

DISPUTE RESOLUTION SERVICE



RICS Conflict Avoidance Process - a user guide



RICS[®]

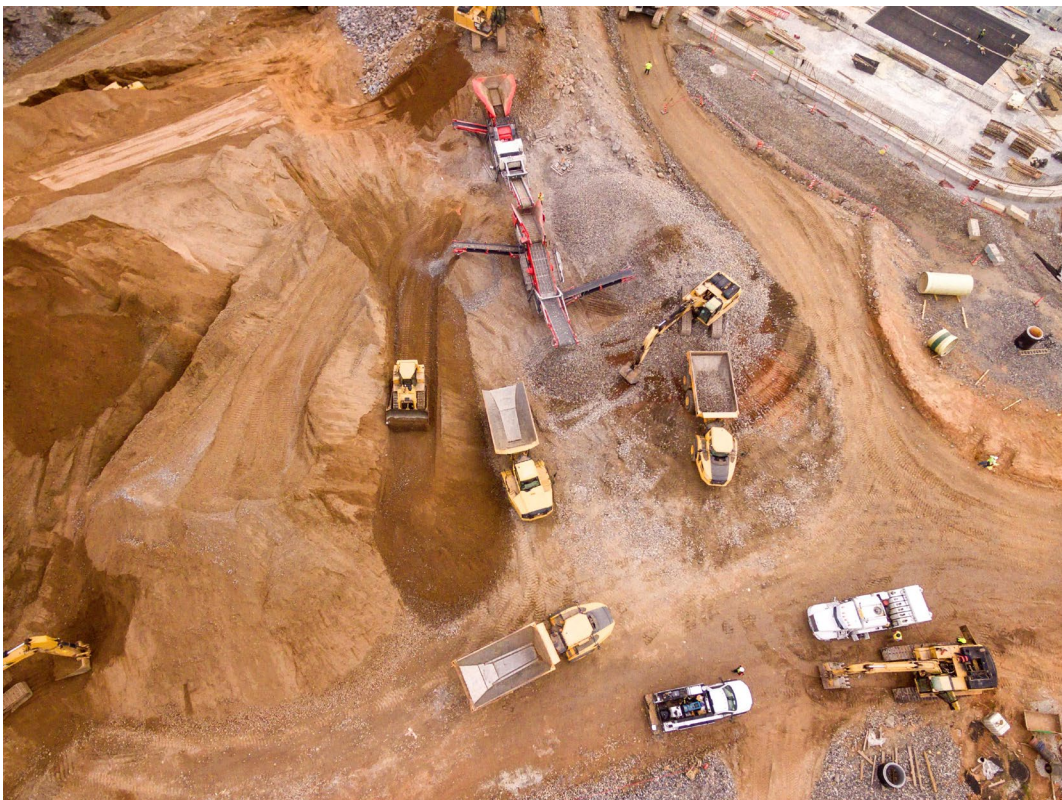
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This user guide is supplemented by the “RICS Conflict Avoidance Process: FAQs”.

Definition of terms

- CAP** The RICS Conflict Avoidance Process
- CAP Panel** The individual(s) appointed to lead proceedings and to deliver a CAP report containing recommendations on how parties should proceed. Reference to a CAP Panel means an individual or a panel of three.
- CAP Report** A fully reasoned, written report prepared by the CAP Panel containing recommendations for resolution of the issues in dispute.
- Project Panel** A selected group of professionals who possess the necessary technical expertise to address potential project-related issues that may arise on the project. The CAP Panel will be drawn from the Project Panel.
- Recommendations** The CAP Panel's proposals for resolving the issues in dispute, as set out in the CAP Report
- RICS** Royal Institution of Chartered Surveyors



Introduction

The RICS Conflict Avoidance Process (CAP) is a cost saving mechanism to prevent lengthy and damaging disputes between parties. Its aim is to help parties address emerging issues early, avoiding costly and confrontational proceedings like adjudication, arbitration, or litigation, which can strain finances and damage commercial relationships.

CAP involves the appointment of a panel of one or three impartial professionals who are experts in the relevant field. The panel will collaborate with parties to provide a fully reasoned, written CAP Report containing pragmatic recommendations to resolve the issue(s) in dispute. CAP is a flexible process, which means that the CAP Panel can adapt the procedure to suit the needs of the parties.

CAP can be applied to disputes at various stages, including those already advanced towards legal action.

A key benefit of CAP is that it provides parties with an impartial risk analysis and assessment of how their matter is likely to be decided if it were referred to a formal dispute resolution procedure.

When employed early on, before a disagreement escalates, CAP ensures that project delivery teams retain control over the outcome of dispute, rather than relinquishing the matter to company lawyers. The CAP panel's focus is on finding practical solutions rather than preparing for litigation.

“CAP offers a number of advantages over other forms of dispute resolution. In particular, potential disputes can be **“nipped in the bud”** before they escalate, meaning that working **relationships can be maintained** and **legal costs can be minimised**, if not avoided altogether.

Furthermore, CAP offers **complete flexibility** in the processes which can be adopted.”



Jonathan Cope
CAP Panellist

The CAP procedure

CAP is a flexible process and can be adapted to suit the needs of the parties. There is no “one size fits all” procedure.

This is an indication of how a typical CAP Panel appointment may progress.

Step 1 – A dispute emerges

Upon identifying an issue with the potential to escalate into a dispute, parties can agree to appoint a CAP Panel to assist them in its resolution.

CAP can be utilised across different stages of disputes, from issues with potential to escalate to fully fledged disputes, to those already progressing towards legal action.

Parties can agree at any stage that they want to refer an emerging dispute to CAP; it does not have to have been written into the contract, although it is advantageous if it is.

Step 2 – RICS appoints a CAP Panel

- I. To appoint a CAP Panel, one of the parties should contact RICS, copying in the other party, with a completed CAP Application Form.
- II. If not already in place, RICS will work with the parties to:
 - agree a fee scale, and
 - put in place a contractual framework for parties to facilitate the creation of the CAP.
- III. Parties may have already agreed who they want on their CAP Panel. In such cases, they should inform RICS of the identity of the preferred panellist(s) and, subject to satisfactory completion of RICS diligence checks, RICS will appoint them.

If RICS identifies any problems with the qualifications or impartiality of the CAP Panel proposed by the parties, RICS will discuss these with the parties and agree next steps.
- IV. If parties cannot agree whom they want on their CAP Panel, RICS will carefully select and appoint an appropriate CAP Panel for them.
- V. In all cases, RICS will only appoint a CAP Panel if satisfied that they are:
 - free from conflicts of interest
 - are qualified and experienced in the subject matter at the heart of the issue between the parties, and
 - are available when the parties require them.

Note: Parties who have included CAP in their contracts will, in many cases, have worked with RICS to establish a ‘Project Panel’. The Project Panel consists of professionals such as surveyors, lawyers, and engineers, who possess the necessary technical expertise to address the potential project-related issues that may arise on the project. RICS and the parties will work together to create and agree this panel.

It is from the Project Panel that the CAP Panel of 1 or 3 individuals will be selected to handle an emerging disagreement. If parties do not have a Project Panel already in place, RICS will appoint one for them drawn from the RICS register of technical experts who are also all experienced and high-quality dispute resolvers.

Step 3 –CAP Panel’s preliminary steps

Within 5 working days of appointment, the CAP Panel will contact the parties.

The CAP Panel will normally invite the parties to:

- Elaborate further on the nature of the disagreement between them
- Participate in a joint initial meeting. Typically, this meeting will occur within two weeks of the CAP Panel’s appointment
- At least one week before the initial meeting, share with each other and the CAP Panel any documents they deem necessary to clarify the issues.

The CAP Panel and parties may agree to work on a ‘documents only’ basis if the issue(s) lend themselves to it.

Step 4 – Parties’ initial joint meeting with CAP Panel

During the initial joint meeting, which may be held online or in person, **the parties** will:

- Set out their understanding of the dispute
- Talk through the documents they have provided
- Work with the CAP Panel to narrow and define the issues. This can also include excluding any issues from consideration by the CAP Panel.

During the initial joint meeting, **the CAP Panel** will:

- Help the parties to explore realistic options for settlement of some or all issues
- Determine whether any further lines of enquiry are necessary
- Identify any concessions that may require authorisation from individuals not present at meeting
- Specify any additional documentation that may be required
- Decide whether involvement of third parties or experts is required
- Establish an agenda and timetable for the remainder of the CAP process
- Determine the representatives of the parties for subsequent stages of the CAP process.





Step 5 - After the initial joint meeting

After the initial joint meeting has taken place, the CAP Panel may:

- Visit the relevant site, either alone or with parties and/or their representatives
- Hold joint or separate meetings with the parties to examine their positions and/or options for settlement
- Issue a 'statement of agreement' of any matters agreed by the parties
- Invite the parties to:
 - provide written explanations on identified issues
 - provide further documents
 - meet for further discussions
- Seek views of experts in the field
- Make their own enquiries or conduct investigations as they see fit.

Step 6 – The CAP Report

The CAP Panel will prepare a CAP Report which will contain recommendations for resolving the issues between the parties.

The CAP Panel will aim to complete the CAP Report within the timetable agreed with the parties. If it becomes apparent that more time is needed, the parties will be asked to agree an extension to allow any phase of the CAP to be completed.

The CAP Report will:

- be in writing and fully reasoned
- be delivered to the parties by the CAP Panel at a face-to-face or virtual meeting.

The CAP Panel will be entitled to payment of fees after delivering the CAP Report.

Step 7 - Implementing the CAP Report

The recommendations in the CAP Report will not be binding on the parties unless they agree otherwise.

Parties can choose whether to adopt, adapt or reject any recommendations in the CAP Report.

Parties may agree to implement the recommendations of the CAP Report in whole or in part.

Parties may use the recommendations in the CAP Report to negotiate a settlement on all or some of the issues between them. They can use the recommendations to assess the likely outcome of proceeding to formal, adversarial dispute resolution or litigation.



Step 8 – Disagreeing with the CAP Report

If either party decides it does not intend to comply with the recommendations, either in whole or in part, it will:

1. Give notice to this effect to the other party within five days of receipt of the CAP Report
2. Provide the other party with fully reasoned grounds, in writing, for not doing so within two weeks of receipt of the CAP Report.

In the event of the above, either party may:

- a. Make suggestions for compromise, taking into account the recommendations in the CAP Report
- b. Propose that aspects be referred to the CAP Panel for further advice and recommendations*. The CAP Panel can act further in a mediative capacity to facilitate a negotiated settlement of issues, drawing on the recommendations in the CAP Report
- c. Make a “without prejudice” offer to settle based on the recommendations in the CAP Report, which offer will be admissible as to costs in arbitration or litigation
- d. Elect to leave the process altogether and to proceed to adjudication, arbitration or court.

* If both parties agree that the matter should be referred to the CAP Panel, then either (or both parties) will notify RICS and RICS will arrange for the CAP Panel to resume the appointment.

Costs

Parties don't pay anything if they include CAP in their contract and do not need to use it. There are no ongoing retainer fees - it is effectively a "pay-when-used" service.

Parties are not required to pay an application fee to RICS for appointing a CAP Panel.

Unless agreed otherwise, each party will bear their own costs and will bear in equal shares the expenses of the CAP Panel.

The amount and basis of fees will always be agreed by the parties and the CAP Panel before formalisation of the CAP Panel's appointment.

Fee scales are not fixed as it is not possible to standardise a schedule of fees that will apply in every case. The flexibility of the CAP process means that a CAP Panel can choose (in discussion with parties) to approach the dispute in a variety of ways, whether that be mediative, evaluative, or determinative. Fees may be determined by reference to the size and value of the dispute as well as the form and duration of the dispute resolution method.

A CAP Panel is entitled to payment of its fees after delivering the CAP Report.



Delivering confidence

We are RICS. As a member-led chartered professional body working in the public interest, we uphold the highest technical and ethical standards. We inspire professionalism, advance knowledge and support our members across global markets to make an effective contribution for the benefit of society. We independently regulate our members in the management of land, real estate, construction and infrastructure. Our work with others supports their professional practice and pioneers a natural and built environment that is sustainable, resilient and inclusive for all.

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