

# Planning to Win

## Background

It's clear that recovery of contractual entitlement to unforeseen project losses is a significant contributor between organisational success or failure, and may even be the difference to business survival. It is also clear that nobody spends time, money and effort on delay and disruption claims with a view to losing. But at the same time there are too many instances where a claim is submitted that doesn't fulfil its own potential, which may be further compounded by an ill thought through claim resolution strategy. Why then wouldn't every effort be afforded to a winning claim strategy, which starts from the very first day of every new project?

It's not difficult to find a lot of advice about the need for contemporary management of change and about the importance of planning and project controls within this process. There doesn't however seem to be nearly the same level of advice regarding how or what should be adopted to result in a system that can add real value to the delay and disruption entitlement recovery process. This brief article hopefully goes some way to addressing this imbalance.

We must first make a number of assumptions. The first relates to a contract being established that provides a defined completion date, together with a mechanism that enables for that time to be extended on the basis of certain circumstances occurring and hence that the damages imposed under the contract to be delayed (an extension of time clause). It is also assumed that a contract schedule is agreed between the contracting parties and that it represents an agreed, achievable and reasonably detailed sequence of events that are to be achieved to meet the specific timeframe (typically a level 3 schedule).

So here we encounter the first problem. Given that the project timeline was established at the pre-contract stage and that it was based on a range of assumptions and assessments of risk that will in all probability prove to be deficient, in addition to which those assumptions will have been subject to commercial pressures, then this doesn't seem to be a good place to build a strong foundation upon which to develop a strategy for the potential recovery of delay and disruption entitlement.

A further constraint exists in relation to the reality that most organisational / project environments are based on a departmentalised system, which typically means that the planning and project controls department is administered under different leadership to the contracts and commercial department, which itself is separate to the construction / project management department. They all come together somewhere in the middle to serve project needs, but will still remain rather departmentalised. This means that a strategy aligned to the recovery of contractual entitlement must overcome cross boundary challenges from the very start.

## Strategy Development

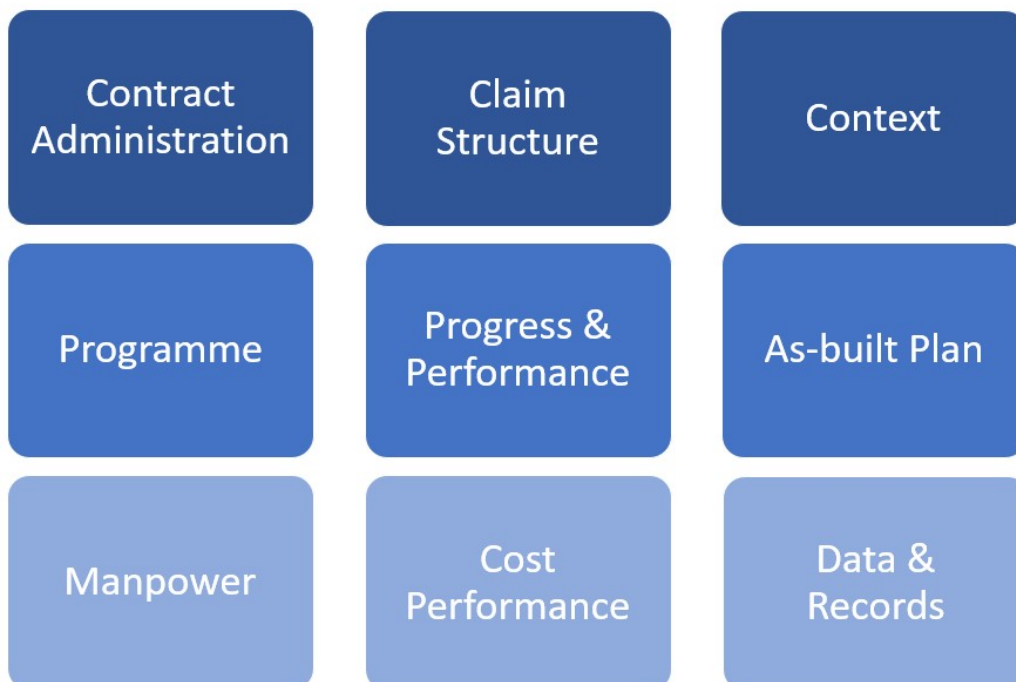
Too many business, large and small, have been consigned to history on account of ingrained practices that did not adapt to loss making practices, in addition no doubt to their leadership teams not reacting to clear indicators of organisational failure (leadership lag). This is either on account of being blinkered to real data; by being caught in the shadows of leadership dominance by one party or another; or simply on account of not believing that the direction of their particular ship could be changed. Perhaps some executives did attempt to change direction, but the response was slower than the circumstances surrounding their business with a consequential effort afforded to bailing out the water slower than it was pouring into their boat. In fairness, in these situations, there's not too much time that can be afforded to finding and fixing the hole!

Setting a strategy that is focused on full recovery of contractual entitlement is both an obvious and manifestly essential business imperative. Putting this at the heart of business operations should engrain direction to operational personnel, whilst promoting proactive client management and administration, as balanced with positive cashflow and the need to make a profit. Quite simply, planning to win is essential for business survival.

Conversely, if contemporary change management practices are not sponsored by business leaders and left instead to only bottom-up tactical initiatives, a paradoxical resistance to the implementation of processes and practices will occur and the effort afforded doomed to failure.

## Component Parts of the Strategy

Though every strategy is bespoke to its sponsor and organisational context, there are a number of features that should be common to the objective of recovering full contractual entitlement and the following is offered as a skeleton framework for consideration:



## Planning to Win

David Tyerman

February 2020

The top row of this matrix is concerned with contract administration, the structure of the claim and its context. More specifically, this translates into ensuring that all project contractual obligations have been met, that negative assertions have been rebuffed, that expectations and deviations from them have been stated and that a clear footprint is visible from the causes identified as being attributed to the losses sustained, through to the effect(s) on the planned intent.

The context of the project, that is, the dynamics of the project team, its environment and general ability to function as engineering, procurement, construction and commissioning functions should, provides not only the background by which to express recovery of loss, but also an opportunity to highlight just why causes of delay and disruption translate into those losses.

The middle row relates to the project schedule which represents both the biggest strength and weakness of a delay and disruption claim. Its strength depends entirely on the accuracy of progress and performance data recorded against it, in addition to a clear understanding of the assumptions underpinning its sequence, manpower requirements and subcontractor interface requirements. On the other hand, as a result of deficiencies associated to the former attributes, it is inherently weak. How easy is it to develop an as-built version of events, of manpower, of gaps in the planned work durations and of the causative influence of events as they relate to the losses asserted? Quite simply, changing behaviours in this regard will demand an entirely different approach to planning, scheduling and project controls.

The final row of the matrix looks similar at first sight to the intent of the middle row, only here 'manpower' refers to the performance and dynamics of sub-contract organisations, whilst 'cost performance' must be adjusted to highlight and define the exact scale and nature of losses as they deviate from the planned intent. The need for cost and planning teams to be fully aligned is essential for this to operate effectively.

## Translating Strategic Direction into Practical Terms

All good strategies must be translated into practical actions in order to realise the stated objective benefits. Though the actual practicalities will vary with the specific circumstances of each environment, there would appear to be a number of common matters that warrant consideration, namely the establishment of a 'forensic investigation team' (or whatever you care to call it), and the dovetailing of cross-departmental interfaces.

The first is suggested as being a separate and specialist team who are tasked with periodic audits of all projects and their respective performance / change. Not only do the teams engaged with project delivery tend to miss change patterns and potential opportunities to recover loss, but they are more often (quite understandably) all too consumed with project delivery duties to have any chance to stand back and conduct such a role. This then affords an opportunity to establish a team who are independent to the project, and who would establish specialist competencies aligned to the investigation, quantification and recovery of loss. Though specialist interventions may be required to establish and coach such a team, the knowledge transfer would represent a significant strategic business advantage, when combined with the specific and detailed project knowledge.

The reason why departmental silos exist is not difficult to understand, after all, it's quite human for people to align themselves and their practices to that of their colleagues, and to become parochially sensitive to external influences. This then results in a breakdown of cross departmental coordination and ultimately data and practices get lost between the gaps. Again, a strategic, focused and business sponsored approach is needed to break-down barriers and to establish habitual behaviours, systems and practices.

## Planning to Win

David Tyerman

February 2020

### Summary

The well-known adage 'fail to plan, plan to fail' comes to mind. Nobody of course plans to fail, it's more a matter of failing to stand-back and consider all available options. In terms of the subject matter of this paper, this failure relates to both strategic and practical organisational matters that are believed to afford an opportunity for claim entitlement recovery to be put on the front-foot.

Contemporary management of change as it relates to amendments of the planned intent, and therefore to an imbalance of assumed risk, is difficult to implement and administer. There are however significant advantages to amending current practices to those being suggested, such as the development and enhanced levels of competence of organisational personnel who form part of the knowledge transfer contract with the appointed expert. Self-reliance must be the most credible and efficient way forward.

Ultimately, it is suggested that the related advantages will represent good business (the need to make money) whilst also helping to ensure business longevity.

## Forge Project Forensics

A specialist in the assessment, analysis and recovery of entitlement to project delay and disruption.

- Project Delay and Disruption Expert
- Training, Development & Coaching
- Contemporary Delay and Disruption Consultancy

00 44 (0)1642 963532



00 44 (0)7951 268647



[enquiries@forgeprojectforensics.com](mailto:enquiries@forgeprojectforensics.com)

