

Sean Sullivan Gibbs

22.11.2022



Credentialing Limited
Certification Body for Global Consulting Professionals
Certified Adjudicator



Fellow

CI Arb

‘Dispute Avoidance & Dispute Resolution’



HI

HANSCOMB
INTERCONTINENTAL

EXPERT WITNESS & EXPERT ADVISORY

Construction | Engineering | Shipbuilding

**Quantum
Delay
Technical**

info@hanscombintercontinental.co.uk

www.hanscombintercontinental.co.uk

Sean Sullivan Gibbs

BSc, PG DIP ARB, DIP ADJ, LLB (Hons), LLM, Barrister

Chartered Quantity Surveyor, Adjudicator, Arbitrator, Dispute Board Member, Quantum Expert & Expert Determiner

- CEO Hanscomb Intercontinental Ltd
- Called to the Bar of England by the Middle Temple July 2017
- Fellow of the Royal Institute of Chartered Surveyors
- Fellow of the Chartered Institute of Building
- Fellow of the Chartered Institute of Arbitrators
- Fellow of the Chartered Institute of Civil Engineering Surveyors
- Fellow of the Institute of Civil Engineers
- Cardiff University Bond Solon / Academy of Experts accredited expert witness
- FIDIC President's List Adjudicator



MULTI-DISCIPLINARY EXPERTS

- **ARCHITECTS**
- **SURVEYORS**
- **ENGINEERS**
- **PROJECT MANAGERS**
- **CONSTRUCTION MANAGERS**
- **ACCOUNTANTS**

EXPERTS APPEAR IN

- **LITIGATION**
- **ARBITRATION**
- **ADJUDICATION**
- **DISPUTE BOARD HEARINGS**
- **MEDIATION / CONCILIATION**
- **EXPERT DETERMINATION**

PROFESSIONAL POSITIONS

- Society of Construction Law (UK) Council Member
- Future Vice Chair Adjudication Society
- CICES Disputes & Contracts Committee Vice Chair
- Chartered Institute of Arbitrators (CI Arb) Western Branch Vice Chair
- Construction Industry Council (CIC) ADR Committee Member
- Dispute Resolution Board Foundation (DRBF) Region 2 Director
- Federation International Consulting Engineers (FIDIC) DB Consultee
- Hong Kong Adjudicators (HKA) Board Director
- UK Adjudicators (UKA) Board Director
- Member of the International Statutory Adjudication Expert Committee
- Consultee on adjudication to governments of Bahamas / Ontario

TRAINER FOR CIARB ADJUDICATION MODULES 1-3



TRAINER FOR DRBF

DRBF Administration & Practice Workshop
DRBF Advanced Administration & Practice Workshop



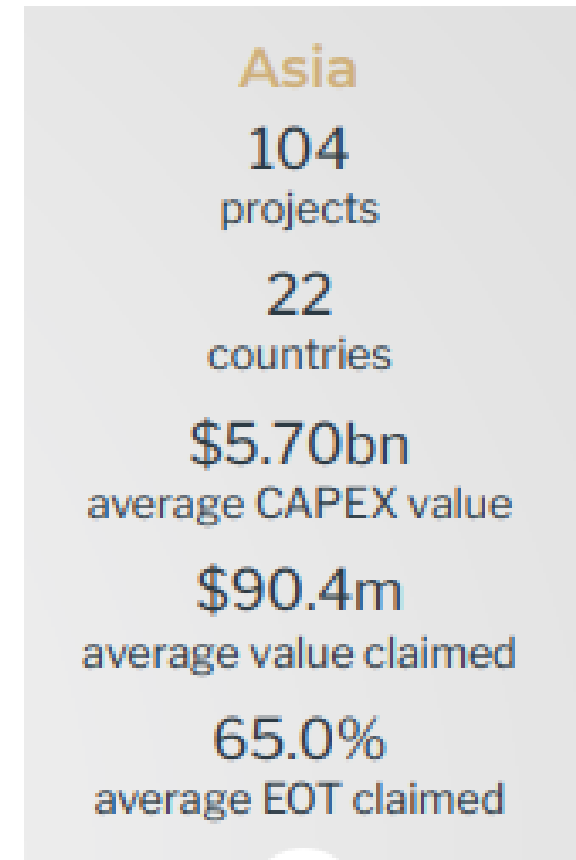
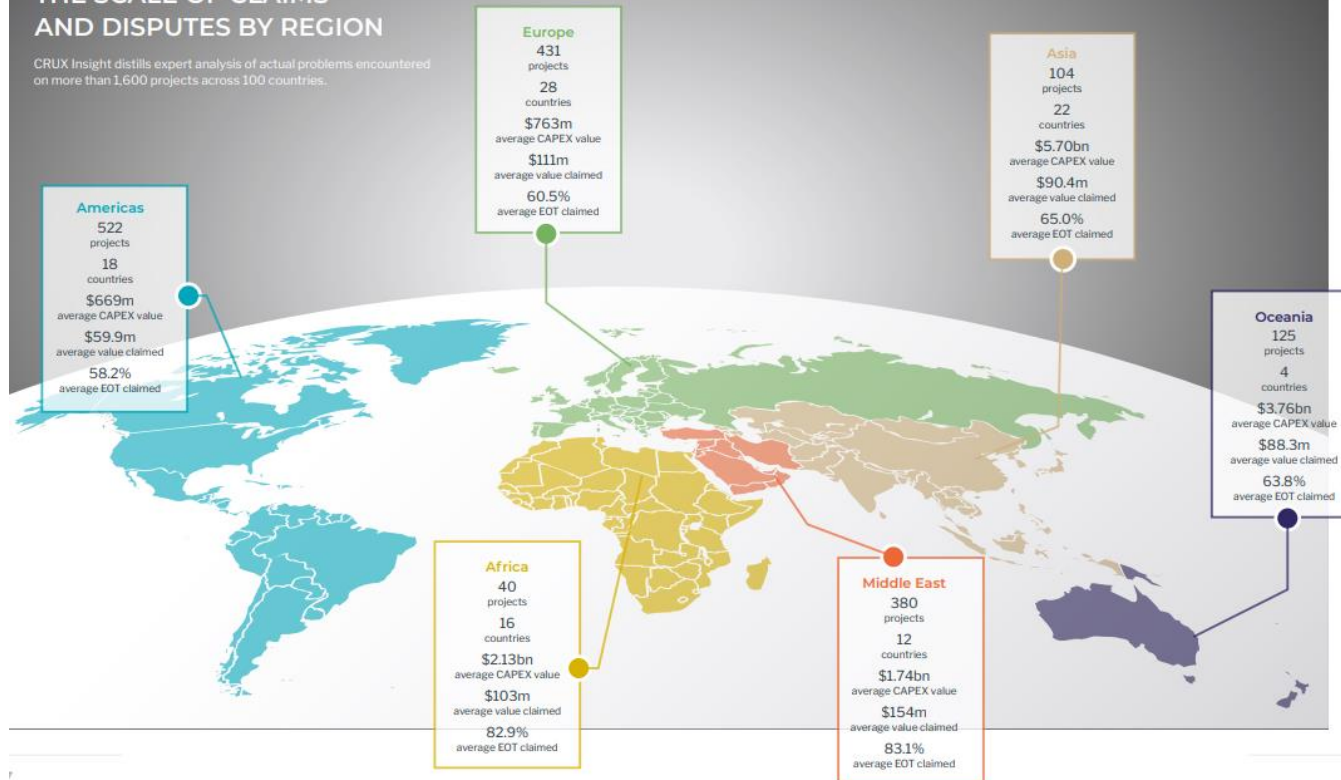
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Dispute Avoidance & Dispute Resolution

A WORLD VIEW

THE SCALE OF CLAIMS AND DISPUTES BY REGION

CRUX Insight distills expert analysis of actual problems encountered on more than 1,600 projects across 100 countries.



Dispute Avoidance & Dispute Resolution

Conflict Avoidance Pledge



Dispute Avoidance & Dispute Resolution

ice
Institution of Civil Engineers

RIBA #
Royal Institute of
British Architects

RICS
Royal Institution of
Chartered Surveyors

CI Arb
Construction Industry
Arbitration Board

The Dispute Resolution Board Foundation
DRBF

Guide to Conflict Avoidance &
Dispute Resolution for the
Construction and Engineering
Industry



16 page guide

- Justification for conflict avoidance and early intervention Techniques

Conflict avoidance and dispute resolution processes

1. Contract Provisions
2. Conflict Avoidance Panels
3. Early Neutral Evaluation
4. Project Based Dispute Boards (DBs)
5. Evaluative Mediation

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Dispute Avoidance & Dispute Resolution



Conflict Avoidance Toolkit

Prepared by the Conflict Avoidance
Coalition Steering Group

Contents

<u>Overview</u>	3 - 4
<u>Conflict Avoidance Coalition Steering Group</u>	5
<u>Pre-Contract Preparation</u>	6
<u>Dispute Avoidance</u>	7
<u>Early Intervention</u>	8
<u>Amicable Resolution</u>	9
<u>Dispute Resolution</u>	10
<u>Conflict Avoidance Pledge</u>	11



Dispute Avoidance & Dispute Resolution



NEC Dispute Avoidance & Dispute Resolution



Options W1, W2 and W3

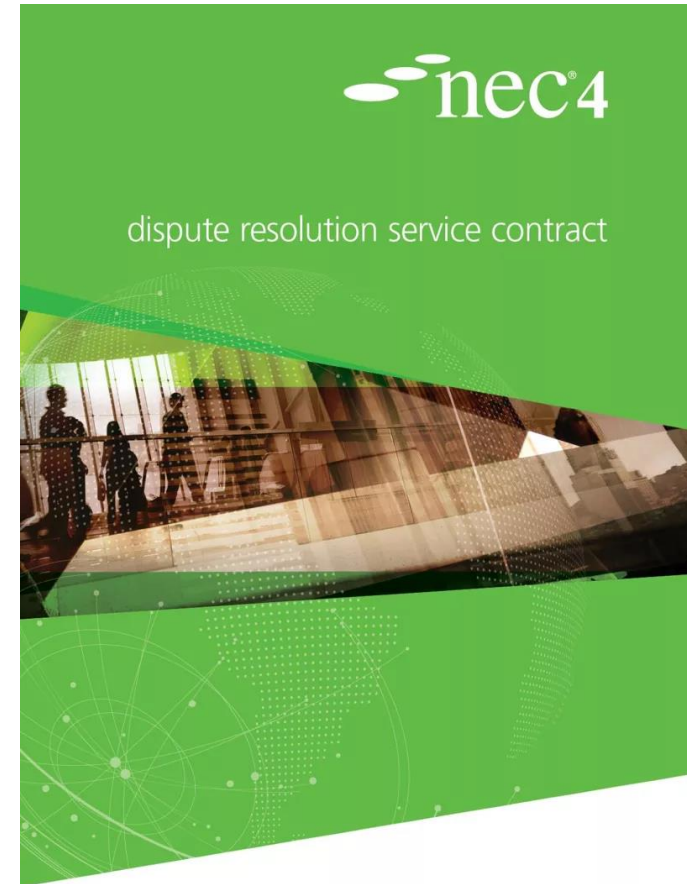
W1 and W3 deal with the situation where the United Kingdom Housing Grants Construction and Regeneration Act (the Act) does not apply.

W1 provides for adjudication outside of the Act and like W2 introduces the concept of Senior Representatives

Option W2

W2 applies where adjudication under the Act applies (UK)

NEC Dispute Avoidance & Dispute Resolution



June 2017



NEC Dispute Avoidance & Dispute Resolution

Option W1

Multi-tier dispute resolution: Options W1

Amendments to Options W1 require the initial referral of all disputes to the parties' senior representatives specified in the contract data.

Under Option W1 (used where the Construction Act does not apply) this initial referral process is compulsory before you can escalate a dispute further.



NEC Dispute Avoidance & Dispute Resolution

Option W1

The new senior representative process that the NEC has tried to walk the line between preventing the process from becoming longwinded and open to abuse, while allowing the parties flexibility to make the process work as they wish.

Each party must submit a statement of case within a week of notification limited to 10 sides of A4 and supporting evidence. On the other hand, the senior representatives can attend as many meetings and use any procedure necessary to resolve the dispute over a period of no more than three weeks.



NEC Dispute Avoidance & Dispute Resolution

Option W1

At the end of the process, a list of issues is produced and the project manager and contractor must put any agreed issues into action. The process is also intended to be “without prejudice” and no evidence of either the statement of case or the discussions can be disclosed in subsequent proceedings.

Under both options, the intention is that the senior representatives process should act as the primary dispute resolution process, adjudication as a secondary process and arbitration / litigation as a third and final resolution process.



NEC Dispute Avoidance & Dispute Resolution

Option W1

Next stage is to refer dispute to adjudication.

After adjudication dispute can be referred to Tribunal.



NEC Dispute Avoidance & Dispute Resolution

Option W3

Is used where the Act does not apply and the parties choose a Dispute Avoidance Board (DAB) rather than adjudication. The DAB procedure must be followed before referring to court or arbitration as appropriate.

The DAB consists of either one or three members. The number of members is stated in the Contract Data Part 1. If there are to be three members, both the Client and the Contractor nominate a specific individual who is named in the Contract Data and the parties jointly chose the third member. There is also provision for dealing with a member not being able to act.



NEC Dispute Avoidance & Dispute Resolution

Option W3

The DAB is appointed under the NEC DRSC. The DRSC is relevant to all three W option clauses.

The DAB visit the Site at intervals. The frequency is specified in the Contract Data. The aim is that the DAB inspect the progress of the works and become aware of potential disputes, thereby resolving issues before they become disputes.

A potential dispute is notified to the DAB between two-four weeks after notification to the other party and the Project Manager.



NEC Dispute Avoidance & Dispute Resolution

Option W3

The DAB makes recommendations. It visits site and inspects the works and prepares a note of its visit. Unless the parties have resolved the issue by the end of the visit, the DAB provides a recommendation for resolving the issue.

Only if a party is dissatisfied with the recommendation is the dispute referred to either court or arbitration (as appropriate). The dissatisfied party must notify the other party of the matter which it disputes and state that it intends to refer to court or arbitration (as appropriate) within four weeks of notification of the DAB recommendation.

Dispute Avoidance & Dispute Resolution



1999 DAB

Dispute Adjudication Board

2017 DAAB

Dispute Avoidance
Adjudication Board

Dispute Avoidance & Dispute Resolution



NEC 4 W3

DAB

Dispute Avoidance Board
Recommendation

Tribunal (Court / Arbitral)



FIDIC

DAAB

Informal discussion to Opinion
Binding Decision

ICC Arbitration



HI HANSCOMB INTERCONTINENTAL

www.hanscombintercontinental.co.uk

5 CHANCERY LANE, LONDON UK
EAGLE TOWER, CHELTENHAM UK
HONG KONG
JOHANNESBURG
NEW YORK
SINGAPORE
VIETNAM

+44 (0)20 3287 8518

sean.gibbs@hanscombintercontinental.co.uk

+44 (0) 7722 643 8146