THE DETERMINANTS OF SUCCESSFUL PARTNERING: A TRANSACTION COST PERSPECTIVE

D.J. Greenwood[1] and D.J.Yates[2]

[1]*School of the Built Environment, University of Northumbria, Newcastle-upon-Tyne, UK*
[2]*Department of Real Estate and Construction, University of Hong Kong.*

Support is emerging for the assertion that partnering can have a significant beneficial influence on project relationships and project outcomes. However, not all of the evidence bears this out: there are some examples of less-than-successful experiments with partnering approaches. Questions quite naturally arise as to whether any particular elements or aspects of partnering have differed in some of the documented examples, thus giving rise to their relative success or failure. In order to answer such questions there is a need for a theoretical framework against which to analyse the relative performance of partnering projects. In this paper, the authors propose an approach based upon aspects of Transaction Cost Economics (TCE) theory. It is argued that two main factors, *contractual incompletedness* and *opportunism*, are fundamental in determining whether project relationships are adversarial or not. The validity of the approach is examined by applying it retrospectively to a strategic partnering agreement involving more than 80 individual building projects. This agreement had been the subject of a four-year study and had been found to produce benefits in a number of areas, not least in the avoidance of conflict and disputes. After analysis, evidence for the reduction of contractual incompletedness was mixed, however the opportunistic inclinations of the participants (specifically, the contractors) were effectively attenuated by a clearly observable combination of factors, which included preselection criteria, and the use of appropriate management and commercial frameworks in which to operate. The case study suggests a *prima facie* validity to the analytical approach that was adopted, which merits further testing: the next stages being to develop and refine the framework, and to carry out comparative multi-case research on a number of different partnering projects.

Keywords: case study, conflict and dispute avoidance, partnering, transaction cost economics.

INTRODUCTION

Criticism of the performance of the construction industry - in terms of the poor quality of workmanship and materials; late completion and/or budget overruns on many projects - has been a recurrent theme for many years (Latham, 1993; Construction Task Force, 1998). The main reasons given for such under-performance usually focus on procurement, in particular 'traditional' procurement, and the inherent adversarial relationships between the parties. For example, in the 1991 report 'Partnering: Contracting without Conflict' the UK National Economic Development Council's Construction Industry Sector Group observed:

> The adversarial relationship established by the traditional contractual framework does not stop with the completion of the project. Claims and counter-claims continue often for years afterwards, exhausting the industry

[1] Corresponding author

> from both [*sic*] energy, resource and cost respects. The industry in fact spends more on contesting claims than it spends on research and development (NEDC 1991).

Bennett and Jayes (1995) observe that there is much room for improvement in the overall performance of the UK construction industry, but that 'the potential is at present inhibited by adversarial attitudes which waste the time of talented people in unproductive disputes'. In similar vein, the Dispute Avoidance and Resolution Task Force of the American Arbitration Association in its February, 1994 Newsletter, comments:

> During the past 50 years much of the United States construction environment has been degraded from one of a positive relationship between all members of the project team to a contest consumed in fault finding and defensiveness which results in litigation. The industry has become extremely adversarial and we are paying the price… A positive alliance of the parties (involved in the construction process) constitutes an indispensable link to a successful project… Disputes will continue as long as people fail to trust one another. (AAA, 1994, cited by Latham, 1994).

The emphasis on trust and teamwork as a partial solution to the problem of conflict and disputes is one of the main themes of Latham's (1993, 1994) extensive and thorough review of the UK construction industry. The terms of reference for the Latham Review were to consider existing procurement and contractual arrangements, and the roles, responsibilities and performance of the participants in the UK construction industry with the objectives of making recommendations regarding reform to reduce conflict and litigation and encourage the industry's productivity and competitiveness.

Latham's (1993) Interim Report, *Trust and Money* identifies and analyses the main issues and problems. Its scope is 'trust and money and the problems which flow from a lack of both'. The topic of *trust* (more correctly, *lack of trust*) and the problem of conflict are a primary theme. It was widely acknowledged (by industry participants who contributed to the review) that the industry had deeply ingrained adversarial attitudes and that '…many believe that they have intensified in recent years … the culture of conflict seems to be embedded, and the tendency towards litigiousness is growing'.

PARTNERING AS A SOLUTION TO CONFLICT

Partnering is an approach to doing business based on cooperation rather than confrontation. Its history as a recognised, formal approach appears to go back to the United States and examples of non-adversarial relationships between contractors and owners have been studied by the Construction Industry Institute (1989, 1991), Weston and Gibson (1993), Loraine (1993), and Larson (1997). Many of its elements are not new to business relations in the UK construction industry: a well-known example was the relationship between Marks & Spencer and Bovis, which originated in 1926.

Unfortunately, use of the word is extensive but varied, thus making analysis of examples of the approach all the more difficult. In a construction context, however, it is generally accepted that partnering can be *project specific* or *strategic*, i.e. encompassing several projects over a period of time (see, for example, Local Government Task Force, 2001:18). These longer-term arrangements are sometimes referred to as framework arrangements or alliances.

Sir Michael Latham's final report, *Constructing the Team* (Latham, 1994) suggested that *partnering* could overcome many of the problems associated with traditionally procured construction projects. Recommendation 19 of the report suggested advising public authorities on partnering and building up long term relationships (Latham, 1994:62). According to its advocates, partnering is not just a way of avoiding conflict. For example, in 1996 The Construction Industry Institute of the USA published a report showing Partnering had reduced project costs by 10%, schedules by 20% and claims by 87 % (Loraine and Williams, 2000:13); in a report commissioned in the UK on partnering, Bennett and Jayes (1998: 4) supported its potential for cost savings (in extreme cases up to 40%) and time reductions (as much as 50% in some examples). In its *Rethinking Construction* report, the Construction Task Force, chaired by Sir John Egan identified *integrated processes and teams* as one of the key drivers of change for the industry.

PARTNERING OUTCOMES: A CASE STUDY

It is clear from many sources, including those cited above, that there are some striking examples of partnering success. Although published cases of partnering failure are rare (an example is given by Angelo, 1998) a number of authors have advised caution about assuming that its success is automatic. Bennett and Jayes (1995) warn that '… the balance of benefits and … costs depends on individual circumstances and also on the attitude and culture of potential partners'. Bresnen and Marshall (2000) point out that partnering can be problematic, and Wood and Ellis (2005) cite the 1999 case of Birse Construction v. St David Ltd[2] as an example of a project where partnering manifestly broke down.

For the purpose of this paper, which aims to explore the applicability of a theoretical framework for interpreting partnering outcomes, the authors use data from a strategic partnering agreement that *was* successful, that of the North Tyneside Partnering Agreement ('the NTPA').

A case study: the NTPA

North Tyneside is a local authority governing an area to the north of the city of Newcastle-upon-Tyne in the northeast of England. The authority is responsible for the construction, replacement and maintenance of a large stock of public buildings, including public housing, schools and other non-housing provision. In 2000, the Council entered a partnering agreement (the NTPA) with three contractors to implement a £74 million reorganisation of the authority's schools. Due to its success the arrangement was extended to include all construction expenditure of the client, which included housing, municipal / public buildings, education, leisure, social, community and environmental services projects, ranging in value from £200k to £10m. The NTPA framework was monitored closely for its first four years under a research grant from the Department of Trade and Industry under its Partners in Innovation programme (Greenwood, 2004). Over this period 85 individual projects were completed.

NTPA results and outcomes

To enable the monitoring of performance on its projects, the NTPA adopted a number of key performance indicators (KPIs) that had been developed for the UK government for use in the construction industry (KPI Working Group, 2000). Of these KPIs,

[2] Birse Construction v. St David Ltd [1999] 4 BLR 194

particular attention was paid to eight, namely: client satisfaction with the product; client satisfaction with the service; defects and Health & Safety performance; time predictability; cost predictability; and construction time and cost (in terms of absolute values rather than relative certainty). Three methods of data capture were adopted, namely: normal project management records (for time and cost performance); a combination of records and specialist observation (for defects and Health & Safety performance); and the use of questionnaires to generate scores for client (and where this was different – end user) satisfaction with the product and service. The results have been reported in detail elsewhere (Greenwood, 2005) but the following is a summary:

Satisfaction

NTPA projects achieved significantly higher levels of satisfaction in all four categories than was the case with pre-partnered projects. Performance was also above industry average. 80% of NTPA projects achieve average or above average industry scores and of those that do 75% do so by a margin of over 10%.

Defects

NTPA projects were found to be above the Industry median and significantly better than the Council's pre-partnering projects.

Time and Cost

NTPA projects consistently outperformed similar projects that the authority had procured using traditional procurement. The results for construction *cost* and *certainty of cost* were particularly dramatic. For example, NTPA-built primary schools achieved target costs of 27% less than those previously tendered by the authority; and this represented an average 18% saving over nationally published cost figures. There was also an improvement in the *cost certainty* of projects: final accounts for earlier, tendered projects had been on average 10% higher than accepted tenders, whereas for NTPA projects, final accounts were 6% less than the agreed target costs.

Health & Safety performance

The performance of NTPA projects was excellent, with only one reportable accident over all of the projects to date.

The use of a KPI framework allowed: inter-project comparison within the NTPA, inter-project comparison between NTPA projects and the authority's previous non-partnered projects and comparison of NTPA project performance with whole industry performance. It also provided a tool to illustrate the extent to which the client is achieving Best Value (Green, 2000; Greenwood, 2002) and the aims of the local authority.

AN INTERPRETATIVE FRAMEWORK

Yates and Hardcastle (2003) articulate a comprehensive and integrated framework that facilitates the identification of the causes of conflict and disputes in construction and the analysis of their inter-relatedness. They suggest that an understanding of the causes of conflict and disputes can facilitate effective procurement decisions to be made - on a rational basis – that enable the Client's requirements with regard to *time* and *quality* to be achieved at the lowest overall *cost*. In doing this they utilise some of the concepts associated with Transaction Cost Economics (TCE), a branch of Institutional Economics pioneered by the Nobel Prize-winning economists, Ronald

Coase and later developed by others, principally by the Berkeley professor, Oliver Williamson.

Transaction Cost Economics and the construction project

Coase's earliest work in the area was in 1937 but almost 30 years passed before he published again on the subject (Coase, 1960; 1988). He considered the firm and the market as the alternative forms of organised economic activity and proposed that it was the *cost of transactions* that explained the existence of one or the other in particular contexts. According to Coase (1960: 22) transaction costs arise from the need 'to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms are being observed, and so on'.

Once transactions costs had been identified, interest turned to finding the factors that accounted for them. The main contribution is that of Williamson (1971; 1975; 1979; 1981; 1985; 1996) who asserts that the costs associated with forming contracts arise from, and vary according to two factors. They are 'the characteristics of the human decision makers who are involved with the transaction on the one hand and the objective properties of the market on the other' (1975: 8). Thus, the transaction costs of any act of market exchange will depend on the interplay between different sets of *human factors* and *environmental factors*.

Several authors have proposed a transactions cost approach to analysis of organisational behaviour in the construction industry: these include Eccles (1981), Gunnarson and Levitt (1982), Reve and Levitt (1984), Buckley and Enderwick (1989), Winch, (1989), Alsagoff and McDermott (1994), Walker and Chau (1999), Chang and Ive (2000), Lai (2000), Hughes *et al.* (2002), Yates and Hardcastle (2002) and Bridge and Tisdell (2004).

In the context of construction projects, Eccles, following Williamson's lead, regards the two most influential sets of *human* and *environmental factors* as (1) *bounded rationality* (human) and *uncertainty/complexity* (environmental) and (2) *opportunism* (human) and *small numbers* (environmental) (1981: 341). According to TCE theory therefore, it is the inter-relationship between these factors that should ideally determine the eventual nature and *governance structure* of the transaction.

Yates and Hardcastle (2002) recast this in the following form: that the client determines the requirements and objectives for the project in terms of *time* (overall project duration) and *quality* (design/functionality). The client then takes into account (a) the nature and characteristics of the proposed transaction (including its complexity, the uncertainty that surrounds it and its completedness) and (b) the degree of monopoly power and the likelihood for contractor-opportunism created. The client then goes on to select the most appropriate *governance structure* (i.e. procurement system) for the project that will minimize its total cost.

The application of TCE to construction conflict

Yates and Hardcastle (2003) apply this model to two case studies in order to seek a better understanding of the root causes of construction conflict and disputes, which they identify as contractual incompletedness and opportunism. They conclude that

> '…contractual incompletedness is the key to opportunism. If there were no gaps in contract documentation and no subsequent changes in client requirements and design, there would be no requirement for ex post

> "adjustments" and consequently no opportunity for the contractor to behave opportunistically'.

A traditionally procured construction project tendered on the basis of a fully completed design, having no errors or omissions in tender documentation and requiring no changes or variations during the construction phase, could be described as a 'complete' – that is, fully contingent – contract. In reality, however, because of the complexity of the construction process and time necessary for delivery, all but the smallest of projects are inevitably incomplete. Thus the main factors that give rise to contractual incompletedness are *uncertainty*, fuelled by the *inherent complexity* of the construction process, and the *bounded rationality* of the participants.

Quite apart from the inherent uncertainty and complexity that surround the project, *bounded rationality* can also manifest itself through inadequate performance by the client and his design/supervision team (due to limits in ability, experience, competence and, in particular, time) in the fulfilment of their respective roles. Additionally, there may be a desire by the client for flexibility in design decision-making (either by leaving decisions as late as possible and/or changing decisions made previously).

The source of *opportunism* is human nature. 'Contractual man' is motivated by self-interest (i.e. he is an individual utility-maximizer) and, according to the philosophy of 16th century Italian nobleman Niccolò Machiavelli, 'will cheat unless not cheating has greater value'. TCE theory does not insist, however, that human actors are all given to opportunism, merely that 'some individuals are opportunistic some of the time' (Williamson, 1985). There may well be a scale or spectrum of opportunism, ranging from nil or insignificant opportunism at one end, to extremes of opportunistic behaviour at the other. The position on this scale of a contractor (or its representative) at any given time could be determined by a host of factors. For example, Dorée (1994) suggests that personal values, education, ethics, gender and culture can affect the degree of opportunistic behaviour. Economic pressure (that is, the need for firms to make a profit) can also have a significant influence.

A condition precedent to successful opportunism, however, is the presence of transaction-specific (sometimes referred to as *idiosyncratic*) investments by the parties: where these are significant they provide *hold-up power* to the other party in the temporary bi-lateral monopoly that the contract has created. Without this *asset specificity* there *is* no significant bi-lateral monopoly power: either party could simply and inexpensively reorganize the transaction elsewhere in the market whenever contractual difficulties (conflict and disputes, for example) arose. Examples of transaction-specific investments made by the *contractor* (creating hold-up potential for the client) are probably limited to any negative cash flow that the contractor has 'locked into' the project, though contractors have learned, through skilful exploitation of contractual payment regimes (for both income and outgoings) to minimise this. The main asset-specific investment by the client, on the other hand, is the substantial asset of the project site. During the construction period this asset is in the possession of the contractor (in spite of the client's legal title), which exacerbates the losses that would be incurred if the client needed to find a replacement contractor. In short, the contractor's potential for hold-up is intensified through his physical possession of the site.

Opportunistic behaviour of the contractor usually manifests itself in the form of a claim for extra money and/or time. The principle of a claim may well have

contractual merit; however, the quantum may be inflated or exaggerated. Nevertheless, opportunism can be difficult to distinguish in the context of a construction dispute, in that both parties, if asked, would doubtless claim sincerity in their actions and deny opportunistic behaviour. As noted by Williamson (1985), 'in a world where (at least some) parties are inclined to be opportunistic, whose representations are to be believed?'

Summary of the implications

Building on the work of others, Yates and Hardcastle (2003) identify contractual incompletedness and opportunism as the root causes of conflict and disputes in construction; to lessen their incidence a client should endeavour to limit or reduce contractual incompletedness, and/or attenuate opportunism.

The issues that are of particular relevance to reducing contractual incompletedness are (1) reducing uncertainty and complexity and coping with any need for flexibility, and (2) the reduction of bounded rationality through improved client competence and an improved briefing process. The reduction of contractual incompletedness, they argue, will have a limiting effect on the potential for opportunism.

Of course, another way of attenuating opportunistic behaviour is to deal with parties who are not inclined to behave opportunistically. This may because of a natural disposition against opportunism that is *inherent* (because of their personal values, education, ethics, culture, reputation) or *acquired* (e.g. because of a relationship they have developed with the other party). One way, therefore, of attenuating opportunistic behaviour would be by improved contractor selection. Alternatively, and more in keeping with a purely TCE approach, the tendency towards non-opportunistic behaviour may be purely calculative: either the party may value its reputation for restraint in such situations, or it may be the case that some future (long-term) position may be of greater value than an immediate opportunistic gain.

It must be recognised, of course, that a party that in normal circumstances is non-opportunistic, may behave quite differently when it is confronted with the prospect of a substantial loss on a project. Indeed, any economic circumstances that have a direct influence on contractors' profit margins are likely to affect their inclinations to behave opportunistically.

The next section of the paper, using the example of the NTPA introduced earlier, will examine whether its governance structure reveals any of these elements of purposive design; further, whether this has application to construction partnering generally. On a more theoretical level, the exercise is designed to illustrate how some of the key concepts associated with TCE might be operationalised in a construction context.

USING THE FRAMEWORK TO ANALYSE OUTCOMES

An important objective (though by no means the only one) of the NTPA's rationale was to engender a long-term collaborative working relationship between the parties (starting with client and contractor partners, but ultimately extendable to others in the supply chain) which *inter alia* would minimise conflict and disputes, or indeed avoid them altogether.

Reduction of contractual incompletedness

The important components of contractual incompletedness were earlier identified as uncertainty, complexity and bounded rationality among the participants, with key

project-related factors lying in the choice of governance structure (procurement method), the performance of the client organisation itself, and the certainty of the briefing process.

The NTPA procurement system

The first question to be addressed was whether uncertainty was reduced in NTPA projects through the choice of its procurement system.

The first stage in the procurement process was an open call for expressions of interest, followed by a so-called 'Primary Qualification Questionnaire' to assess applicants' suitability, competence and financial standing. The client then evaluated these and those who emerged were sent a second, more detailed questionnaire. The following extract from the 'Primary Qualification Questionnaire' issued by the client indicates a fair degree for uncertainty in the client requirements:

> North Tyneside Council is seeking potential partners to assist in the delivery of a major capital works programme based on a review of its services to schools. The resultant capital works comprising new build, extensions, alterations and adaptations has been programmed to span 1999/2000 to 2004/2005 financial years. It is proposed to select two or three partners who will collectively deliver the capital programme under a partnering agreement with the Council. Each partner would not only work with the Council, but with each other to deliver mutually agreed targets with regard to quality, time and cost certainty and could expect an allocation per annum of between £5-10 million.

Note the expressions 'mutually agreed targets' and the relative uncertainty of expected turnover available from the framework. For the next stage (the 'Secondary Qualification Questionnaire') the client was able to identify five projects (with a total combined budget of £8.9 millions) that it proposed would fall under the Agreement. The number of partner contractors had also been set at three. The proposal added that 'the allocation of this work within the partnering group will be discussed with the partners' but then continued with an example of how this volume of work *could* be allocated.

A shortlist of seven contractors was then invited to present proposals, and from this the final three partners were chosen. Once partner contractors had been chosen, the only written element to support the NTPA's formation was the Partnering Charter, which was developed jointly at an 'Initial Partnering Workshop' on the 14th and 15th July, 2000. In this document the partnering aims were,

> [to] work together in an open and honest environment dedicated to achieving mutually beneficial solutions with the aims of:
> - Clearly identifying client requirements;
> - Achieving client requirements with a customer focus;
> - Continuous and sustainable improvement on a measurable basis;
> - Having a positive approach to problem solving.

The charter contained other similar references to 'mutuality' but no mention of the more conventional contractual issues. It was agreed that in terms of procedure (principally insurance, valuation and payment) projects would be 'conducted on the basis that the Joint Contracts Tribunal (JCT) Standard Form of Building Contract was in place' but that 'parties should disregard it and work to the guidelines of the partnering charter' (Greenwood, 2004). Indeed no JCT Articles were completed for the NTPA as a whole or for any individual project. It was decided that neither

Liquidated and Ascertained Damages provisions nor contractors' claims for Loss and Expense would be appropriate to the agreement. In the 'spirit of partnering' the client also decided that it would not require retention monies to be held from interim payments. From its inception the NTPA was committed to the rigorous collection and publication of Key Performance Indicators. However, unlike some framework agreements, the results of these KPIs were not related to reward or penalty but to improvement by mutual consent.

Thus, and in contradiction to the theoretical objective of minimising them, the NTPA appears to have been formed under conditions of *extreme* uncertainty and flexibility. These are important elements of contractual incompletedness, which in turn, as Yates and Hardcastle (2003) argue, is the key to opportunism! Thus there was nothing in the initial formation of the NTPA that suggested it would avoid opportunistic behaviour and subsequent conflict.

Performance of the client organisation

Client bodies, particularly those in the public sector, can be extremely complex, and this case was no exception. At best, a local authority that requires the construction of a school can be seen as a bundle of stakeholders ranging from council officers and members to end-users such as school head (and other) teachers and with an array of functions including the specification, sanctioning, ordering, monitoring, maintaining, auditing, and ultimately the use and enjoyment of the proposed facility. From a TCE perspective this situation, as it stands, is complex and promotes a considerable amount of indecision, flexibility and uncertainty.

Following its formation, the NTPA coped with this in a number of ways. Firstly, the NTPA Core Group (*v. infra*) operated on a cross-project basis like a virtual company. This deflected much of the system complexity away from individual projects. Secondly, a beneficial involvement with stakeholders was maintained through a carefully considered communication strategy. Stakeholders were encouraged to attend their relevant project partnering workshop and did so in most cases. The idea of introducing the end user as early as possible to the construction process was to maintain realistic expectations within the context of client's budgetary restriction.

Increasing the certainty in the briefing process

In the early stages of the NTPA a considerable amount of attention was paid to improving the briefing process for individual projects. One of the most important features of the Project Delivery Plan that resulted was its series of 'gateways'. The first of these occurred in the *Feasibility/Options* stage and involved the client in committing to the project with a written brief of requirements, including a budget and timetable. Project risks were discussed at this stage and communicated to the parties involved. Gateway 2 occurred at the end of the *Scheme Concept* stage and at that point the client brief was 'frozen'. By far the most important of the 'gateways', Gateway 3, occurred when the *Design Development and Price Setting* stage (based upon Stage D of the RIBA Plan of Work) was complete. It was at this point that the whole team (client, contractor, designers) agreed a cost estimate for the project. The project was then subject to a detailed value engineering process which continued through the *Detailed Design, Measurement and Pricing* stage. When this was complete (Gateway 4) a target cost was agreed. After this stage any overrun or shortfall between this agreed target cost and the final account was subject to a 50-50 split between client and contractor.

The ability to involve the contractors (and in some cases, even subcontractors and suppliers) at these early stages of the design process was of immense benefit. It gave contractors a better understanding of budgetary restrictions and enabled them to focus much earlier in the process on client or end-user expectations. Equally clients and designers benefited from the presence of contractors in being confronted at this stage with the problems that they might face later.

Contractual incompletedness in the NTPA

The question of whether contractual incompletedness was reduced by the NTPA's governance structure is therefore not an easy one. At the NTPA level, the lack of any written agreement (other than the Partnering Charter), the removal of conventional contractual safeguards, such as liquidated damages, extension of time and loss and expense claims, and the non-binding approach to KPIs, all portray a very 'incomplete' contractual situation. In fact, this accords with the views of Ian Macneil, an influential critic and adapter of the TCE schema, who has argued that no long-term deal could ever be contractually complete (see, for example, Macneil, 1974).

On the other hand, the potential uncertainties emanating from the complexity of the client body were significantly reduced by the approaches adopted, and the briefing and budget setting process for individual projects ensured the 'buy-in' of all parties to project decisions. This engendered more certainty; and where uncertainty remained, it was recognised as such by the parties at an early stage. The consequence of both these last situations would, in theory, reduce the scope for opportunistic behaviour.

Attenuating opportunism

Apart from the precondition of contractual incompletedness, it has been noted earlier that a number of other factors affect the incidence of opportunistic behaviour.

In Bennett and Jayes' (1998) guide it is stressed that 'for cooperation, rather than opportunism … to prevail' a successful partnering agreement must be 'fair' in such matters as 'sharing of work, profit and loss, risk and reward strategies, problem solving and the management of differences.' From a theoretical perspective this is rather a mix of approaches: in the TCE literature, opportunism is motivated by self-interest and will vary according to calculative, economic rationalisations. There is no room in this 'system' for the concept of fairness. Notwithstanding this concern, many of the aspects of the NTPA's risk and reward approach were examples of disincentives to opportunism.

Economic pressure and the commercial imperatives of the contractor

Under the NTPA agreement, contractors' overheads and profit margins were agreed and 'ring-fenced' in advance. As part of pre-qualification, the contractors submitted financial information and the ring fencing was concluded on the basis of these figures. Furthermore, it was agreed that any savings on projects would be split 50:50 between the client (i.e. the project or the schools programme of work) and the contractor. Project over-spend would be dealt with in the same way.

As noted earlier, a number of the contractual safeguards that are commonly present in construction project agreements (Liquidated and Ascertained Damages provisions, contractors' claims for Loss and Expense, and Retentions) were dispensed with in the case of the NTPA framework. These departures from traditional practice allowed the contractors to focus on projects without the pressures of defending margins or coping with contractual issues that so often consume their efforts. On the other hand, the client side was relieved of concerns about the contractors making excessive profits or

claims. The decisions taken on these contractual and commercial issues were intended to give NTPA clients a degree of comfort in gaining most from available budgets, whilst removing from the contractors the need to adopt adversarial positions to secure a fair return on their resources employed.

Selection of the partners

The three NTPA partnering contractors were the product of a rigorous selection process. It was noted above that the degree of *opportunism* is can be affected by corporate or personal values and culture. The partnering pre-selection process (see above) was designed to explore the pre-existing values and culture of the candidate contractors.

In the first stage questionnaire applicants were asked to describe (in no more than 300 words) 'why the Council should consider your organisation as being an appropriate partner'. As well as the normal details of equal opportunities, quality and health & safety policies, the second pre-qualification questionnaire asked applicants to disclose any outstanding claims or litigation, provide details of the changes and modifications they would anticipate making to their structure if selected as a partner, and to provide the names of three referees. A further section tested the contractors' understanding of the organisational and cultural consequences of partnering. Past experience of collaborative working was also a factor. Finally the short listed contractors were invited to attend for presentation and interview, based on projects listed in the second questionnaire.

Team building within the partnership

After appointment of the partners a series of 'Initial Partnering Workshops' was run with the objective of exposing participants to the rationale and culture of partnering. These workshops brought together as many as possible of the staff from the three contractors and the local authority to work in multi-disciplinary teams. At the end of this process a partnering charter was drawn up which all team members signed. Although initially directed by proponents of partnering within the authority, the charter was entirely the creation of the workshop participants and set out the aims, aspirations and philosophy behind the agreement. As well as committing the partners to continuous improvement the charter also espoused a 'no blame' culture, and committed to effective communication.

Team building at project level

Further 'Project Partnering' workshops were held for each project as it was initiated. These involved each project team coming together before the start of the project for a half- day facilitated meeting. The agenda was to reinforce the message of the NTPA (see above), to agree expectations, look at how best to measure performance, identify areas for improvement, and appoint a 'Project Partnering Champion' for the project. The champion was responsible for promoting the partnering ethos and recording the team's performance across the range of performance indicators.

Cross-company groups and roles

The council invited two representatives from each contractor to join a Core Group. The group was the effective executive of the whole NTPA and its functions included, steering the partnership process generally, allocating each project as it entered the Feasibility stage to one of the contractor partners, on the basis of size, suitability, skills and resource availability, especially the availability of the management resource, since with the NTPA partnering approach there was a requirement for the contractor's input at this early stage. If disputes were to occur, the Core Group was to be the initial

locus for their resolution. The core group also encouraged the three contractor-partners to share labour resources wherever possible. As the NTPA grew in maturity, two further extra-project groups were formed.

A Supply Chain Forum, with representatives from each of the four partners, was set up by the Core Group to act on its behalf and report directly to it. The role of this group was to identify areas where supply chain links could benefit the NTPA, establish the required relationship (subject to ratification by the Core Group), and monitor subsequent performance. A Contracts Managers' Forum was set up by the Core Group to provide production-related feedback from all projects. The NTPA partners also jointly funded the employment of three individuals at the Core Group level (rather than the project level) namely an overall Partnering Manager, his assistant and a Supply Chain Co-ordinator.

Performance and benchmarking
As noted earlier, the collection of KPI data was fundamental to the NTPA process, though not in terms of reward or penalty. Their main function was to serve as a good proxy for 'value-for-money' which, provided they were within acceptable bounds, would give political support to the client's arguments for the benefits of strategic partnering and obviate the need to go out to tender for each project. In the event, the NTPA results demonstrated a considerable improvement on pre-partnering experiences (Greenwood, 2004) and as a result had, arguably a very positive effect on the emerging NTPA 'ethos'.

Transaction-specific investments

As mentioned earlier, one of the conditions for opportunistic behaviour in a transaction is the presence of transaction-specific (idiosyncratic) investments by each party, which creates an exploitable source of 'hold-up power' for the other.

Herein lay a major difference between the NTPA programme and a simple series of similar conventional projects. The main asset-specific investment by the client is once again the need commitment to the project. But in contrast to a conventional project relationship, where transaction-specific investments by the contractor were earlier described as being hard to discern, in a framework agreement such as the NTPA they were substantial. First, there was a considerable investment in the pre-qualification process; then, the investment of managerial resource into the cross-project NTPA groups: the Core Group, Supply Chain Forum, and Contract Managers' Forum, as well as the funding of the three NTPA Core Group posts of Partnering Manager, assistant and Supply Chain Co-ordinator (*v.supra*). Finally, and less obviously, there were the partnering contractors' commitments (over time) to one another, which included the sharing of labour, of supply-chain relationships, and of construction good practice.

Arguably, this change in the normal state of affairs could have had a number of possible effects on the incidence of opportunism. The first observation would be that the higher levels of contractors' asset-specificity would increase the client's ability to behave opportunistically and that this would increase the overall potential for conflict. The other possibility is that, with a more equitable balance of power, the potential for conflict would be reduced. This is what appears to have happened.

Calculated self-interest in the long and short-term

In TCE theory, the *human* pre-requisite for opportunism is the fundamental neo-classical economics concept of the individual utility-maximizer. The absence of opportunistic behaviour by the contractors (or at least, its manifestation in terms of conflict, claims and disputes) from the NTPA programme of projects, presents some interesting material for speculation on this.

The first, most obvious conclusion, hinted at earlier, is that the maintenance of their long-term (4 or 5-year) positions was of greater utility to the partner-contractors than any short-term opportunistic gain from claims on an individual project. Nor was this behaviour affected by the 'normal' commercial risks of a project: the contractors' overhead and profit margins were 'ring-fenced' at acceptable levels and they were allowed to operate in the absence of the normal 'contractual threats', such as Liquidated Damages and Retention.

CONCLUSIONS

The aim of this paper was to describe an interpretative framework developed from TCE theory, and to experiment with the operationalisation of its concepts by applying them to a specific, recorded partnering programme, the North Tyneside Partnering Agreement (NTPA). The decision to partner with three contractors over its entire programme of projects, rather than inviting bids on individual schemes, constituted a dramatic departure from the traditional local authority procurement paradigm. Over its 4-year time frame the NTPA proved extremely successful in bringing in projects to time and budget, improving client satisfaction, and adding value. However, the aspect that concerns this paper is the fact that no claim or dispute occurred on any of the 85 projects during period that the programme was studied.

Following earlier work, it has been suggested that the root causes of conflict and disputes in construction are *contractual incompletedness* and the parties' *opportunism*, and that the avoidance of conflict and disputes requires the limiting or reduction of the former and the attenuation of the latter. Evidence from the NTPA is used to examine how closely its outcomes align with these assertions.

In the case of *contractual incompletedness*, the findings are ambivalent: a high degree of uncertainty surrounded the start of the programme, however the approach to briefing and target-cost setting on a project-by-project basis *did* offer some evidence of uncertainty and bounded rationality reduction.

On a project-basis, then, it could be argued that there was less scope for opportunistic behaviour, but more important was the fact that the parties were naturally less disposed towards it. This was partly due to pre-selection. The contractor-participants had, after all, been selected on purely qualitative criteria based on their reputations and their likely predisposition towards collaborative working. Secondly, the working practices of the NTPA (with its series of team workshops, integrated cross-project teams, and the structure and authority of the Core Group) were designed to develop a collaborative ethos.

Furthermore, and perhaps more crucially, the commercial conditions under which the partners worked could be said to be highly influential. These included the effective 'guarantee' (ring-fencing) of a reasonable overhead and profit margin for contractors on every project; the potential for a 50% gain-share on any savings on target costs; and possibly most important, the prospect of future work, under the same contractual conditions, with the same participants, and without the need to bid. The contractors placed greater value on these benefits than on any short-term potential gain from

opportunistic claims. The use of performance measurement on projects acted more as a motivator than a threat: the KPIs were not linked to reward or penalty but the contractors were nevertheless committed to performance improvement as this enabled the client to sustain the partnering arrangement by demonstrating 'best value' and avoiding pressures (principally from elected members of the Council) to return to the tender marketplace.

The case study reveals that the approach is *prima facie* valid, and merits further testing: the next stages being to develop and refine the framework, and to carry out comparative multi-case research on a number of different partnering projects.

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