

Guidance

RICS Conflict Avoidance Process (CAP) – Summary

RICS Dispute Resolution Service (DRS)



Summary of RICS Conflict Avoidance Process (CAP)

General

1. The RICS CAP provides the parties with an independently appointed and administered conflict avoidance process conducted to international standards under the auspices of the Royal Institution of Chartered Surveyors.
2. A CAP procedure and timetable can be included in the main contract between the parties or entered into separately with the agreement of the relevant parties.
 - a. The CAP procedure operates alongside the main contract. It does not suspend the operation of the main contract, unless the parties involved in the CAP agree that it should.
 - b. Any notices, steps or processes under the main contract would continue to be served, or taken as they would if the CAP was not utilised, save that the parties will at the same time provide an appointed CAP member with a copy of any such notice or inform him/her of the nature of such steps or processes.
3. The CAP procedure is voluntary, and any party may withdraw from it at any time.
4. CAP procedures are confidential.
 - a. The CAP member and parties and RICS agree that they will not disclose the contents of the CAP negotiations to any individual or organisation not involved in it.
 - b. With the agreement of the relevant parties, the CAP member may provide a copy of the CAP recommendation to RICS, which may use it in anonymised form only for training CAP members and improving the RICS CAP service.
5. A CAP member may draw on their own experience and expertise in running the CAP and in making their recommendation(s).
 - a. Where the CAP member intends to do so, s/he will endeavour to discuss any such aspect with the parties, or the party affected by it, either in joint or separate meeting but is not obliged to do so.

- b. The CAP member may take into account any information given to him/her by the parties during the course of the CAP, whether in joint or separate meeting, in making their recommendation(s).
6. All correspondence and exchange of documents between the CAP member and the parties or between the parties relating to the CAP will be by way of email or other electronic means, unless hard copy is more convenient.
7. The CAP is a common-sense, non-adversarial, commercial process and is not meant to be a quasi-adjudication or arbitration
 - a. The process will be conducted as informally as possible.
 - b. The CAP process is inquisitorial by nature and led by the CAP member.
8. CAP meetings will take place in person where possible and will not be in the form of a formal hearing. The CAP member will normally meet commercial directors, managers and others who are involved in the subject matter of the dispute. Whilst lawyers and other professional advisers are not excluded, the CAP process is primarily intended to encourage and support dialogue between commercial parties, and inform their decisions on how to resolve emerging issues without the need to resort to formal processes, such as adjudication, arbitration, etc.
9. Meetings.
 - a. Meetings take place primarily:
 - i. to allow the CAP member to develop a clear understanding of the issue(s) which is giving cause for concern, and which could develop into a dispute; and
 - ii. to allow the CAP member to hold detailed discussions with the parties, help them to examine each other's positions, explore options for settlement and appreciate possible outcomes were the matter to proceed to adjudication, arbitration or court.
 - b. The CAP member will generally conduct meetings with both parties present, but may meet separately with the parties where it is agreed that it would help to move a settlement process forward, and/or to narrow issues in dispute which would be inhibited by the presence of the other party's representatives.

10. The CAP process is designed primarily as a means of Conflict Avoidance intended to “nip issues in the bud” before they become entrenched. It can, however, be used to address all disputes, even if they are well advanced towards adjudication, arbitration or court. In this case, the guidelines below will need to be adjusted as necessary.

Process

1. The parties identify an issue which has the potential to grow into a dispute and agree to seek the intervention of CAP to help resolve it. One or both parties request the appointment of a suitably experienced and qualified CAP member by RICS.
 - a. One or both parties will complete a DRS application form in which it will provide inter alia an agreed description of the nature and estimated value of the issue, and the person, or persons, on the RICS list who the parties agree to be suitable to act as the CAP member.
 - b. In the absence of agreement, DRS will contact the parties and obtain inter alia their input on the nature and value of the dispute, and their views on whom they would consider suitable to act as the moderator
 - c. Unless the CAP process is included in the existing contract between the parties, the parties will be required to sign and abide by the DRS CAP Terms and Conditions.
 - d. In the absence of agreement, or if the named person is unavailable or not suitable, depending on the nature and value of the issue, DRS will aim to provide the parties with the name(s) of alternative CAP members competent to deal with the subject matter. Such persons will have been checked by DRS to ensure they are free from conflicts of interest and are subject to the DRS Quality Assurance including the DRS Customer Charter.
 - e. DRS will seek agreement from the parties as to the CAP member to be appointed.
 - f. If the parties cannot agree, DRS will appoint the moderator.
2. The CAP member will, within five days of appointment, contact the parties and set out the basis on which s/he wishes to proceed. In doing so, the CAP member may invite the parties to:
 - a. provide a fuller outline of the nature of the issue(s) between them

- b. attend a joint meeting(s) with
3. Once an appointment is accepted by both parties, the CAP member will arrange a meeting.
- a. The parties will inform each other and the CAP member as to who will attend the meeting on their behalf.
 - b. The meeting will normally take place within two weeks of the CAP being appointed.
 - c. At least one week prior to the meeting, the parties will inform each other and the CAP member of any documents they believe are necessary to explain the issue and the recommendation(s) being sought.

At the CAP meeting, the parties will

- d. In conjunction with the CAP member, agree an agenda and timetable for the CAP process
 - e. use the CAP member as a sounding board, mediator and/or subject matter expert to inform their discussions, and help them resolve/narrow issues
 - f. agree who the representatives of the parties should be for any stage of the CAP process
4. Once the CAP member has met with the parties and read the documents, s/he will, if necessary, invite the parties to:
- a. provide written explanations on identified issues
 - b. provide further documents
 - c. meet him for further discussions

The CAP member may also:

- d. Visit the site, either alone or with representatives of the parties
- e. Hold joint or separate meetings with the parties to examine their positions or options for settlement
- f. Invite parties to consider and respond to offers for settlement that either party may choose to make as a result of the CAP process

- g. Issue a statement of agreement reflecting those aspects of the issue that the parties have agreed during the course of the CAP.
 - h. Invite, at any stage, further explanations, documents or meetings to assist with the preparation of final recommendation(s).
5. The CAP member will aim to complete the CAP process, including the delivery of recommendation(s) within 28 days of the appointment. Where it becomes apparent that more time is needed, the CAP member will seek agreement on an extension to allow any phase of the CAP to be completed.
6. The CAP member will deliver the recommendation(s) to the parties.
- a. The recommendation(s) will be in writing and will be fully reasoned.
 - b. The CAP member will be entitled to payment of fees after delivering the recommendation(s).
7. The recommendation(s) made by the CAP member will not be binding on the parties. If either party decides it does not wish to comply with the recommendation(s), either in whole or in part, it will provide the other party with fully reasoned written grounds for not doing so within two weeks of the date the recommendation(s) is made.

Both parties may follow this process if they both decide they do not wish to comply with aspects of the recommendation.

Either party may:

- a. Make suggestions for compromise taking into account the CAP recommendation(s)
 - b. Propose to the other party that aspects be referred back to the CAP for further advice and recommendations
 - c. Make a “without prejudice” offer to settle to the other party based on the recommendation(s), which offer will be admissible as to costs in arbitration or litigation.
 - d. Elect to leave the CAP process and to proceed to adjudication, arbitration or court.
8. If both parties agree that the matter should be referred back to the CAP member, along with the grounds for non-compliance and the response to earlier recommendations,

then either (or both parties) will notify DRS of this and DRS will arrange for the CAP member to resume the appointment

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