



Partnering and Alliancing in Construction Projects

Sally Roe and Jane Jenkins

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Jane Jenkins

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Sally Roe and Jane Jenkins

2003

Foreword

I am delighted to have been asked by the authors to write this foreword, first because I know from working with them that they both have a deep knowledge of their subject, and secondly because of my own conviction that wider application partnering and alliancing can bring enormous benefits to the construction industry in both the public and private sectors.

This conviction is borne out by my own direct experience of alliancing. In the early 1990s I was fortunate to lead the BP team charged with finding an economic way of developing the Andrew oilfield in the North Sea. There is no doubt that one of the major factors in the outstanding results that were ultimately achieved—See Chapter 1—was the decision to execute the project via the innovative Andrew alliance that brought BP and seven contractors together in a co-operative approach. Following Andrew, the four years I spent as a BP global and worked with project teams in various parts of the world to set up a number of successful alliances further strengthened my conviction that alliancing offered significant tangible benefits both to BP and just as important, to the contractors.

Few people, if any, would find it easy to refute the simple assertion on which partnering and alliancing is based, namely:

“co-operation must be better than conflict.”

However conflict (or “adversarialism” as it is sometimes described) in the construction industry is deeply rooted having been carefully, if perhaps unintentionally, nurtured over many years and eradicating it has perhaps proved somewhat more difficult than some would have imagined.

However it has become more and more widely recognised that the unproductive cost of delivering construction projects within such a culture cannot be sustained either by individual private companies, public bodies or indeed national economies. There seems little doubt that this is the primary reason why partnering has developed and found increasing application over recent years. Having been initially developed and applied largely in the private sector in the UK, the concept has been gaining much more explicit support from Government in recent years and consequently increasing application in the public sector.

Nevertheless, and despite many partnering successes, failures of projects conducted under such arrangement continue to be reported. Almost invariably these failures are attributed to partnering or alliancing per se. In my view and experience this is rarely the reality and the underlying reason is more likely to lie in those involved having had a poor or superficial understanding of what is required to create a successful partnering arrangement.

A proper and full understanding of the concept in its various forms is an essential pre-requisite of success. An important part of this is first recognising that there are alternative forms of partnering available and that each has advantages and disadvantages that must be carefully weighed before deciding which to adopt. Perhaps of even greater importance is the need to recognise that every form of partnering entails specific issues that *must* be addressed during the process of setting up the arrangement if success is to be achieved.

The publication of this book is particularly relevant in this context. Its specific value lies in the fact that the authors do not present a single "recipe" for partnering. Rather, the emphasis is on stressing that a wide range of alternatives are available and are being practiced. Perhaps for the first time, here is a volume which gives a succinct but nevertheless excellent description of each of these alternative forms of partnering. This is augmented with clear descriptions of alternative contract structures and contracts. Of particular value I believe are the authoritative critiques of various standard forms of contract covering partnering which have become available in recent years. Refreshingly, and usefully, the authors get behind the hype generated by those who have produced such standard forms and draw attention to potential weaknesses within them.

The volume also comprehensively covers the extremely important issue of remuneration and incentive schemes and has an excellent and very informative chapter on the interpretation of contract terms. The remaining chapters each of which deals with a

specific topic such as intellectual property rights and dispute resolution amongst others are all equally relevant and clear.

As a legal layman, I believe this book will prove to be invaluable to all legal and perhaps more importantly, non-legal personnel who are contemplating entering into partnering or alliancing arrangements. It will be equally valuable to existing proponents of partnering.

The book focuses on legal and contractual aspects of partnering and I know that there are those who feel—most notably Sir John Egan—that it should be possible to dispense with contracts for partnering on projects. I do not share this view for three main reasons other than those which can be put forward from a purely business and legal perspective:

First, I am convinced that much of the conflict seen on construction projects stemmed not so much from the existence of a contract as from a lack of sufficient clarity and precision in its wording and omissions in its content.

Secondly, as someone who pioneered alliancing and has set up successful alliances for oil and gas projects in the North Sea and for other projects in a variety of industries around the world, I am convinced that the very process of developing contracts that are clear and unambiguous and during which all of the major and key issues are addressed by the participants is an extremely powerful factor in building the personal and corporate relationships and commitment that lie at the heart of all successful partnering projects.

Thirdly, the joint creation of the contracts and the knowledge that all the important issues have been addressed and are appropriately covered in the contracts is of particular value in building trust between the participants.

I should perhaps note that the above pre-supposes that companies and other entities entering into partnering arrangements will be wise enough directly to involve senior managers in developing contracts rather than leaving this entirely to project professionals and lawyers. Conversely it also pre-supposes that senior managers will be wise enough to involve their legal experts. Irrespective of who is involved this book will provide a comprehensive guide to all the issues that have to be addressed.

Many assertions are made regarding the relative effectiveness of the various forms and contractual structures but ultimately it is for Individual companies, public bodies and other entities to decide

Foreword

for themselves which, if any, form of partnering they will adopt. For my own part I am very clear that, properly conceived, developed and executed, all of them offer a better way of undertaking construction projects and with lower levels of associated risk than do the more traditional approaches to contracting.

Transforming the concept of partnering into reality and applying it successfully to projects is vital if the benefits that it can bring are to be realised. Those genuinely interested in doing so will seek out and use all the resources that are available and they will recognise that this book is a particularly valuable resource.

Bob Scott MBE, BSc CEng MICE

Director, APP Consultants

Preface

We were delighted to be invited by Sweet & Maxwell to write this book on partnering and alliancing in the construction industry. There are, of course, some excellent practical guides available, which address the implementation of partnering arrangements, a number of which we have referred to. What this guide aims to do is to look at partnering and alliancing from a legal standpoint. We consider, for example, the different structures for partnering and alliancing in a legal context and look at a number of terms which commonly appear in partnering and alliancing agreements. We have included some comments on the standard forms currently available in the UK and have a chapter devoted to the interpretation of contract terms generally. We then address a number of specific topics including intellectual property and confidentiality, information flows, staff issues, procurement and dispute resolution.

It will be apparent from this summary that partnering and alliancing raises a number of discrete legal issues. We have not attempted to address these in great depth as there are excellent textbooks available devoted to each topic. Instead we have attempted to bring together in this book the key points from each area of relevance to partnering and alliancing arrangements. The book is intended for both lawyers and non-lawyers. Our aim as far as possible, is to be practical and with that in mind we have included as an appendix a checklist of issues that those considering entering into partnering and alliancing arrangements may wish to consider.

Sally Roe and Jane Jenkins

July 2003

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(References are to paragraph numbers)

Arbitration between L Sutro & Co and Heilbut Symons & Co, Re [1917] 2 K.B. 348, CA	7-06
Baird Textile Holdings Ltd v Marks & Spencer Plc; sub nom. Baird Textiles Holdings Ltd v Marks & Spencer Plc [2001] EWCA Civ 274; [2002] 1 All E.R. (Comm) 737; [2001] C.L.C. 999, CA	3-02
Balfour Beatty Civil Engineering Ltd v Docklands Light Railway Ltd [1996] C.L.C. 1435; 78 B.L.R. 42; 49 Con. L.R. 1; (1996) 12 Const. L.J. 259, CA	7-02, 7-05
Beaufort Developments (NI) Ltd v Gilbert-Ash (NI) Ltd [1999] 1 A.C. 266; [1998] 2 W.L.R. 860; [1998] 2 All E.R. 778; [1998] N.I. 144; [1998] C.L.C. 830; 88 B.L.R. 1; 59 Con. L.R. 66; (1998) 14 Const. L.J. 280; [1998] E.G.C.S. 85; (1998) 95(24) L.S.G. 33; (1998) 95(31) L.S.G. 34; (1998) 148 N.L.J. 869; (1998) 142 S.J.L.B. 172; [1998] N.P.C. 91; [1998] N.P.C. 93; <i>The Times</i> , June 8, 1998, HL (NI)	7-02
Bedfordshire CC v Fitzpatrick Contractors Ltd 62 Con. L.R. 64, QBD (T&CC)	7-02
Birse Construction Ltd v St David Ltd (No.1) [2000] B.L.R. 57; 70 Con. L.R. 10, CA; reversing [1999] B.L.R. 194, QBD (T&CC); [1998] C.L.L. 1440	3-03, 7-06
Chantrey Martin & Co v Martin [1953] 2 Q.B. 286; [1953] 3 W.L.R. 459; [1953] 2 All E.R. 691; 46 R. & I.T. 516; 97 S.J. 539, CA	8-03
Collins (Brian D) (Engineers) Ltd v Charles Roberts & Co Ltd [1965] R.P.C. 429	9-03
Commission v French Republic (C-225/98) [2000] E.C.R. 2000 pl - 07445, ECJ	11-02

Table of Cases

Courtney & Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd; sub nom. Courtney & Fairburn v Tolaini Bros (Hotels) [1975] 1 W.L.R. 297; [1975] 1 All E.R. 716; 2 B.L.R. 97; (1974) 119 S.J. 134; <i>The Times</i> , November 29, 1974, CA	7-04
Didymi Corp v Atlantic Lines and Navigation Co Inc (The Didymi) [1988] 2 Lloyd's Rep. 108, CA	7-04
Didymi, The. <i>See</i> Didymi Corp v Atlantic Lines and Navigation Co Inc (The Didymi).	
Donwin Productions v EMI Films <i>The Times</i> , March 9, 1984	7-04
ECM (Vehicle Delivery Services) Ltd v Cox [1999] 4 All E.R. 669; [2000] 1 C.M.L.R. 224; [1999] I.C.R. 1162; [1999] I.R.L.R. 559, CA	12-12
English Industrial Estates Corp v George Wimpey & Co Ltd [1973] 1 Lloyd's Rep. 118; 7 B.L.R. 122; 71 L.G.R. 127; (1972) 116 S.J. 945, CA	7-06
Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1989] Q.B. 433; [1988] 2 W.L.R. 615; [1988] 1 All E.R. 348; (1988) 7 Tr. L.R. 187; (1988) 85(9) L.S.G. 45; (1987) 137 N.L.J. 1159; (1988) 132 S.J. 460, CA	7-02
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J Evans & Son (Portsmouth) Ltd v Andrea Merzario Ltd [1976] 1 W.L.R. 1078; [1976] 2 All E.R. 930; [1976] 2 Lloyd's Rep. 165; 120 S.J. 734; <i>The Times</i> , November 15, 1975, CA	7-06
John Mowlem & Co Plc v Hydra Tight Ltd (t/a Hevilifts) (2001) 17 Const. L.J. 358, QBD (T&CC)	13-06
Kurt A Becher GmbH & Co KG v Roplak Enterprises SA (The World Navigator); sub nom. World Navigation, Re; joined cases Roplak Enterprises SA v Tradax Ocean Transportation SA [1991] 2 Lloyd's Rep. 23; <i>Financial Times</i> , April 26, 1991, CA	7-03
Leicestershire CC v Michael Faraday and Partners, Ltd [1941] 2 K.B. 205, CA	8-03
Mackay v Dick (1880-81) L.R. 6 App. Cas. 251, HL	7-03
Martin Grant & Co Ltd v Sir Lindsay Parkinson & Co Ltd 29 B.L.R. 31; 3 Con. L.R. 12; (1984) 1 Const. L.J. 220; [1985] C.I.L.L. 137, CA	7-03
Merton LBC v Stanley Hugh Leach Ltd 32 B.L.R. 51; (1986) 2 Const. L.J. 189, Ch D	7-02
Mona Oil Equipment & Supply Co Ltd v Rhodesia Railways Ltd [1949] 2 All E.R. 1014; (1949-50) 83 Ll. L. Rep. 178; [1950] W.N. 10, KBD	7-03

Table of Cases

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Oy Liikenne AB v Liskojarvi [2001] All E.R. (EC) 544; [2001] E.C.R. I-745; [2001] 3 C.M.L.R. 37; [2002] I.C.R. 155; [2001] I.R.L.R. 171; [2001] Emp. L.R. 235; <i>The Times</i> , February 27, 2001, ECJ (6th Chamber)	12-12
P Ward v Civil and Civic [1999] NSWSC 727	14-06
P&O Trans European Ltd v Initial Transport Services Ltd [2003] I.R.L.R. 128, EAT	12-12
Philips Electronique Grand Public SA v British Sky Broadcasting Ltd [1995] E.M.L.R. 472; <i>Independent</i> , October 31, 1994 (C.S.), CA	7-02
Phillips Petroleum Co (UK) Ltd v Enron (Europe) Ltd [1997] C.L.C. 329, CA	7-04
Prosper Homes Ltd v Hambros Bank Executor and Trustee Co Ltd (1980) 39 P. & C.R. 395, Ch D	7-07
RCO Support Services Ltd v UNISON [2002] EWCA Civ 464; [2002] 2 C.M.L.R. 34; [2002] I.C.R. 751; [2002] I.R.L.R. 401; [2002] Emp. L.R. 690; <i>Independent</i> , April 19, 2002, CA	12-12
Saltman Engineering Co v Campbell Engineering Co (1948) [1963] 3 All E.R. 413 (Note); (1948) 65 R.P.C. 203, CA	9-03
Sudbrook Trading Estate Ltd v Eggleton [1983] 1 A.C. 444; [1982] 3 W.L.R. 315; [1982] 3 All E.R. 1; (1982) 44 P. & C.R. 153; (1983) 265 E.G. 215; (1982) 79 L.S.G. 1175; 126 S.J. 512, HL	7-04
Suzen v Zehnacker Gebäudereinigung GmbH Krankenhausservice [1997] All E.R. (E.C.) 289; [1997] E.C.R. I-1259; [1997] 1 C.M.L.R. 768; [1997] I.C.R. 662; [1997] I.R.L.R. 255; (1997) 16 Tr. L.R. 365; <i>The Times</i> , March 26, 1997, ECJ	12-12
Thiess Contractors Pty Ltd v Placer (Granny Smith) Pty Ltd [2000] W.A.S.C.A. 102	14-06
Timeload Ltd v British Telecommunications Plc [1995] E.M.L.R. 459, CA	7-02, 7-05
Walford v Miles [1992] 2 A.C. 128; [1992] 2 W.L.R. 174; [1992] 1 All E.R. 453; (1992) 64 P. & C.R. 166; [1992] 1 E.G.L.R. 207; [1992] 11 E.G. 115; [1992] N.P.C. 4; <i>The Times</i> , January 27, 1992; <i>Independent</i> , January 29, 1992, HL .	3-12, 7-02, 7-04, 13-02
World Navigator, The. See Kurt A Becher GmbH & Co KG v Roplak Enterprises SA (The World Navigator).	
Zockoll Group Ltd v Mercury Communications Ltd (No.1) [1998] F.S.R. 354, CA	7-02

Table of Statutes

(References are to paragraph numbers)

- | | | | |
|--------------------------------------------------------|------------------|---------------------------------------------------------------------|---------------------------------------------------|
| 1890 Partnership Act (53 & 54 Vict. c 39) | 3-16 | 1996 Housing Grants, Construction and Regeneration Act (c 53) | 3-12, 5-09, 5-11, 13-02, 13-05, 14-03, Appendix A |
| 1946 Atomic Energy Act (9 & 10 Geo.6 c 80) | Appendix A | s.111 | 9-09 |
| 1949 Registered Designs Act (12 & 13 Geo.6 c 88) | 9-02 | s.105(2) | 13-06 |
| 1974 Health and Safety at Work etc Act (c 37) | 8-04, 12-09 | s.108 | 13-06 |
| 1974 Rehabilitation of Offenders Act (c 53) | 9-11 | (2) | 13-06 |
| 1977 Unfair Contract Terms Act (c 50) | 7-02 | s.110 | 8-04 |
| 1980 Limitation Act (c 58) | 8-05 | s.111 | 8-04 |
| 1988 Copyright, Designs and Patents Act (c 48) | 9-02 | s.112 | 8-05 |
| 1989 Official Secrets Act (c 6) | 9-09, Appendix A | 1998 Data Protection Act (c 29) | 9-10, 9-11, Appendix A |
| 1996 Arbitration Act (c 23) | 13-07 | s.56 | 9-11 |
| | | Sch.2, para.1 | 9-10 |
| | | Sch.2, paras 1-4 | 9-11 |
| | | Sch.2, para. 2(a) | 9-10 |
| | | Sch.2, para. 6(1) | 9-10, 9-12 |
| | | 1998 Competition Act (c 41) | 10-02, 10-09, 10-13 |

Table of Statutes

1998	Human Rights Act	2000	Freedom of Informa-
	(c 42) 9-11		tion Act (c 36) 9-10
1999	Contracts (Rights of	2002	Enterprise Act (c 40)
	Third Parties) Act		Pt 6, ss.188-190 10-01
	(c 31) 4-03		Pt 7, s.204 10-01
	s.1 4-03		
	(a) 4-03		
	(b) 4-03		
	s.2 4-03		

Table of Statutory Instruments

(References are to paragraph numbers)

1981	Transfer of Undertakings (Protection of Employment) Regulations (SI 1981/1794)	9-12, 12-01, 12-11, 12-12-12-14, Appendix A	1994	Construction (Design and Management) Regulations (SI 1994/3140)	8-04, 12-09, Appendix A
1991	Public Works Contracts Regulations (SI 1991/2680)		1995	Public Supply Contracts Regulations (SI 1995/201)	11-01
	reg.3	11-01	1996	Utilities Contracts Regulations (SI 1996/2911)	11-01
	reg.9	11-02		reg.3	11-01
	reg.10	11-02		reg.11	11-03
	reg.12(6)	11-02		(2)	11-05
	(7)	11-02		reg.13	11-03
	reg.13(5)	11-02		reg.18	11-03
	reg.14(1)	11-02		reg.19(1)	11-03
	reg.20(2)	11-02		(5)	11-02
	(4)	11-02	1998	Construction Contracts (England and Wales) Exclusion Order (SI 1998/648)	13-06
	reg.31(7)	11-01			
1993	Public Services Contracts Regulations (SI 1993/3228)	11-01			