative consequences of claims by developing solutions that work within the cultural and administrative structures prevalent in their respective construction sectors. For example, in the GCC, contractors might make more use of independent technical advisors to comment on the prospects of a claim succeeding, before it is formally raised. Perhaps more importantly, contractors might seek to adjust their employees' expectations and interpretations of the acts of the employer and the consultant in respect of claims, which could prevent the spiral of conflict that arises when claims are raised. This might be addressed through training on local customs and norms, or through role play to stimulate discussion of how claims are perceived from multiple perspectives.

## **11.5 Contributions**

The main contribution of this research was to extend the existing literature by showing how, from a practitioners' perspective, the conflict and claim culture operates within the construction industry.

From a methodological perspective, the research demonstrated that auto/ethnographic approaches can be suited to construction management research, providing that research is designed to account for the insider-researcher's unique position. The methodology applied in this thesis provides a unique example of autoethnographic construction management research that may be useful as a model or guide for future researchers in construction management, claims or other fields.

The research also provided contextual explanations for some of the primary issues in claims management. Claim and conflict culture was not presented as a static or external concept, as in previous construction industry studies, but as a dynamic and evolving



concept that is created and recreated through interactions that occur commonly across construction projects. With this understanding, practitioners may be able to address claims management issues from a new perspective, by acting to minimise social tension alongside the operational deficiencies already explored in previous research. While the characteristics observed in this research are not representative of all contractors and all claims, the research's focus on a specific place and in an interesting time resulted in contextual understandings that epitomise ethnographic research. Put another way, whilst this research focused on GCC claims management, practitioners facing similar issues in comparable socio-historical contexts may also find utility in the findings of this study.

I have set out below examples of some of the specific contributions presented by this thesis.

#### *Auto/ethnography in construction claims management research*

The research provides a unique example of the application of analytic autoethnography in construction management research. The limited examples of autoethnographic studies in the construction management literature tend to adopt an evocative approach and constructivist standpoint (Grosse, 2019). This research presented a new approach to conducting insider research in the construction industry based on more traditional realist theoretical principles and analytical techniques. I have argued that this approach may be more attractive to researcher-practitioners used to dealing with tangible issues in their day to day work, rather than abstract or emotional constructs.

#### *Symbolic interactionism in construction claims management research*

The research also provided an example of the explicit use of symbolic interactionism to construction management issues, and demonstrated the various possibilities of adopting this perspective in future work. The interactionist theoretical framework deployed in this study provided access to a range of conceptualised mechanisms through which to interpret observed behaviour in the field.

#### *A study of the everyday lives of claims practitioners*

This was the first extended study focusing on the work lives of construction claims practitioners in the real world. No other published study has presented such a detailed and

in-depth account of how practitioners experience claim management, and the specific challenges and problems they face.

*Role generalisations in the construction industry*

This thesis also presented potentially the first contextual representation of role generalisation by practitioner groups in the GCC construction industry. It revealed a range of complex issues associated with the way roles in the construction industry are generalised by practitioners, and the influence this has on their actions.

*Conformance and deviance factors*

In addition, the research set out a number of unique findings on conformance and deviance factors, which represent the mechanisms through which conflict emerges around construction claims. These factors added support to some conflict avoidance methods, but also provided clues to other potential methods in future development.

*Conflict-process theory applied to construction claims*

This was the first study to apply conflict-process theory to an ethnographic study on construction claims. It demonstrated the usefulness and limitations of this theory in describing the construction conflict process in episodic terms. This was also the first study to adapt the social control and sensemaking theories to construction claims. The conflict process model was refined through these theories to explain a fuller range of problematic behaviours as observed in the field. The refined model of construction conflict presented in this thesis provides a unique contribution to the construction management literature.

*Empirical evidence of issues in practice*

Finally, this research is unique in representing an in-depth empirical study of construction management practice in the Gulf Cooperation Council States. It has proven insightful in revealing a range of issues in practice that appear specific to the GCC, such as the problems with the GCC's unique cultural mix and customs, and the particularly adversarial contracting environment that practitioners face.

## **11.6 Limitations and future research**

While this thesis has provided a range of unique contributions to the current literature, there remain several limitations to the research that may provide an opportunity for further development.

First, the autoethnographic approach adopted in this thesis also leads to several methodological limitations. Apart from the limitations associated with self-reported 'data' already discussed in Chapter 5 [Research Methods], it is unlikely that other researchers would have access to the same participants and cases, or would report precisely the same experiences of claims management that I have reported in this thesis. There remains room for further autoethnographic work in claims management, to create points of contrast to the current research, which may further refine our understanding of the causes and implications of 'claims culture' from multiple perspectives.

Second, the research only considered the perspective of contractors, consultants and employers, and how they perceive their relationship with each other. It did not consider other participants in the industry (such as designers, subcontractors, suppliers and manufacturers), or the motivations underlying their actions. Such investigation may demonstrate that the 'victimisation' and other experiences espoused by practitioners are viewed differently from the perspective of other participants in the industry.

Third, another potentially significant limitation is the lack of acknowledgement of how the religious or cultural background of project participants may influence how they perceive and act within claims management. I assumed a monocultural perspective on claims management in this thesis, but one that was inevitably influenced by my own religious and cultural orientation. A more explicit investigation into the religious and cultural underpinnings of management practice in the Middle East (e.g. Weir and Sultan, 2011) and its influences on decision making by practitioners in a construction context (e.g. Loosemore and Muslmani, 1999), may provide deeper insights into the perspectives and motivations of claims managers.

Fourth, similar limitations exist in terms of gender perspective. As I explained in Chapter 6, the research participants were (unintentionally) all male. This is a potentially important limitation to address in future research given the differences in how genders deal with conflict (Brahnam, 2005).

Fifth, this research primarily utilised symbolic interactionism to interpret data and elicit findings as to the implications of claims culture in practice. This provides an opportunity for extended research to utilise contrasting theoretical perspectives to explain the claims culture, and to fully explore how it is created and recreated at both the micro and macro levels.

Sixth, as I explained in Chapter 6 [Research Setting], as a result of my professional occupation, I was normally mobilised to projects in financial or programme difficulty. Therefore, I cannot claim that the projects I visited were a fair representation of the entire construction industry, as there are doubtless numerous projects that do not face the kinds of difficulties that I witnessed during this research. Therefore, this research may have less relevance as a means of understanding industry-wide behaviour compared to a more wide-ranging or quantitative study. What this research does represent, however, are the experiences of practitioners in respect of the typical challenges faced on troubled projects. This research may therefore have the most relevance in understanding behaviours that manifest on financially troubled or delayed projects, whether in the GCC or elsewhere.

Finally, whilst the data collection methods utilised in this research proved surprisingly robust in their ability to draw conclusions from a complex, idiosyncratic data set, the opportunity remains to relate the research to further empirical studies of professional practice. This would enable the methodological and theoretical challenges to be explored in further detail, and compared and contrasted to the experiences of insider researchers in other fields.

## **11.7 Reflection on the research**

Finally, I wish to emphasise that this research has been transformative on a personal and professional level. The process of carrying out this research, and in particular my engagement with and reflection on my own personal experiences of practice, was a process that raised challenges, gave fascinating insights and, eventually, led to a distinct sense of achievement in my doctoral journey. As a practitioner, it also drew me out of my comfort zone within construction management towards wider sociological theory, leading to a greater understanding of claims management issues and significant professional development. Because of all this, I have grown stronger, wiser, more independent, and

increasingly capable of understanding (to at least some degree) the complex and chaotic world in which I work.

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*Appendix A – Ethical Approval*



Research, Innovation and Academic  
Engagement Ethical Approval Panel

Research Centres Support Team  
G0.3 Joule House  
University of Salford  
M5 4WT

T +44(0)161 295 5278

[www.salford.ac.uk/](http://www.salford.ac.uk/)

16 January 2017

**Alan Whaley**

Dear Alan,

**RE: ETHICS APPLICATION ST1616-19 – Claims Culture in the GCC [Gulf Cooperation Council]  
States: An Autoethnography of Claims Management Practice**

Based on the information you provided, I am pleased to inform you that your application ST1617-19 has been approved.

If there are any changes to the project and/ or its methodology, please inform the Panel as soon as possible by contacting [S&T-ResearchEthics@salford.ac.uk](mailto:S&T-ResearchEthics@salford.ac.uk)

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Alan Whaley'.

*Appendix B – Employer and Participant Consent Forms*

University of  
**Salford**  
MANCHESTER

University of Salford  
School of the Built  
Environment  
Maxwell Building,  
University of Salford,  
Manchester M5 4WT,  
UK

**Organisation Consent Letter**

Date 28 March 2016

Mace International Ltd.  
Aspect Tower, Executive Towers,  
Dubai,  
UAE

Dear Andrew Gregory

As you are aware, alongside my employment with you I am a doctoral student at the University of Salford. As part of my course, I am conducting a research study titled: *An investigation into claims culture in the UAE*.

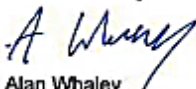
The research explores issues around claims under construction contracts. It focuses on the practice of managing claims under construction contracts within the UAE. It looks at the real world of claims management, and focuses on the culture underlying claims management issues. This is practice based research and therefore I require your approval to draw on my work experiences, and to conduct interviews with colleagues within the company.

Prior to undertaking the research, I need your agreement/consent to draw on my general work experiences and approach members of the Mace team to take part in interviews. I will recruit people to the study by direct approach during work hours, and will obtain individual consent using the Information Sheet and Consent forms attached. I hope to recruit up to five participants.

I can assure you that the study shall not disrupt the working environment in any way and any data collected shall be fully anonymised and strictly confidential. I have obtained ethical approval for the study from the University of Salford, School of the Built Environment.

If you have any concerns about my research, please contact my supervisor Dr. Paul Chynoweth, mobile: +44 (0)7970-39-2008 email: p.chynoweth@salford.ac.uk.

Yours sincerely



Alan Whaley

00971562281285

a.r.whaley@edu.salford.ac.uk

I give consent to conduct this study:



(Andrew Gregory) 28/3/16 (Date)



**I**  
**Title of Project: An investigation into claims management practice in the UAE**

**Ref No:**

**Name of Researcher: Alan Whaley**

*(Delete as appropriate)*

➤ I confirm that I have read and understood the information sheet for the above study (version 1- dated 12 February 2015) and what my contribution will be.

Yes	No
-----	----

➤ I have been given the opportunity to ask questions (face to face, via telephone and e-mail)

Yes	No
-----	----

➤ I agree to take part in the interview

Yes	No	NA
-----	----	----

➤ I agree to the interview being tape recorded

Yes	No	NA
-----	----	----

➤ I understand that my participation is voluntary and that I can withdraw from the research at any time without giving any reason

Yes	No
-----	----

➤ I agree to take part in the above study

Yes	No
-----	----

**Name of participant:**

**Signature**

**Date:**

**Name of researcher taking consent:** Alan Whaley

**Researcher's e-mail address:** a.r.whaley@edu.salford.ac.uk

**If you have any concerns about this research that have not been addressed by the researcher, please contact the researcher's supervisor via the contact details below:**

**Supervisor's name** Dr. Paul Chynoweth

**Supervisor's email address:** p.chynoweth@salford.ac.uk

*Appendix 3 – List of Acronyms*

<b>Acronym</b>	<b>Definition</b>
BIM	Building Information Modelling
EOT	Extension of Time
ER	Employer's Representative
FIDIC	Fédération Internationale Des Ingénieurs-Conseils (English: International Federation of Consulting Engineers)
GCC	Gulf Cooperation Council
ICC	International Chamber of Commerce
LAD	Liquidated Ascertained Damages
NEC	New Engineering Contract
OSCOLA	Oxford Standard for the Citation of Legal Authorities
PM	Project Manager
TIA	Time Impact Analysis
UAE	The United Arab Emirates