



What is Negotiation's impact on disputes related to contracts in the construction industry in Dublin in the last five years?

To determine if Negotiation is more effective than alternative dispute resolution methods in the construction industry in Dublin.

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Abstract

Ireland has become a booming economy in recent years; simultaneously; the construction industry is growing, creating innovation and giving a new face to Dublin. Therefore, too many people are involved in this industry, and conflicts come up due to many reasons during the process of any project; more details of the grounds will be exposed in the first and next chapter. The principal objective of this study is to investigate the impact of negotiation on disputes related to contracts in the construction industry in Dublin, Ireland, during the last five years based on experiences and understating of the participants that took part in this study as well the structure of those life experiences and finally recommended an effective dispute resolution process in the construction industry.

The secondary objectives are; to contrast Negotiation and a method of dispute resolution to alternative dispute resolution techniques, to determine if negotiation is more effective than alternative dispute resolution methods, to recommend an effective dispute resolution process in the construction industry related to contracts in Dublin.

The literature review explains the reasons why conflict can come up in the construction industry and how that affect the scope of the projects, and that was the basis to proceed with the primary research in order to determine if negotiation is more effective than other alternatives dispute resolution. This research focused on the interpretivism philosophy to produce results from the collected data as well the study took an inductive approach to create a theory; the survey strategy was used to get primary data from people working in the construction industry with enough experience in the field, mono-method was used to collect qualitative data, this research was cross-sectional because the study implies observations in precisely period of time of the last five years in Dublin and used non-probability sampling.

The thematic analysis of qualitative data was used to analyse the data; this investigation used convenience sampling and targeted construction industry professionals working full-time in Dublin, Ireland, within the last five years.

The objective of the use of this qualitative method during this study was to investigate the impact of Negotiation on disputes related to contracts in the construction industry in Dublin, Ireland, by using the theoretical basis and other tasks that preceded this research and combining it with the data obtained from the participants, the objective was too beyond the description and propose a theory. The researcher examined the study and findings, analyses the secondary data and surveys to answer the goals of this current study.

The researcher recommended strategies in order to avoid escalating conflict at work, specifically in the construction industry in Dublin, Ireland and finally, his point of view of the new theory result of this investigation.

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INTRODUCTION

Overview

The Irish economy has been growing in the last 20 years; one of the ways to appreciate at a glance the economic development of a country is its infrastructure. Dublin has new modern buildings around the city and too many in the process of construction, generating sources of work for its inhabitants.

Building and civil engineering work in Ireland consist of a very extensive scope of industrial, commercial, and residential construction activities, reaching from infrastructure projects worth several hundred million euro to the renovation or extension of small residential or commercial properties.

Most of those projects will be carried out under one of many forms of construction contracts established in Ireland, so when a dispute comes up, the contract is reviewed to verify if one of the parties is not satisfying the agreements previously settled.

There are several reasons why a conflict can come up in the construction industry; the next chapter, "Literature Review", it will be detailed those reasons and how negotiation is an alternative instrument to avoid escalating conflict.

There was not research found that studies the impact of negotiation as an approach to solving the conflict in the construction industry, so that this research will be based on exploring the effects of negotiation to avoid escalating the conflict in construction and determine if Negotiation is more effective than alternative dispute resolution methods.

This research was based on researching whether construction professionals working in Dublin, Ireland, within 2017-2021 know about negotiation as a method of dispute resolution, and if they know the advantages of negotiation as an approach to solve a conflict in the construction industry.

Statement of the problem

The construction industry is recognised to be controversial (Latham & Böcker, 1994). This is not a surprise knowing that a construction project requires an extensive network of staff from designers, engineers, contractors to other people working indirectly and to organisations times, budgets and points of view are occasionally incompatible so that there is needed a contract in order to agree all the parties involved and set up the details before mentioned.

There are a variety of forms of contracts that have been used equally in Ireland and internationally for a lengthy period of time; some types of documents are RIAI, FIDIC, EI/ICE, and NEC contract forms. Specifically, in Ireland, the Department of Finance introduced a group of contracts, known as the Public Works Contract Forms; these contracts can be found on the Department of Expenditure and Reform website.

RIAI; the “yellow” and “blue” forms of Royal Institute of Architects or Ireland.

FIDIC; The FIDIC suite of construction contracts is written and published by the International Federation of Consulting Engineers.

EI/ICE; Institution of Civil Engineers forms

NEC; the new engineering contract form

According to the Construction Contracts Act 2013 (Irish Statute, 2013), a contract can be defined as an agreement amongst an executing party and another party, where the executing party is engaged for any one or more of the succeeding events:

- Carrying out construction processes by the performing party;
- Arranging for the carrying out of construction processes by one or more other persons, whether under subcontract to the executing party or otherwise;

- Providing the executing parties own labour, or the labour of others, for the carrying out of construction operations.

Therefore, when a conflict comes up, the involved parties review the contract to find solutions or manage the situation appropriately. Historically, all standard forms of construction contract include at least one dispute resolution as an alternative to not go to the court because of the long process and the cost that the litigation in court signifies. In Ireland has been classically employed adjudication as the ending scenario for a dispute resolution under the Construction Contract Act 2013. However, is it usually preceded by either conciliation or, more recently, mediation.

It is well known that Negotiation is a process whereby parties work out between them more quickly and cheaply to reach a reciprocal agreement, a third party is not needed, and the future business relations can be preserved, and those facts are very significant in the construction industry, where time a good work relationship are the priority.

So that, this research desires to find the impact of Negotiation on disputes in the construction industry related to contracts, based on surveys and proper questions to the right people working in the sector.

Research Question

Based on the approach of the problem and knowing that conflicts are primarily present in any work sector, including the construction area, and specifically knowing that the time and budget are one of the most essential facts for the scope of any project due to the millionaire contracts involved, it is needed to find the best alternative dispute resolution in order to avoid waste the time and keep the good work-relationships, the following question arises:

What is the impact of Negotiation on disputes related to contracts in the construction industry in Dublin in the last five years?

As well secondary questions arise in order to support the research question;

- How Negotiation differs from the other dispute resolution alternatives?
- How a long process of dispute resolution affects the project scopes and work performance?
- What is the best way to avoid escalating conflict at work?

Purpose of Research

The purpose of this qualitative study is to investigate the impact of Negotiation on disputes related to contracts in the construction industry and provide recommendations through a suitable method of dispute resolution and with this method avoid escalating conflict at work, specifically in the construction industry.

This study investigates this alternative goal by exploring whether dispute resolution procedures and negotiation, in particular, recover the well-being of work relationships and contribute to their safeguarding.

Results from the current qualitative study shed light on circumstances or reasons to contrast Negotiation and other alternatives of dispute resolution techniques. The information gathered includes participants' experiences, emotions, and backgrounds. The data collection process consists of both survey and specific questions to the specific people. These people work in the construction industry with plenty of experience to share their knowledge and expertise.

Aim and Objectives

The primary purpose of this research is to investigate the impact of Negotiation on disputes related to contracts in the construction industry. Therefore, the following secondary objectives arise:

Objective 1: To contrast Negotiation and a method of dispute resolution to Alternative Dispute Resolution techniques.

Objective 2: To determine if Negotiation is more effective than alternative dispute resolution methods

Objective 3: To recommend an effective dispute resolution process

Methodology and Structure

This research focuses on the interpretivism philosophy; the survey strategy was used in order to gather data from people working in the construction industry; mono-method was used to collect qualitative data; this research is cross-sectional, and therefore, considering the limitations, it used non-probability sampling.

The investigation consists of five chapters:

Chapter One, "Literature Review", contains, the secondary research and all the theory regarding the investigations.

Chapter Two, "Research Methodology and Methods", contains the research, design and methodology; research problem, aims and objectives; data sample and data collection; and the study's contribution.

Chapter Three, "Presentation and Data Analysis", contains the analysis of all the information gathered in the course of the investigation.

Chapter Five, "Data Analysis and findings", contains the result of the information gathered and findings.

Chapter Five, "Conclusions and Recommendations", contains conclusions of the investigation and the recommendations for the case studied.

Assumptions and Limitations

This research begins from the hypothesis that negotiation is a suitable tool in the construction industry to manage conflict thus, determining if negotiation is more effective than alternative dispute resolution methods in the construction industry in Dublin, Ireland, in the five last years.

This research uses the survey as a means to data collection and presumes that the participants answer the questions in the most precise and truthful manner. Thus, anonymity and confidentiality will be preserved and that the participants are volunteers who may withdraw from the study at any time and with no ramifications (Simon, 2011). The investigator assumed that the population participating in the research in addition probably their opinion reflects the problem of the entire community affected; however, it cannot be considered as such.

This research adopts a non-probability design. The researcher cannot precisely know the total of the people working in the construction industry in Dublin, including contractors, designers, engineers and indirect staff, either the number of people that have had a conflict at the workplace. Therefore, the analysis of this research is limited in terms of numbers, but assuming that the population to be randomly selected minimises the margin of error, and the result can express as the general thinking of the entire community (Price & Murnan, 2013). On page 66-67.

Likewise, no record, works, documents or previous researches study the same phenomenon as this investigation. Thus, this research uses secondary research that may or may not be directly related to it. The surveys are limited to the participants' availability and disposition to participate in the study.

Significance of the Study

With the study of this topic, it can be known the impact of negotiation in the construction industry and how it differs from the other alternative dispute resolution; as well as to explore whether those construction professionals working in Dublin, Ireland, experience or have experienced a conflict in the workplace and if they know about negotiation as a method for dispute resolution and finally what the possible recommendations to this problem would be.

Therefore, it will be possible to identify which specific factors are those that play an essential role in the selection of an alternative dispute resolution in the case that an issue arises in the construction

industry. This investigation will be able to propose some recommendations in order to avoid escalated conflict at work.

This research is vital for construction companies in Ireland, specifically Dublin as well professionals working in the construction sector and how it affects the scope of the projects and work performance of the population studied. Likewise, it will serve as a research background for future dissertations that could be done by students of Independent College Dublin.

1. CHAPTER I: LITERATURE REVIEW

1.1 Introduction

The chapter contains four sections; the first section explores the concepts of conflict, how conflict affects the work construction environment, and the reasons for conflicts within construction projects, the second and third sections focus on Negotiation, from defending Negotiation and Negotiation as an approach to solve issues in the construction industry and the last section compares Negotiation with other dispute resolution alternatives and outlines their differences. Additionally, this chapter will serve as a point of comparison in the primary analysis, the formulation of conclusions and recommendations.

It is known that the construction industry is exponentially growing around the world, and Ireland is not an exception. A construction project is a result of a group team who have worked in perfect synchrony to achieve the desired objectives; most of the construction projects are expected to be finished in short terms in order to minimise costs.

The short-term objectives are frequently challenging and occasionally mismatched; for example, some contractors want to reduce costs in devolving a project, designers may struggle pressures on budgets in order to defence their design and guarantee, so that, it is common to see conflicts breaking out in these circumstances.

1.2 What is a conflict?

Without conflict in our daily life, there would be no call for dispute resolution; before boarding on an evaluation of alternatives for resolving issues, it supports examining the singularity of the conflict itself. This section contains a brief summary of ideas of conflict and outlines some of the main ideas about its origins and nature. A conflict is perceived by people as an uncomfortable and destructive

situation that nobody wants to be part of it; however, a conflict can be constructive acting as a compound for transformation; as human beings, we need to live some experiences in order to learn from them; a famous actor said conflict is essential to, ineradicable from, and inevitable in human life; and the source, cause and process of conflict can be turned from life-destroying to life-building ends. (Augsburger, 1992). Conflict can also be defined as struggles between two or more people over values or competitions for status, power and scarce resources. (Closer, 1956).

Most executives, managers, and employees face conflicts on a daily or weekly basis, spending from 20 per cent to as much as 80 per cent of their working hours trying to resolve or contain them. If we calculated the time spent by the engineers, contractors, designers or clients in a construction project on unsolved conflict and multiply its salary, the result would far exceed the cost of in-depth in conflict resolution skills (Cloke, 2011). On page 18.

Nowadays, dispute resolution can help us to handle conflict; there are alternatives to manage a conflict depends on how escalated is the conflict or the type of issue to treat the alternative will be chosen, but it is important to define Dispute Resolution. According to the Royal Institution of Chartered Surveyors (RICS), dispute resolution is about: *"recognising when a dispute has arisen and appreciated the escalation of that dispute. Besides, it understands the range of techniques that might be available to resolve the dispute and seeking appropriate guidance before the client is placed at a disadvantage in respect of its position with the other party.* (RICS Professional, 2012).

A dispute can come up during the construction process for a diversity of reasons, including, but not certainly not limited to, unexpected project site conditions, the cost for extra or wide-ranging work that the contractors must carry out or disagreements over the scope of the project and specifications of the project designs. Construction projects are frequently technically complex thus may comprise contractors captivated on substantial risks and or burdensome responsibilities; competitive tendering necessities compound these pressures; for example, a contractor needs to win a contract so that they

reduce the prices too low in order to beat the others competitors and then when the project is underway the issues come up because they are not using the materials that initially were specified or they are not accomplishing the times creating delays, at the same time another contractor is waiting for this contractor to start the second stage of the project and all involved in thus, affecting the scope of the overall project drastically. A preventive approach would be the best circumstances, that is, removing the causes of the dispute together. Nonetheless, such an atmosphere could be created by fundamentally changing the procedures, attitudes and structures to lead to disputes (Birchall, et al., 2006).

1.3 How does a conflict affect the work performance?

Sporadically, the impasse may have arisen for the reason that of a clash of behaviours or personalities, or misinterpretations due to lack of or non communication, which has led to entrenched positions and soured working/ business relationships. Situations may, nevertheless, be observed in a different way by 'detached' members of professionals or more experienced colleagues. If the situation can be cleared, a co-operation may be reached which is agreeable to both parties. Such cooperation may preserve current business relations, and perhaps even improve them.

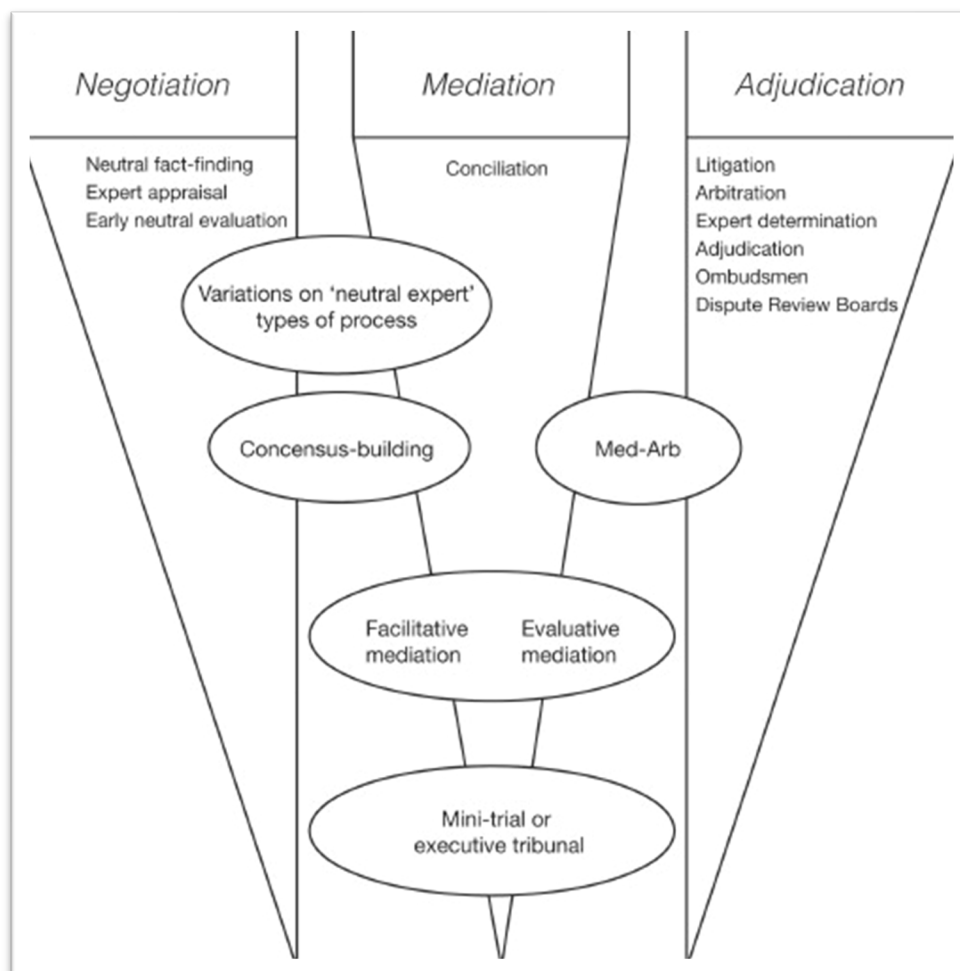
1.4 What is next if a conflict arises during a construction project?

In Ireland, the disputes under construction contracts have characteristically used adjudication as the final method for a dispute resolution under the Construction Contracts Act 2013. However, it is usually preceded by either conciliation or mediation since these methods would be the first step when a dispute arises.

Complaints are almost unavoidable throughout the construction contracts, and all of the principal Irish standard forms of building contract comprehend measures for deal with them. The contract conditions regulate whether or not complaints are valid, a set-out procedure for evaluated them.

Greatest of the complaints are settled through the contractual mechanisms, occasionally, some are not, and these unresolved claims develop into disputes.

This research examines various means by which a construction dispute may be managed settled in the principal Irish Standard forms of building contract but focuses on Negotiation. The RICS guidance report has categorised the different alternatives of resolving disputes in three key sets, which they refer to as the *"the three pillars of dispute resolution"*. The first pillar Negotiation, where the dispute reaches an agreement without a third-party assistance; the second pillar Mediation/Conciliation, where a third party is needed in order to clarify or come up with a common agreement and finally, adjudication, where the parties are imposed a binding verdict by the court (RICS, 2012). The next figure summarises the most common techniques used in solving disputes in the construction industry in Dublin, Ireland, and their position within the spectrum.



Negotiation is mentioned as a first pillar because the conflict is still considered neutral. The conflict is not escalated yet so that it can be solved with early unbiased evaluation; on the other hand; it is a faster and cheaper way to find an agreement or compromise.

"Compromise is the best and cheapest lawyer" – Robert Louis Stepheson

The most wanted way of resolving any dispute is for the parties themselves to reach a mutually acceptable *compromise*. This is likely to be faster and economy; no third party may be involved or even informed of the dispute; and future business relationships can be preserved (Royce, 1989).

Another source suggests that informal meetings such as Negotiation between the parties may be helpful and inspire the parties to talk frankly; on the other hand, formal discussions may also be attempted to bring matters to a head; nevertheless, these tend to carry out about a more thoughtful atmosphere and may curtail open discussion. A negotiation meeting during an early stage of the conflict may be helpful to resolve the problems, seek mutual benefits through rational thinking, or the parties may look for compromise to overcome their issues (Fryer, et al., 2004).

1.5 What is Negotiation?

Negotiation is the procedure whereby the disputants work out between them how to resolve any issues that have arisen. Authority to settle down the dispute rests with the parties (RICS Professional, 2012).

The parties involved in the conflict or disagreement should, of course, make an effort to resolve their differences before they develop into disputes. (Royce, 1989)

Negotiation happens when two or more people involve in problem-solving discussions intended to promote common understandings, resolve differences, or engage in tradeoffs that will be equally beneficial. (Spangle & Warren, 2002). Sometimes, these discussions outcome in successful

agreements, other times not 100 per cent in an agreement but people have experimented and developed the ability to talk about their issue and building in this way good relationships or reaching an understanding.

In the process of this research, the researcher figured out that Negotiation happens far more often than most of the people think, for example, a negotiation occurs when a marriage discusses how they will use their monthly budget, when a boss promote an employee or when a customer takes a buying back to a store and ask for a refund, precisely talking about the construction industry since the contractors have to compete in order to win a project they have to negotiate the prices with the client so that Negotiation is present in many ways in our daily life. However, negotiating contracts in the construction industry differ from the issues or matters that happen in families, neighbourhood groups, or administrative staff meetings, and this study explores the challenges of negotiating issues related to contracts and determinate if Negotiation is a suitable alternative to resolve the problems in construction projects in Dublin, Ireland.

There are, however, events when differences of view and disagreements are outside the point where the disputants to a contract feel that they are able to get an equally satisfactory agreement through Negotiation, and they choose that orientation should be made to a non-biased third party.

1.6 Types of Negotiation

According (Fisher & Ury, 2011) , there are three approaches to negotiate and any outcome of the negotiation may be fairly judged by three criteria.

1.6.1 *Soft Approach*; Refers to an extremely collaborative approach or sacrifice approach. The soft negotiator aims not at victory but to reach an agreement. The agreement is their goal, and it is very possible that a soft negotiator could refuse aspirations, especially those that could create a difficulty to get the agreement. Summarising the soft negotiator makes the Negotiation easier than the hard negotiator.

The soft negotiator is afraid of the failure, therefore decides to lower the goal to achieve it without much effort.

Main characteristics of a soft negotiator:

- A soft negotiator is soft on the people and soft on the problem, contradictory to the hard approach
- A soft negotiator changes their position easily, so it is manageable for a hard negotiator.
- A soft negotiator sees the other party as a friend and never as a rival or enemy
- They search for a single answer, the one which the other party accepts even though the answer does not meet their expectation totally.

1.6.2 Hard Approach; Refers to extremely competitive bargaining, either soft and hard Negotiation involves a position rather than interest.

The hard approach is the hard-line in which we want to see the other as the adversary. For a long time, it has been used this line that seeks victory at any cost and considers hitting the other is the key to achieving it.

Hard Negotiation can be stable in situations where the powers of the parties are too different than; in reality, negotiation is no carried out but rather an imposition.

A hard approach is where the negotiator is focus since the beginning on winning or beating the counterpart, is extremely competitive, looking for victory as the only goal or aim.

In this kind of Negotiation, one side" wins" and one side" loses". In this situation are fixed resources to be divided, so that, the more one gets, the less the other gets. The hard approach includes the Negotiation of positions, rather than interests.

According to (Fisher & Ury, 2011), a hard negotiator sees the counterparts as adversaries, and demand concessions of the opening position, refusing to make concessions, they may misinform the opponent about their bottom line a demand one-side gains as the price of the agreement.

Main characteristics of a Hard negotiator:

- Threat counterpart as adversaries
- Suspicious of other negotiators
- Use of threats
- Argumentative
- Focus on positions
- Unwilling to concede

1.6.3 Principled approach; a principled approach is where the negotiator focuses on interests to create values. Unlike the hard negotiator, a principled negotiator is looking for a win-win position, and the negotiator focuses on interests, not positions, where both parties will gain together. If the parties can achieve a relationship, the goal becomes one of finding common interests that can help to generate choices, and it means both parties are satisfied.

Basically, the main goal is to approach the Negotiation accurately and rationally in order to avoid it from becoming into a conflict. Instead of concentrating on what they must give up, both parties are free to create or invent an original solution that is equally positive.

Main characteristics of a principled negotiator:

- Treat participants as friends, separate people from the problem.
- Trusting of other participants
- Creates offers or alternatives for mutual gain
- Non- confrontational
- Focus on interests
- Willing to negotiate.

1.6.4 Basis of a principled negotiation

Separate people from the problem: a principled negotiator identifies and set aside relationships conflicts from substantive ones and deal with them separately.

Focus on interests: principled negotiators concentrate on understating what will be successful for both parties and identify underlying targets, finding out whether there is common ground.

Invent options for mutual gain: principled negotiators work together to find out solutions that satisfy both parties' target.

Insist on objective criteria: principled negotiators look outside the Negotiation to see what other, similarly situated parties have done. They used this as a common measure to evaluate offers.

1.7 Alternative Dispute Resolution

The methods used in the construction sector in Dublin, Ireland, are mentioned by the RICS in the *figure 1* above and are frequently defined using the term alternative dispute resolution techniques.

The Law Reform Commission 2010 defines the term Alternative Dispute Resolution as follow:

A broad spectrum of organised procedures, including mediation and conciliation, which does not include litigation; nonetheless, it may be linked or combined with litigation, and which includes the support of an unbiased third party and which authorises parties to resolve their own disagreements.

The commission (RICS Professional, 2012) identifies the following habitually features linking to alternative dispute resolution:

- a varied range of procedures;
- excludes litigation – several construction writers also exclude arbitration (RICS, 2012); (Ashworth, et al., 2013);
- an organised procedure;
- typical independent, impartial third-party assistance, and;

- decisions are non-binding initially.

The philosophy of sustaining alternative dispute methods is the want to protect an agreed settlement. The disputing parties are typically assisted in reaching an equally acceptable plan to resolve their differences. The outcome is, therefore, consensual. Even though the results of these events are not primarily binding, they have several cases of acceptance, thereby determining disputes outside of the law court or arbitrations schemes.

(Ashworth, et al., 2013) describes the following demanded advantages of alternative dispute resolution:

- Private; parties can keep the conflict indoors, a very important point in the construction sector.
- Speed, reaching an agreement can take days rather than weeks, months or years like going to the court.
- Economy, paying a solicitor or all the cost that a process of litigation included can be evaded.

They argue that goodwill is a 'vital element on both sides to settle the matter on a commercial rather than a litigious source. If this goodwill does not happen, then the parties have no choice but to opt for arbitration or the courts without wasting additional time and resources (Ashworth, et al., 2013) page 343.

It must keep in mind, however, that alternative dispute resolution techniques, while mostly successful, will occasionally fail, and the dispute will then continue to litigation or arbitration. This failure will probably increase the overall cost and time taken in resolving the conflict. Critics of alternative dispute resolution may argue that "it is soft justice, nothing more than a supplementary layer of cost in the litigation stream..." (LRC, 2010).

1.8 Dispute Resolution Methods

The (RICS, 2012) note that there has been a move towards changing the term 'alternative' in Alternative Dispute Resolution for 'appropriate'. They complement that a suitable resolution process should purpose to resolve the dispute in an economical and faster means, while seek to look after existing business relationships through a private and manageable method. They claim that this should lead to greater satisfaction with the procedure for litigants.

1.9 Supported Negotiations: The Mediation and Conciliation: spectrum

The RICS describe mediation and conciliation as a link between the parties who agree to an independent and neutral third-party scheme to facilitate discussions between them, with the goal of reaching an agreement. The power to settle the remnants with the parties, but the process is directed by the mediator. (RICS, 2012).

The terms mediation and conciliation tend to be used interchangeably, certainly, the (RICS, 2012)) say: 'For our purposes, conciliation is the same as mediation'. In the Irish context, (Keane, 2001) describes that mediation initially means the process in which a mediator would effort to persuade the disputing parties to reach a negotiation by their own. "The mediator will not propose an outcome." It distinguishes the mediator from the conciliator, who may attempt to negotiate a fair and reasonable outcome or make a non-binding recommendation in an attempt to resolve the issues. It complements that these differences seem to be vanishing, and the term conciliation is used in most Irish agreements or contracts.

The (LRC, 2010) continues worried about that this deficiency of accurate description of various dispute resolution terms that are producing misunderstanding in the people and is heading, on occasion, to pointless litigation in the courts and tribunals. It is practical, therefore, to guarantee that the parties agree on the precise meaning of the proposed procedure.

1.10 Non-Binding Awards

The following approaches are contentious in nature, but are helpful because the disputant with the strongest case is likely to be identified during the process.

1.11 Adjudication

(Engineers Ireland, n.d.) adjudication is defined as a procedure in which a self-sufficiently appointed neutral agrees on the issues in dispute within a predetermined, usually extremely short amount of time.

Under the *Construction Contracts Act 2013*, A party to a construction contract covered by the Act can refer a compensation issue to an impartial third party for adjudication at any time.

Unless the parties agree otherwise, or the result is overturned by future legal action, the adjudicator's decision is final. (O'Higgins, 2013).

1.12 Mini trial

Mini trials are rare in Ireland.

(Murdoch, 2008) The procedure is described as a trial before a panel of senior managers from the disputing entities who have the authority to reach and implement findings. Significantly, until now, panel associates have not been personally involved in the debate. Both parties are anticipated to take opposing positions and present their claims before the board. The board can then negotiate their separate viewpoints until they reach an agreement after hearing the facts.

1.13 Binding Awards

Independent Expert Determination

(SCSI, 2019) define expert determination is a technique in which a sovereign third party is appointed to resolve a dispute as an expert. The appointment is usually stipulated in the parties' agreement, and

it is frequently offered as a nominated position. The expert's responsibilities, according to the Society, are to investigate the facts in dispute and make a judgement based on his or her qualified professional opinion..

1.14 Litigation

Litigation refers to legal proceedings in which one party seeks a legal agreement with the other party. Gould and Russell (2007) explains that the traditional method of resolving disagreements is via litigation in the courts. They do point out, however, that the vast majority of conflicts are resolved through other ways, and that in the United Kingdom, 90% of High Law court procedures are settled before going to trial.. The (RICS, 2012) remarks that the law court takes: *‘inherent jurisdiction to hear a dispute over almost any subject. The parties shall have the opportunity to refer their case to an appropriate court if no alternative process is available.’*

Construction disputes are seldom the topic of litigation since most Irish standard forms of contract limit the parties' ability to litigate a dispute, often requiring problems to be resolved by conciliation or arbitration. Nonetheless, if formal agreements have not been reached, litigation is a regular technique of settling construction problems. This was one of the key motivators for the implementation of *The Construction Contracts Act 2013*.

(Murdoch, 2008) point out that, if the parties so want, they can reject a contract's arbitration clause and go straight to court..

1.15 Appointing central contracts for construction work in the Republic of Ireland.

This study also briefly examines numerous methods for resolving a construction dispute, with a particular focus on the dispute resolution provisions set forth in the main Irish standard forms of the building contract. (O’Higgins, 2013) exposes that substantial construction contract disputes in Ireland have traditionally used arbitration as the final forum for dispute resolution, with

conciliation and/or high-level talks serving as the starting point. She also mentions that in some cases, such as when the FIDIC contract is employed, dispute resolution boards have been employed. She claims that a better knowledge of the benefits of various conflict resolution processes is necessary for efforts like the upcoming implementation of constitutional adjudication under the Construction Contracts Act 2013, which will be binding only in the provisional sense. (Keane, 2003) explains that *‘When a disagreement emerges, the question that must be posed is: what is the best strategy for resolving that specific issue? Any issue can be resolved by any method and in any media determined by the parties themselves, subject to the assent of all disputants. If they want to, they can agree to throw a coin..’*

The dispute resolution actions underneath the existing Irish standard forms of building contract are set out in Table 1, and these are explained below.

RIAI ‘Yellow’ and ‘Blue’ Contracts	Conciliation/arbitration
Public Works Contracts	Conciliation/arbitration
CIF Subcontract.	Arbitration
CIF Domestic Subcontract for use with Public Works Contracts	Mediation/arbitration
Informal and/or bespoke contracts which are silent on dispute resolution procedures	Currently litigation – however, adjudication will precede litigation following the commencement of the Construction Contracts Act 2013

Table 1 Forms of Dispute Resolution under Irish Forms of Contract

During construction contracts, claims are almost unavoidable, and all of the main Irish standard types of building contract provide processes for dealing with them. Contract conditions decide whether claims are genuine and establish standards for managing and analysing them. The majority of claims are handled by contractual instruments; nevertheless, some are not, and these unsettled claims become disputes.

(Murdoch, 2008) explains that those disputes arise when 'people engage in some way.' When individuals engaged become narrow-minded, a dispute worsens or escalates, and it becomes an altercation, especially when the issue involves rights and is 'justiciable.' They say that when a project is on-site, these issues are more likely to escalate since the conflicts are more contractually grounded. They find that: Contractual disputes typically arise when one party argues that the other has failed to uphold the terms of the initial agreement..

(Hussey, 2007) Most contract conflicts begin with demands under the contract, whether for payment, for time, for variation, for an apparent failure in contract administration, or originating from one or both parties abandoning their contractual obligations.' They clarify that the contract manager is in charge of deciding on these claims, and that he or she can:

Agree to take the claim;

- Discard the claim – either because there is no contractual rationale for it or because the contractor has lost his right to claim as a result of the contract's asking mechanism;
- Accept the claim in principle but reject the quantum, or accept the claim in principle but reject the quantum, or
- Agree to accept the claim, including the amount, but deduct or impose counter-charges.

Disputes arise when the parties cannot agree on a settlement; often, the contractor's claim is denied, and the worker/contractor declines this rejection. (Hussey Fraser, 2007).

(Fryer, et al., 2004) observes that '*Disputes seldom end in a good resolution.*' They say that in severe disagreements, parties spend a lot of time and money defending their positions, and they frequently hire professionals to help them. These budgets must be satisfied by one of the debating parties, or both. In Figure 2, They show the growing costs associated with various ways for resolving an increasing disagreement. As the size of the issue grows, so does the number of third parties involved, and so do the costs of resolution. This exterior

participation, however, does little to improve the project's performance.

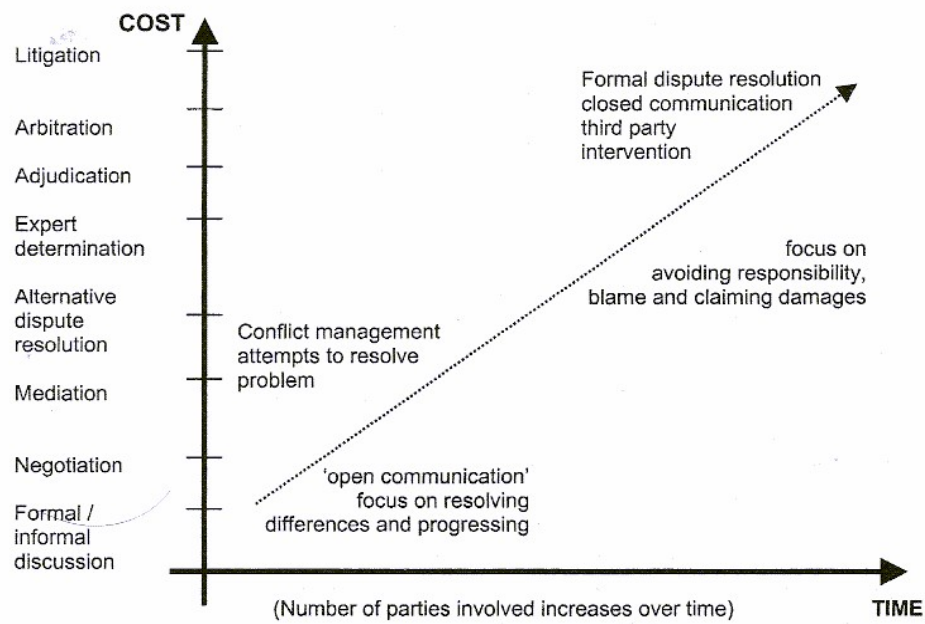


Figure 2 Contract Management Strategies against Time and Cost – Source (Fryer, et al., 2004)

2. CHAPTER 2: RESEARCH METHODOLOGY AND METHODS

2.1 Introduction

This chapter explains the design of this research and the methodology used to study this phenomenon. It describes the objectives of the research design and the data collection process, how it was codified and analysed. It also explains the method of sampling selection.

The methodology of a project or investigation includes the type or types of research, techniques and procedures that will be used to carry out the research. It is how the study will be carried out to answer the main objective (Arias, 2006) on Page 47.

The primary purpose of this research is to investigate the impact of Negotiation on disputes related to contracts in the construction industry; therefore, the following secondary objectives arise:

Objective 1: To contrast Negotiation and a method of dispute resolution to Alternative Dispute Resolution techniques.

Objective 2: To determine if Negotiation is more effective than alternative dispute resolution methods

Objective 3: To recommend an effective dispute resolution process.

2.2 Research Design and Methodology: Research Paradigm

This research design represents the strategies to follow for the development of the research: the stages of the process must be indicated in a structured and functional manner (Alejandro de Humboldt University, 2009). This means that the design is the methodology or global plan with which the research will be structured, as long as it is formulated coherently and concretely.

To answer the research paradigm, the study was based on (Saunders, et al., 2007) model: The research onion and it is structured as follow:

- **Philosophy:** the researcher used interpretivism philosophy because “Interpretivism is a term used to describe methods that emphasise the importance of people's engagement in social and cultural activities.” (University of Derby, 2019). This philosophy fits into this research because it plays an essential role in producing the final results based on the collected data. The study also plays a vital role in giving meaning and interpreting the collected data.
- **Approach:** this investigation used an inductive approach since it started with questions, and the research tries to answer them to create a new theory. This study aim is to investigate the impact of Negotiation on disputes related to contracts in the construction industry in Dublin, Ireland, in the last five years. This indicates that the study progresses from a research topic through observation, description, analysis, and, eventually, a theory. Therefore, if little research exists on a topic, then an inductive approach may be the best way to proceed (University of Derby, 2019).
- **Strategy:** The strategy used was the survey, questions made to the right people, that is means people working in the construction industry in Dublin, Ireland, with enough experience and knowledge to share with the researcher their thought about conflict at work and understand better how a conflict proceed in the construction industry.
- **Time Horizon:** This investigation used cross-sectional research because the study was looking for a snapshot view of a particular situation in a single period or point of time (2017-2021) a single period of time in Dublin, Ireland and time horizon provided it (University of Derby, 2019).
- **Techniques and Procedures**

The subject and questions formulated in this investigation determined that it had to be carried out with a qualitative approach for the collection and analysis of data. The surveys made were designed

to get specific information as well to let the candidates express their personal experiences (Silverman, 2011) and with it to be able to gather the experiences and knowledge of the candidates' bases on their answers that reflect opinions, emotions, and descriptions (Walliman, 2011).

Qualitative data in an “emergent”, inductive, interpretive and realistic approach to the study of individuals, cases, phenomena, social situations and processes in their natural settings to disclose in descriptive terms the meanings that people attach to their experiences of the world” (Yilmaz, 2013). Individuals’ interpretation plays a vital role in the events, e.g., uses participant observations in the surveys (Langos, 2014).

Qualitative data “draws on a philosophical idea in phenomenology, symbolic interactionism, hermeneutics and other traditions to support the attention on “quality” rather than “quantity” (Brewer, 2003) at the page. 239.

This type of research method allows obtaining a list of responses to open-ended questions through different means, such as surveys. Qualitative data analysis procedures assist this, “allowing you to construct theories based on your facts. They include both deductive and inductive procedures, and vary from basic classification of replies to techniques for detecting connections between categories, similar to the jigsaw puzzle method.” (Saunders, et al., 2007) at the page. 480.

Even though qualitative data is a standard data collection method, the effectiveness of this type of research relies on the skills that the researcher has, and the results cannot be completely reliable since they come from the analysis and personal judgment of the researcher (Langos, 2014).

It is not possible to determine the number of construction professionals working in Dublin, let alone in Ireland, either how many of them have faced a conflict at work or if they know about negotiation. However, choosing the qualitative data method to carry out this research was vital, although “it is more appropriate for small samples, it is also risky for the results of qualitative research to be perceived as reflecting the opinions of a wider population” (Bell, 2005).

2.3 Research problem, Aims and Objectives

The thesis aim is to investigate the impact of Negotiation on disputes related to contracts in the construction industry in Dublin, Ireland, in the last five years.

The objective of this research is to determine if Negotiation is more effective than alternative dispute resolution methods, to contrast Negotiation and a method of dispute resolution to Alternative Dispute Resolution techniques, and finally, to recommend an effective dispute resolution process. During this investigation, managed through surveys to a specific group, professionals working in the construction sector integrated conflicts under one of many forms of construction contracts established in Ireland.

To answer the main aim and objectives of this study, the researcher will investigate the similarities and differences between Negotiation and other methods of dispute resolution to alternative dispute resolution techniques. The research seeks to explore with the surveys, work commitment, professional growth, individualism, work environment and integration of contracts and how this affects a conflict at work, specifically in the construction industry. The researcher obtained the data by formulating specific questions to the participants of this study.

The questions asked to the selected population or specific sector were elaborated after an extensive analysis and comparison of the different alternatives of dispute resolution in Dublin, Ireland and were used to explore the individual experience of each of the participants. The answers to those questions were analyzed to identify similarities in the experiences of each one of the participants regarding the conflicts that they faced before and the alternative of dispute resolution chosen.

2.4 Issues addressed by the research

The question of this research comes from an extensive literature that was used to analyse and understand how conflict is managed in the construction industry in Dublin, Ireland and how the conflict affects the scope of the project or the contract in between at the same time how this affects

the performance of the professionals involved. The answers provided by the participants were analysed to identify possible patterns and similarities and thus investigate the impact of negotiation on disputes related to contracts in the construction industry in Dublin, Ireland, in the last five years.

This investigation only addresses the impact of Negotiation in the construction industry related to the contract and excludes any conflict in other areas outside the construction industry, either the regular activities outside of the work environment of the participants, such as their personal life.

3. CHAPTER 3: PRESENTATION OF THE DATA

3.1 Data Sample and Data collection process

3.2 Data Sample

“Sampling is the process of selecting a few (a sample) from a bigger group (the sampling population) to become the basis for estimating or predicting the prevalence of an unknown piece of information, situation or outcome regarding the bigger group” (Kumar, 2011) at page 188.

The scope of the data collection was only the professional working in the construction industry in Dublin, Ireland, within the last five years. Since there was not an exact number of the total population of construction professionals in Dublin, Ireland, therefore, some individuals did not have the chance of being selected.

This investigation used convenience sampling due to factors where members of the target population, professionals in the construction sector working full-time in Dublin, Ireland within the last five years, met specific practical criteria such as easy accessibility, geographical proximity, availability and willingness to participate in the study (Etikan & Musa, 2016).

The sampling of the population selected was accessible to the researcher through emails and social media such as LinkedIn; a group of 37 construction professionals working in Dublin were chosen randomly. This methodology guaranteed convenience sampling. The selection of the participants depended on their availability and willingness to take part in the surveys.

All the surveyed or participants work in Dublin, so it is understood their location, so their age group coded the sample group; numerical order in the surveys; age group and the position that they develop within the construction industry. For example, D (25-34AG) Engineer, denoted Dublin, the random candidate interviewed/surveyed; age group within 25-34 years old and engineer the position within the construction industry, in Dublin Ireland. D (over 51AG) Client, denoted Dublin, another random candidate, age group over 51 years old, and client is his/her position within the construction industry.

3.3 Data collection and analysis

The process of data analysis involves “working with data, organising it, breaking it into manageable units, synthesising it, searching for patterns, discovering what is important and what is to be learned, and deciding what you will tell others” (Westbrook, 1994)

The data collection techniques are the means and guidelines that are used in the investigation in order to gather relevant information about the issue, which will be applied to the selected sample. Likewise, the (Alejandro de Humboldt University, 2009) states that data collection techniques are the guidelines that will allow obtaining information, data or opinions on the subject under investigation on page 22. This investigation used surveys as the primary data collection techniques.

The data collection process took place throughout March 2021 for four consecutive weekends, and the surveys were carried out by email and LinkedIn due to the lockdown in Dublin, Ireland. The questions of the surveys were sent to the participants, and they did fill up the survey when they were available so as not to create interference with their daily activities, the tool to create and send the surveys to the participants was google surveys.

The results of the surveys were stored on a password-protected laptop to which only the researcher had access and an extra copy on the cloud as well on a password-protected. Each group was transcribed manually to the final document “dissertation”, always assuring the integrity and accuracy of the transcribed content to Microsoft Excel to do easier the study of the results and finally Microsoft Word, where this study was made; as well and each participant spent around 20 minutes in order to fill out all the questions made. The data gathered result of the survey would be saved for three months and then destroyed.

Thematic analysis of qualitative data was used to identify and draw upon common themes across the surveys (MacDonald, 2021) on the page 42. The information was read several times to familiarise

myself with the transcripts. The data was organised in segments to filters them to codes, then category and get the relevant information that helps to answer the objectives.

During the analysis of the surveys made, it was possible to see that each participant provided information relevant to the topic that, in some cases, coincided with the rest of the participants. The researcher was able to organise a list of several codes, making the technique challenging to compress these codes into categories.

During the analysis, the researcher omitted some categories that had less relevance, limited to the six types that he considered were the most important and relevant to the objectives of this research. Despite having designed surveys questions based on the research objectives, it was essential to keep only the most pertinent categories and those also associated with the secondary research for comparison.

For quoting purposes, it is understood that all the participants are based in Dublin because the investigation was made in Dublin, Ireland. So, D (25-34AG) Engineer, denoted Dublin, the random candidate cross-examined; age group within 25-34 years old and engineer his/her position in the construction industry in Dublin, Ireland. For content analysis, reducing large amounts of unstructured textual content was the goal, to manage only relevant data to the research questions.

3.4 Contribution of the study

The impact of Negotiation in the construction sector in Dublin, Ireland, has not been studied almost or that study is non-existent. Therefore, this implies that any research that investigates the impact of Negotiation in the construction industry related to contracts in Dublin, Ireland in the last five years or any other period, would help to understand and improve conflict at the workplace and the impact of this in the scope of any construction project.

This investigation may be the first phase of the study of this phenomenon. Therefore, it can identify the advantages of Negotiation in the construction industry, as well as contrast negotiation and another

dispute resolution alternative in Dublin, Ireland. Likewise, this study will provide conclusions after a systematic analysis of both primary and secondary research.

This research would provide recommendations on how Negotiation can improve or alleviate conflict in the construction industry and improve work relationships in the construction sector. These recommendations can be taken by both parties: the Irish construction companies and the professionals working in the construction sector in Dublin, Ireland.

3.5 Limitation of the study

The fact that it is not conceivable to know the exact number of construction workers living in Ireland, and specifically in Dublin, means that this research is based on a small group for the sample and that automatically, the findings of this research are not exhaustive either definitive. The questions in this investigation only cover a minimum part of the broad and complex topic.

The use of non-probability sampling and convenience sampling affects the result of this investigation since the sampling was selected because they were available and, the final product can be impartial. Neither biases nor their probabilities were quantified. The research did not know how well convenience sampling represented the population regarding the traits or mechanism under investigation.

There is a high vulnerability to severe hidden biases with the sample selected. There was no way ever to know that the chosen model was genuinely representative because the researcher did not know anything about those not included in the sample. Another limitation of the use of this methodology is that, based on the number of participants, so little information obtained can lead to a false or premature conclusion.

During this interpretative investigation, the researcher had to interpret complex social phenomena from each participant, and as a result, merge every one of the perspectives of these participants, leaving aside the prejudices of the participants and his own. Nevertheless, there is a margin of error

in the existence of biases or preconceptions from the researcher and the participants' point of views. This issue is because the researcher was not sufficiently trained to see and interpret complex social behaviours and opinions.

The opinions of all the participants may not be reliable, impatient, or participants might not know thoroughly the problem that is being studied, which could lead to a false impression and false results. All the answers given by the participants are based on their own experiences and how they see, feel and are affected by certain events.

Each participant may have reacted differently to the same situation and may have given false testimony during the interviews. Finally, the use of interpretative research may not answer the questions and objectives of the study at 100% and does not predict future behaviour. Therefore, the recommendations and conclusions of this research may not be helpful in the long term.

4. CHAPTER 4: DATA ANALYSIS AND FINDINGS

4.1 Findings in the surveys

The objective of the use of this qualitative method during this study was to investigate the impact of Negotiation on disputes related to contracts in the construction industry in Dublin, Ireland, in the last five years. By using this theoretical basis and other studies that preceded this research and combining it with the data obtained from the participants, the objective was to go beyond the description and propose a theory. The crucial question of this investigation was the Negotiation's impact on disputes related to contracts in the construction industry in Dublin in the last five years.

The sub-questions and objectives of this study included:

Objective 1: To contrast Negotiation and a method of dispute resolution to Alternative Dispute Resolution techniques.

Objective 2: To determine if Negotiation is more effective than alternative dispute resolution methods

Objective 3: To recommend an effective dispute resolution process.

4.2 Profile of the surveyed participants

Thirty-seven participants were part of the data collection, people working full time in the construction industry in Dublin, Ireland. Group of people between 25 to 65 years old with enough experience and knowledge to share with this study their experiences at the workplace and how have they faced conflicts related to contracts. Because of the 37 answers that were got during the process of data collection, the chapter will summarise what all the answer has or not in common in order to find what the majority think about the made it questions. Nonetheless, it will be shared four different profiles of the main four groups that are defined by the age groups and their opinions and answer to the questions of the survey as follow;

1. Participant D1(25 - 34 AG) Engineer; the participant D1 has been working in the construction industry for between 1 to 3 years, has faced a conflict at the workplace and used Negotiation as an alternative for dispute resolution, the participant exposed that the conflict was solved by Negotiation and explains that good relationships are *very important* in the construction industry in Dublin, Ireland, besides mentions that price/budget are the factors that are more important to decide the method of dispute resolution.
2. Participant D26 (35 - 42 AG); Other staff; the participant D26 has been working in the construction industry for between 1 to 3 years, has faced a conflict at the workplace and used mediation as an alternative for dispute resolution, the participant exposed that the conflict was not solved by conciliation/mediation and explains that good relationships are *very important* in the construction industry in Dublin, Ireland, besides mentions that price/budget are the factors that are more important to decide the method of dispute resolution.
3. Participant D25 (43 - 51 AG); Engineer; the participant D25 has been working in the construction industry for more than six years , has faced a conflict at the workplace and used Negotiation as an alternative for dispute resolution, the participant exposed that the conflict did reach an agreement by Negotiation and explains that good relationships are *very important* in the construction industry in Dublin, Ireland, besides mentions that price/budget are the factors that are more important to decide the method of dispute resolution.
4. Participant D23 (over 51 AG); Contractor; the participant D23 has been working in the construction industry for more than six years , has faced a conflict at the workplace and used conciliation/mediation as an alternative for dispute resolution, the participant exposed that the conflict was solved by conciliation/mediation and explains that good relationships are *very important* in the construction industry in Dublin, Ireland, besides mentions that time of reaching an agreement, Work/business good relations are the factors that are more important to decide the method of dispute resolution.

4.3 Findings as they pertain to the research objective 1

This research found that the opinions of the participants regarding contrasting Negotiation and a method of dispute resolution to Alternative Dispute Resolution techniques differed in specific points. For this study, the researcher focused on the ideas, opinions that had similarities among the participants. The primary characteristics that contrast negotiation and a method of dispute resolution to alternative dispute resolution techniques resulting from the finding of the surveys are as follow:

4.3.1 Aspects of deciding the method of dispute resolution

During the gathering of data, it could be seen that the participants /construction professionals working in Dublin, Ireland agree that the economic point is the most important to decide the method of dispute resolution, as we can see in the following graphic;

Which of the following factors are important to you to decide the method of dispute resolution?

35 respuestas



Figure 3 Reason to decide for a method of dispute resolution

4.3.2 Budget

As we can see, 51.40% of the participants agree that price/budged invested in a third party is the most crucial factor to determinate the method of dispute resolution, as the researcher exposed in the Chapter 1, literature review, Negotiation can be defined as follow: *is the procedure whereby the disputants*

work out between them how to resolve any issues that have arisen. Authority to settle down the dispute rests with the parties (RICS Professional, 2012)

(RICS Professional, 2012) Mentioned Negotiation as a first pillar of methods of dispute resolution in the construction industry, because the conflict is still considered neutral. The conflict is not escalated yet so that it can be solved with early unbiased evaluation; on the other hand; it is a faster and cheaper way to find an agreement or compromise. In contradiction to mediation/conciliation, a third party is needed to guide and facilitate the disputants during the process; as a result, time and extra budget are needed.

4.3.3 Good relationships at work.

As we can see the 40% of the participants agree that good relationships are very important in the construction industry. (Royce, 1989) explains that the most wanted way of resolving any dispute is for the parties themselves to reach a mutually acceptable *compromise*. This is likely to be faster and economy; no third party may be involved or even informed of the dispute, and then future business relationships can be preserved. Sometimes, these discussions outcome in successful agreements, other times not 100 per cent in an agreement but people have experimented and developed the ability to talk about their issue and building in this way good relationships or reaching an understanding.

D32 (25 – 34 AG) Client said; *I find that good work relations and finding solutions to be the most important for completing successful work projects.*

D21 (25 – 34AG) other staff said; *Job is commonly known as the second home, that is why good relations are fundamental to get a comfortable environment.*

4.3.4 Time

As we can see, 34.3% of the participants agree that the time of reaching an agreement is a very important point in the construction industry.

D17 (25 – 34 AG) client said; *I find Negotiation helps to solve problems quicker; it creates a path where all parties walk away happy. Compromises discussed and aimed for the same at the end. It generates better results, and fewer conflicts if Negotiation took place during work.* D12 (over 51 AG) client agreed to say; *Speed and early resolution are very important in the construction industry.*

In the figure 2 (Fryer, et al., 2004) explained that as the time of dispute increases, the participation of third parties increases and, so too, do the associated resolution expenses.

This research, based on the opinions and knowledge of the participants surveyed, it was found that construction professionals working full time in Dublin, Ireland think that the budget is one of the most significant factors to decide on a method of dispute resolution, because a third party is not needed yet, parties can talk about their differences before escalating the conflict, so that invest in a mediator or solicitor is not necessary at this level.

4.4 Findings as they pertain to the research objective 2

During the data analysis, the researcher found that most of the participants know the basis of Negotiation, therefore based on their opinions, it is wanted to determine if Negotiation is more effective than alternative dispute resolution methods in the construction industry in Dublin, Ireland, what stood out in this investigation was:

As the chapter 1, literature review mentioned, the four fundamental principles of Negotiation are:

4.4.1 Be hard on the problem and soft on the person

D24 (25 -34 AG) other staff said; *Well, I think negotiations are a fair way to ensure all parties come out of the situation with something. Plus, I think an open conversation is the best way to deal*

with difficult situations, and negotiations give everyone an equal chance to communicate. The participant knows that having an open conversation where both parties can expose their differences can result in a common agreement or a win-win outcome. So being hard on the issue and soft on the other party, and understand their needs is a good start in any negotiation. D30 (25-34 AG) Engineer said; *applying Negotiation at work can improve your abilities in Negotiation in general life, outside work.* D37 (25-34AG) other staff agree with that saying that: *Certainly, we negotiate for everything along the day things like, delivery times needed, cost price target, budgets per each project, sourcing of goods needed.* Participants have felt that a principled negotiation is part of life, not just at work, having a beneficial outcome when both parties win.

4.4.2 Focus on needs, not positions

The participants believe that a win-win outcome is the most important outcome in a negotiation, where the agreement is focused on their needs and not positions, the next graphic show the percentage of participant agreed with that:

What would be most important to you in resolving a conflict at work?

35 respuestas

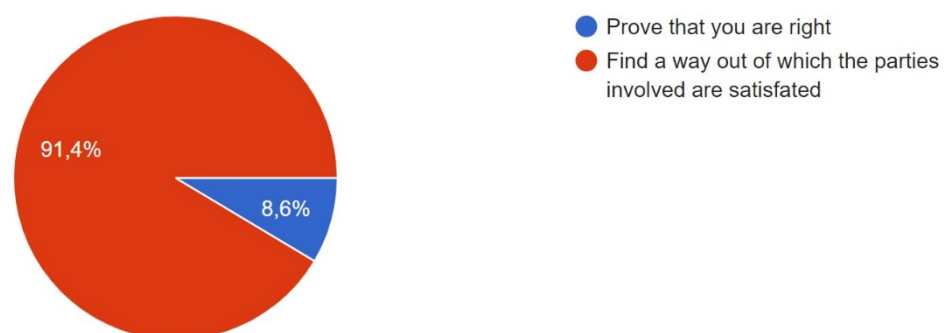


Figure 4 Reasons in resolving a conflict at work

As we can see, 91.4 per cent of the participants agreed that finding a way out of which the parties involved are satisfied with the outcome is the most important. D21(25-34AG) other staff agreed with that saying that: *Always is better a common agreement than an own benefit.* It is known that a friendly

and common agreement create long-lasting friend relationships. Besides, the current issues can teach us how to manage future conflict at work. D10(25-34AG) Engineer added that during the Negotiation, it is necessary to understand different points of view or approaches to a problem, providing you more knowledge and tools to improve or solve future problems.

4.4.3 Be inventive about win-win options

In the literature review, it was explained that a win-win outcome is called principled Negotiation and is an interest-based approach to Negotiation that emphasises principally on conflict resolution. Principled Negotiation practises an integrative approach that means a way to find a mutually shared outcome. D23 (over 51 AG) contractor agreed with that saying that: *It is the only way to work in a win-win way.* D36(25-34AG) other staff added how a win-win result could be applied in a construction project as follow: *In the construction sector, the negotiations of the terms of a project or contract are very important, having a considerable impact on the performance of the project and stakeholders related with it.* So that a win-win outcome is beneficial in all the ambits, not just a conflict at work, as the previous participant explained is also the root of a construction project or contract in order to develop a successful project.

4.4.4 Make clear agreements

After reaching a principled negotiation agreement, it is also necessary to set up the what the parties have agreed through their conversation and shared ideas in order to facilitate future inquires related to the issue. D21(25-34 AG) other staff added, saying that; *Always is better a common agreement than an own benefit, but that those agreements must be fulfilled by the parties after the Negotiation is finished. It is recommended to leave those agreements in writing in case they are reviewed again in the future.*

D31 (25-34 AG) Client added that *There needs to be a congruent decision made in construction in order to build cohesive architecture. Otherwise, there will be obvious discrepancies in how a city will overall look.* So that, clear and unclear agreements can be easily viewed when a construction project is finished; if the professionals involved in the project had some discrepancies during the process of construction, the final result would show up those misunderstood or the opposite when there were no misunderstandings and the new building proves it.

4.5 Findings as they pertain to the research objective 3

4.5.1 *Knowing the advantages of Negotiation*

Overall, the participants know about Negotiation as an approach to solve a conflict in the construction industry in Dublin, Ireland, as we can see in the following graphic product of the survey;

Have you heard about negotiation?

35 respuestas

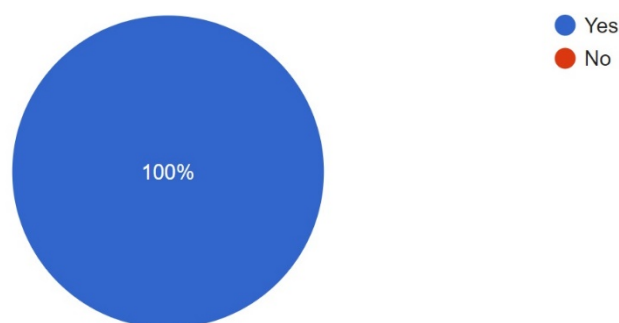


Figure 5 knowledge about Negotiation in the construction sector in Dublin, Ireland.

Nonetheless, not all of the participants are familiarised with the Negotiation's techniques, as follow;

Negotiation is present in our daily lives, considering this affirmation, do you use formal techniques to conduct a negotiation?

35 respuestas

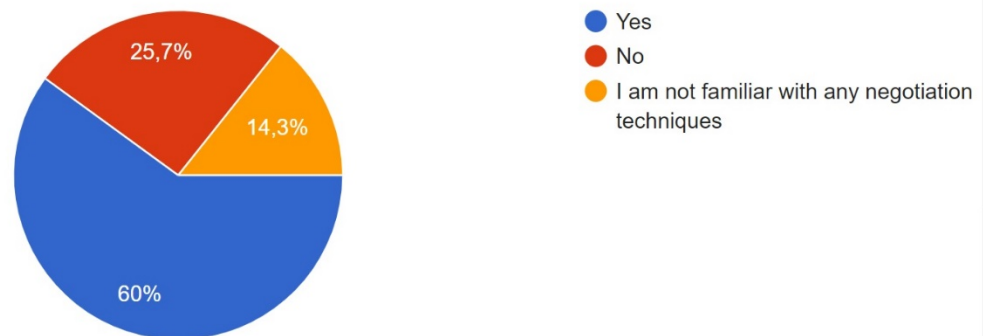


Figure 6 knowledge about negotiations techniques in the construction sector in Dublin, Ireland.

Just 14.3 per cent of the participants are not familiarised with any negotiation techniques, but a sixty per cent does. The participant D08(25-34 AG) Client; *agreed with this and explained that: Negotiation in my personal life allows me to use basic examples or Negotiation in my professional life.* Another participant, D37 (25-34AG) other staff agree with that, saying that: *Certainly, we negotiate for everything along the day things like, delivery times needed, cost price target, budgets per each project, sourcing of goods needed.*

As it was explained in the findings as they pertain to the research objective 1, the participants have in common that know the main advantages of Negotiation and how important they are in the construction industry for the scope of any project. D36(25-34AG) other staff mentioned how Negotiation has an impact on the scope of any construction project as follow: *In the construction sector, the negotiations of the terms of a project or contract are very important having a considerable impact on the performance of the project and stakeholders related with it.* As it was explained in the chapter 1 literature review, Negotiation is present in the construction industry even before that a project begins, since the contractors negotiate with the owner of the project or engineers the prices of

the activities or times to deliver a duty. The construction industry around the world has a long-established for tradition the selection of contractors through a process of tendering, which may be thought of as “the process which connects the client with the marketplace firms” and here is where Negotiation begins in the construction industry and keep present during the whole process of a construction project, even though not all the professionals working in the construction industry are aware of the fact that Negotiation is present in their daily lives.

4.6 Findings Summary

Each respondent answered each of the questions asked based on their work experience, knowledge and personal opinion. Each of the respondents knows about Negotiation as an approach to solving the conflict in the construction industry in Dublin, Ireland, but just the sixty per cent of them are familiarised with negotiation techniques or basis. As well it was found that the budget or the investment is the most important factor for the respondents to decide on a method of dispute resolution, followed by the good relationships at work and the time invested successively. And finally, but not the less important the basis of Negotiation;

- Be hard on the problem and soft on the person; most of the respondents agree that a good communication is the basis of any successful agreement; thus, if both parties are focus on how to solve their differences and forget about who is winning or not, they argue the final outcome will be positive for all.
- **Focus on needs**, no positions; 91.4 of the participants agreed that a win-win outcome is the most important outcome in a negotiation, where the agreement is focused on their needs and not positions, and this is directly connected with good relationships at the workplace when both parties feel complete with the result of their decision that was part of a common agreement create a long-lasting good work relationship.
- **Be inventive about win-win options**; having different option to choose the parties have more opportunities to reach a win-win agreement and indirectly we are finding win-win options in

our daily lives as the participant D37 (25-34AG) other staff explain us: *Certainly, we negotiate for everything along the day things like, delivery times needed, cost price target, budgets per each project, sourcing of goods needed.* So that a win-win outcome is beneficial in all the ambits, not just a conflict at work, as the previous participant explained is also the root of a construction project or contract in order to develop a successful project.

1. **Make clear agreements;** the participant D21(25-34 AG) other staff did mention a very important point that is important to emphasise; *Always is better a common agreement than an own benefit, but that those agreements must be fulfilled by the parties after the Negotiation is finished. It is recommended to leave those agreements in writing in case they are reviewed again in the future.* It is very important to remark “by when” this is really important because some people do not volunteer deadlines; another question to remark would be “who will do this” because if nobody response clearly, it means that the conflict is still not solved.

5. CHAPTER 5: DISCUSSIONS AND RECOMMENDATIONS.

5.1 Conclusion

Primary and secondary research has shown that the differences between Negotiation and another alternative of dispute resolution are significant as well the advantages of Negotiation in the construction industry in Dublin, Ireland. Besides, it was found that all the participants in the survey know about Negotiation; however, not all of them are familiarised with the negotiation techniques. The chapter one, the literature review, explained to us that under the Irish construction contracts had been typically employed arbitration as the final forum for dispute resolution, but the question must be asked when a conflict comes up, which is the suitable method for resolving the particular dispute. *Any issue can be resolved by any method and in any channel decided by the parties themselves, subject to the approval of all parties.*

The research made has shown that in the construction industry, the time is truly worth and any dispute showed during the construction process should be solved as soon as possible, thus avoiding worsening the situation and not stopping the scope of the project programmed before. Therefore, Negotiation shows to be an ideal recourse as an approach to resolve disputes in the construction industry, because:

- 1.- Private process, so confidentiality is retained, which leads to good future work relationships.
- 2.- Time; a matter that can be solved in a day rather than weeks, which make it unnoticed and therefore harmless to the ongoing project schedule.
- 3.- Economic process; because a third party outside of the process is not needed, so that, legal and other costs subsequent from a long litigation are evaded.

The findings from the data gathered and analysed about the features of Negotiation and how that is an advantage in the construction industry, as well that the all the participants know about Negotiation as an approach for dispute resolution in the construction industry; however, under the Irish construction contracts, arbitration/adjudication are the methods established for dispute resolution.

Nonetheless, the research was limited to the population, because it was not possible for the researcher to determine or know the exact population of construction staffs working in the construction industry in Dublin and let alone in Ireland. That is why the researcher used simple non-probability, with a population of 37 candidates to carry out the surveys. This research was limited in its population and, therefore, it cannot be assumed that the opinions of the participants represent the total population of construction workers in Dublin, Ireland. The technique that was used for the analysis of the surveys was the thematic analysis of qualitative data to identify, examine, and report repeated patterns.

5.2 Discussions

5.3 Summary of findings Objective 1

Objective 1: To contrast Negotiation and a method of dispute resolution to Alternative Dispute Resolution techniques.

The top three of the specific features of Negotiation that other methods of dispute resolution do not share with are:

1. **Budget;** viewed from an economic point, people want to save all the money possible every time that it can be, when a dispute arises the same point of view is taken by people. So that, we want to solve our differences but not spending money on that. Negotiation is a method of dispute resolution that can be used when a conflict is not escalated so that the parties can talk between them in order to find out their differences and a third party is not needed, saving money in this way. The opposite case happens with other methods of dispute resolution, such as; mediation/conciliation, where a third non-biased party is required in order to guide the parties during the process. Besides, most of the conflict-related to contract in the construction industry are related to budget, when a contractor reduced too much the prices in order to win the process of tendering, so that, another issue related to money is the one that is least needed to make the situation even worse. The participants are aware of this point, making this feature the most mentioned in our survey and specific questions.
2. **Good relationships at work;** one of the participants who took part in the study did mention that our job is our second home, and that is totally true because the time that we spend on it, a professional spend 40 hours per week or sometimes, even more, so the relationships are significant, making our time there easier. People that have friends at work are more likely to be engaged in their jobs, and that is beneficial for the employee and the company. When a conflict arises, a good work relationship can be in stand by, and this situation is uncomfortable, we want to find a way to solve our differences and keep the good relationship,

and this is another feature of Negotiation because the conflict is not escalated yet, the parties can talk about their differences and find the way to reach a common beneficial agreement when both parties are happy with the outcome of their Negotiation or agreement, the trustfulness increases thus reinforcing good business relationships. Besides, being Negotiation a process where a third party is not needed, the conflict can keep in private; just the disputants know about their situation and can keep the issue between them, building in this way more reliability as business partners.

3. **Time;** as it was explained in chapter 1, literature review, that during serious disputes, parties invest considerable time and resources defending their position, and usually employ experts to argue their case. These budgets must be met by either, or both, of the debating parties. In Figure 2, it is illustrated the rising charges associated with various methods which may be employed to resolve an escalating dispute. As the dispute increases, the participation of third parties increases and, so too do the associated resolution expenses. This exterior participation, however, does little to improve the project's performance. So that, the more time invested in a conflict, the more money will be spent directly. At the same time, the time that the construction professionals invest in a conflict affects the scope of the project directly, which is the main reason they are there. For example, if two contractors are arguing because of the time to deliver the construction of a wall, one of them need to finish in time because the second contractor will paint the wall to deliver in time and not affecting the scope of the whole project, but if they cannot find an agreement, the most affected will be the project. That is why time is extremely important in a construction project where vast amounts of money are usually in between.

5.4 Summary of findings Objective 2

Objective 2: To determine if Negotiation is more effective than alternative dispute resolution methods.

During the data analysis, the researcher found that most of the participants know the basis of Negotiation, therefore based on their opinions and supported by the secondary data through primary sources, it is desired to determine if Negotiation is more effective than alternative dispute resolution methods in the construction industry in Dublin, Ireland, what stood out in this investigation was:

1. *Focus on needs*, not positions; the survey did show that 91.4 per cent of the participants agreed that finding a way out of which the parties involved are satisfied with the outcome is the most important. Focusing on positions over what each party think rarely works. Interest-based bargaining is a negotiation strategy that emphasises on the interests of the parties what they really need, rather than their positions, what they think the solution is. This basis is directly connected with the time because the more the disputants want to prove their point, the more time is invested and worsening the situation and finally affecting the scope of the construction project.
2. *Be inventive about win-win options*; after the disputants agree that a position is not the most important point to prove in order to reach an agreement, but the common needs are, the second step would be to figure out a win-win solution, as we explain in chapter one, literature review is also known as a principle negotiation or principle approach, as a result of a principled negotiation we have; no confrontations, trusting of the disputants; thus they are willing to negotiate, again this is also connected with time and budget, those important features of Negotiation that are very significant in the construction industry.

2. *Make clear agreements*; after reaching a principled negotiation agreement, it is also necessary to set up what the parties have agreed through their conversation and shared ideas in order to facilitate future inquiries related to the issue; it is very important to remark “by when” this is really important because some people do not volunteer deadlines; another question to remark would be “who will do this” because if nobody responds clearly, it means that the conflict is still not solved. Clear agreements are at the same time connected with time and good business relationships, which are essential for the parties and the scope of the project.

5.5 Summary of findings Objective 3

Objective 3: To recommend an effective dispute resolution process.

During the process of gathering data from the participants, it was noticed that they know about Negotiation as an approach to solve a conflict in the construction industry; however they are only governed by the rules applied in the contracts and under the Irish construction contracts arbitration/adjudication are the methods established for dispute resolution, and this opens the doors to propose recommendations. What stood out this investigation was:

Unawareness of the negotiation techniques; even though the participants working in the construction industry in Dublin, Ireland know about Negotiation that took part in our study, not all of them are aware of the negotiation techniques. As it was explained in the findings as they pertain to the research objective 1, the participants have in common that know the main advantages of Negotiation and how important they are in the construction industry for the scope of any project; nonetheless, the participants are aware of the fact that Negotiation is present in their daily lives, and they negotiate outside of work, when they need to get goods or they need to sell something.

However, if a conflict appears during the construction process and the disputants do not know the recognise the negotiation techniques, engineers should consider being the negotiator of disputes that arise because, in most construction contracts, a dispute involved on-site staff, and the project staff are more often engineers who are in charge of the decision-making. Besides, Engineers are qualified in engineering universities to follow and examine evidence and to recognise assumptions when solving problems; engineers understand the issue reasons as well the fact of what happened during the project. The difference of opinions and disagreements between contractors sometimes can pass beyond the point where the parties feel that they are not able to reach a mutually satisfactory settlement, and at this point, the engineer should be the negotiator.

This research means an attempt to investigate the impact of Negotiation on disputes related to contracts in the construction industry in Dublin, Ireland, in the last five years. Future investigations and additional studies on Negotiation and its advantages as a method of dispute resolution in the construction industry in Ireland and how it differs from other methods of dispute resolution would contribute significant value to this topic and thus creating awareness on how positive could be Negotiation when a conflict arises, as well giving the disputants the options to choose what method they want to use for their dispute and not just a method previously set in a contract.

5.6 Recommendations.

5.6.1 Recommendations as they pertain to the research objective 1

The first objective of this research was to contrast Negotiation and a method of dispute resolution to Alternative Dispute Resolution techniques. As a result of the investigation, it was possible to determine the features that make negotiation different from another method of dispute resolution and why it is suitable in the construction industry in Dublin, Ireland. The top three of the specific features of Negotiation that other methods of dispute resolution do not share with are:

1. **Budget;** the study has shown that both the participants and the secondary sources are aware that Negotiation is a method that can help cut the costs, because a third party is not needed when a conflict is not escalated, the disputants can solve their differences by sharing their opinions and finding their needs instead of their positions. Contrary to mediation/conciliation that a third party is needed, therefore extra budget has to be considered.
2. **A good relationship at work;** people tend to respond to the others with similar action that they perceive, as research in the social sciences has found, in the opposite way if the other cooperate with us and treat us with respect, we tend to respond equally. These behaviours are the basis that Negotiation applies in order to get a principle approach between the disputants.

When the conflict is not escalated yet, the parties can talk about their differences and find a way to reach a common beneficial agreement; when both parties are happy with the outcome of their Negotiation or agreement, the trustfulness increases, thus reinforcing good business relationships. Besides, because a third party is not needed at this stage of the conflict, parties can talk frankly and express their feelings and thought without thinking that a third person can judge.

3. **Time;** the study has shown that Negotiation is a process can take day or weeks to get a common agreement; therefore, the conflict will not escalate otherwise, as the dispute increases, the participation of third parties increases and, so too do the associated resolution expenses, also affecting the scope of the construction project directly.

The three characteristics of Negotiation mentioned above are closely related and make negotiation different from the other methods of dispute resolution, on the base of that this research recommends when a disagreement arise that Of course, disputants in a disagreement should make every attempt to reconcile their disagreements before they become conflicts. Alternatively, a negotiating forum may be developed to assist in the resolution of difficulties, the search for mutual advantages through lateral thinking, or the disputants' search for a solution through compromise.

5.6.2 Recommendations as they pertain to the research objective 2

The second objective of this research was to determine if Negotiation is more effective than alternative dispute resolution methods; during the data analysis, the researcher found that most of the participants know the basis of Negotiation, therefore based on their opinions and supported by the secondary data through primary sources, the researcher can determinate that Negotiation is more effective than alternative dispute resolution methods in the construction industry when a conflict is not escalated yet when a disagreement arises the parties should immediately talk about their differences in order to avoid escalating the situation, as we studied before if the conflict escalates, the time and the cost will be increase as well, affecting the scope of the project directly.

So that, it is recommended that construction companies should establish negotiation forums in order to find mutual needs and benefits of the disputants, as well this study and future studies related to negotiation as a method of dispute resolution can be seen by the construction entities in Ireland, such as; The Royal Institution of Chartered Surveyors (RICS) (RICS, 2012); Royal Institute of the Architects of Ireland RIAI (RIAI, 2012); Society of Chartered Surveyors in Ireland SCSI (SCSI, 2019); and Engineers Ireland (Engineers Ireland,, n.d.) to determinate together that negotiation would be very helpful in the construction industry in order not to escalate the conflict and to help not disturbing the scope of the project, so that the disputants can choose the method of dispute resolution and not just one previously established in a contract.

For this specific recommendation is necessary to recapitulate the basis of negotiation studied;

1. *Focus on needs*, not positions; focusing on positions over what each party think rarely works.

Interest-based bargaining is a negotiation strategy that emphasises on the interests of the parties what they really need, rather than their positions, what they think the solution is. This basis is directly connected with the time because the more the disputants want to prove their

point, the more time is invested and worsening the situation and finally affecting the scope of the construction project.

2. *Be inventive about win-win options*; after the disputants agree that a position is not the most important point to prove in order to reach an agreement, but the common needs are, the second step would be to figure out a win-win solution, this solution is also known as a principle negotiation or principle approach, as a result of a principled negotiation we have; no confrontations, trusting of the disputants; thus they are willing to negotiate, again this is also connected with time and budget, those important features of negotiation that are very significant in the construction industry.
3. After reaching a principled negotiation agreement, it is also necessary to set up what the parties have agreed through their conversation and shared ideas in order to facilitate future inquiries related to the issue; it is very important to remark “by when” this is really important because some people do not volunteer deadlines; another question to remark would be “who will do this” because if nobody response clearly, it means that the conflict is still not solved. Clear agreements are at the same time connected with time and good business relationships, which are essential for the parties and the scope of the project.

5.6.3 Recommendations as they pertain to the research objective 3

As a result, after a long journey collected information from specific people working in the construction industry in Dublin, Ireland; professionals with enough experience and knowledge to contribute to this investigation and supported with secondary data from books and similar but the same investigations, the researcher can firmly determine that negotiation is a suitable dispute resolution technique when a disagreement arises, because that the parties involved can, of course, make every effort to resolve their differences before they develop into escalated disputes, avoiding worsening the situation and directly affecting the scope of the project. The total impact of conflicts on individual initiatives has the potential to endanger the goals of all parties involved. The optimal situation would certainly be to take a prophylactic strategy, that is, to eliminate the sources of conflict entirely. Nevertheless, Only by drastically altering the procedures, attitudes, and institutions that contribute to disagreements could such an atmosphere be established. (Ramus, 2006).

However, if a conflict appears during the construction process and the disputants do not know the recognize the negotiation techniques, engineers should consider being the negotiator of disputes that arise because, in most construction contracts, a dispute involved on-site staff, and the project staff are more often engineers who are in charge of the decision-making. Besides, Engineers are qualified in engineering universities to follow and examine evidence and to recognize assumptions when solving problems; engineers understand the issue reasons as well the fact of what happened during the project. The difference of opinions and disagreements between contractors sometimes can pass beyond the point where the parties feel that they are not able to reach a mutually satisfactory settlement, and at this point, the engineer should be the negotiator.

Being Dublin, a small city compared with other European cities, good business relationships are crucial, because those people working in the construction industry will be working together on different projects around the city.

5.7 Reflection

What is the impact of Negotiation on disputes related to contracts in the construction industry in Dublin in the last five years?

As a result of this investigation, it was determined that issues could come up very often when people work as a team, mostly when they do not know each other so that they do not trust as resulting clash of ideas or disagreements can make work as a team adamant. In the construction industry work as a team since the beginning of any project is vital for the development of it.

Holding a background in the construction industry and new skills learned through the masters, it was desired to work on my dissertation, putting together my old and new skills.

Negotiation has been the alternative of dispute resolution that caught my attention since the beginning of my studies, because if we know how to apply the basis of a principled negotiation at the commencement of any conflict, we won't escalate it, so that, waste of time and money could be avoided.

Construction projects are very often complex, which means that either contractors or engineers take considerable risks, the contractors, for example, need to win the project competing with others, so in some cases, they set the prices too low; as a result, disputes come up between clients, engineers, and contractors. The cost related to resolving disputes are usually expensive and take a very long time to be solved; those circumstances impact the projects directly. Million-euro contracts are at risk if those issues are not solved in time.

This study has determined how effective is Negotiation as an approach to resolve issues in the construction industry related to contracts in Dublin, Ireland, in the last five years.

Apart from the data collected, the author wants to contribute with personal experience in employing negotiation techniques in previous construction projects, at the same time, relate the background and experience with the master's degree in conflict resolution for the final dissertation.

On the basis of my personal experience and background, I believe that negotiation is the basis of any contract agreement between the contractor and the client, even before the project start, because the parties have negotiated the prices, the terms of the contracts for any eventuality and the scope of the project, therefore, there is a base on which the parties can recapitulate in case of an issue come up.

As a professional in construction, I am looking forward to applying the knowledge learned through this investigation that I believed has changed the way how I perceive conflicts and how I will face them from now and in the future.

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