

CAP Rules

RICS CAP Rules

Resolving a Construction Dispute Using the RICS Conflict Avoidance Process



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Article 1 – Scope of Rules

1. The RICS Conflict Avoidance Process (RICS CAP) helps parties to resolve emerging and established issues by providing an impartial expert assessment of the matters on which they disagree. The assessment is set out in a written report. The report is fully reasoned and includes practical recommendations for settling the disagreement.
2. These CAP Rules explain the process and approach that parties and the CAP Panel should adopt.
3. By providing parties with an assessment of their issue(s) by an impartial subject matter expert, CAP helps inform their negotiations and prevent escalation of matters to formal, adversarial intervention such as arbitration, adjudication or litigation.

Article 2 - Agreement to Submit to the Rules

The Parties should cooperate with one another and with the CAP Panel in the implementation of these Rules.

Article 3 – Conflict Avoidance Panel

1. The CAP Panel will be comprised of either one or three independent persons who are qualified and experienced in the subject matter(s) on which the parties disagree.
2. The CAP Panel will work with the parties to identify, precisely, the issue(s) on which they disagree, and the timetable and procedure to be followed.
3. The CAP Panel will take evidence from the parties and will also undertake an inquisitorial role to gather information and evidence, which will be used to inform the Panel's report and recommendations.
4. Unless otherwise agreed by the parties, Recommendations are non-binding.

Article 4 – Appointment of CAP Panel

1. Prior to an issue(s) being refer to CAP, Parties should agree who shall take the role of Applicant and Respondent. The Applicant shall submit a "Request for Appointment of CAP Panel" to RICS, which includes a description of the issue(s) which they require the CAP panel to analyse and make recommendations. RICS will aim to help the parties to appoint a suitably qualified and impartial CAP Panel of one or three persons within 10 working days from receipt of application.
2. The Parties may propose a person or persons to be on the CAP Panel. In this case, RICS will undertake due diligence checks to ascertain whether the proposed

persons are willing and available to act in the matter and are free from conflicts of interest.

3. Where relevant and appropriate, RICS will liaise with the parties and panellist/s to ascertain whether they are willing to comply with timetables and/or fee arrangements proposed by the parties.
4. If Parties fail to agree on the identity of the person or persons to be on the CAP Panel, or if the proposed person or persons are unsuitable or unavailable, RICS may appoint the members of the CAP Panel on behalf of Parties.
5. When sourcing member for a CAP Panel, RICS will assess candidates based on their qualifications, professional experience, availability, impartiality, location, training, and capacity to perform the required tasks. RICS will also consider any preferences or requests provided by the Parties and will strive to appoint a CAP Panel that aligns with attributes mutually agreed by them.

Article 5 – CAP Panel attributes

Any person who wishes to accept an appointment on to a CAP Panel shall be:

1. A neutral person acting in their personal capacity
2. Free from conflicts of interest and seen to be independent of both parties
3. Required to declare any prior or current interest related to the issue(s) or Contract
4. Qualified, up to date, and experienced in the relevant subject matter on which a Report and Recommendations are sought by the Parties.

Article 6 – Confidentiality

Save as required by law, the Parties and the CAP Panel must keep confidential all information of whatever nature provided by or on behalf of the Parties.

Article 7 – Conflict of Interests

1. Each member of a CAP Panel must be free from conflicts of interest.
2. Without prior written consent from all Parties, no member of a CAP Panel should participate, or have participated, in any judicial, arbitral, or similar proceedings related to the contract, whether as a judge, arbitrator, expert, or representative or advisor to a Party.

Article 8 – CAP Panel Agreement

1. Each member of a CAP Panel must sign a CAP Panel Agreement with the Parties before starting the process.

2. If the CAP Panel consists of more than one person, each CAP Panel Agreement must have identical terms unless otherwise agreed.
3. The CAP activities will commence once the CAP Panel and the Parties have signed the CAP Panel Agreement.

Article 9 – Joint Meeting

1. Upon appointment, the CAP Panel shall, as soon as possible, contact both Parties (or their Representatives) to set up a Joint Meeting.
2. The purpose of the Joint Meeting is to:
 - a. ensure the issue(s) and recommendation(s) sought are clearly defined
 - b. agree on the procedure and timetable, and
 - c. ensure the Parties are aligned on how to proceed.
3. At the Joint Meeting, Parties will present their understanding of the issue(s) .
4. The CAP Panel may use this Joint Meeting to reach agreement with the Parties on practical matters, which might include:
 - a. Whether the parties consider that a site visit will be of assistance to the CAP Panel
 - b. Whether it would be beneficial for the CAP Panel to meet with each party separately
 - c. The extent to which the parties will provide written and oral submissions and whether there will be a limit on the length of their submissions
 - d. The type and format of evidence the parties wish to submit, if any
 - e. The extent to which the CAP Panel will gather information and act inquisitorially, and the procedure and timetable for preparing the CAP Report and recommendations.
 - f. Whether the parties have discussed and/or agreed what they want to see in the CAP Report in terms of detail, reasons, personal opinions, etc

Article 10 – Communication

All correspondence exchanged between a party and the CAP Panel, including any enclosures or attachments, must be shared simultaneously with all parties.

Article 11 – Power of the CAP Panel

The CAP Panel shall have the power to:

1. Request any documents from the parties deemed essential for the CAP Panel to perform its role.
2. Require the parties to attend meetings and hearings as the CAP Panel deems are necessary.
3. Undertake site visits.
4. Decide all procedural issues relating to meetings, hearings or site visits.
5. Question the parties, their representatives, and witnesses in any order the CAP Panel considers to be appropriate.
6. Appoint one or more experts, subject to the parties' agreement, which will inform the CAP Panel on specific or specialist issues which are outside the CAP Panel's normal sphere of professional knowledge and expertise.
7. Implement any actions necessary to carry out its duties.

Article 12 - Conduct of Proceedings

1. The CAP Panel shall apply technical expertise and professional experience diligently at all times. Any conclusions, recommendations, or decisions must be based on reasoned analysis and evidence, clearly demonstrating the application of the CAP Panel's expertise. Arbitrary figures or unsupported judgments are not permitted, and the rationale behind all conclusions and recommendations should be transparent and reasoned.
2. Where the CAP Panel consists of more than one member, any discussions between the panel members regarding purely logistical or administrative matters, i.e. not connected with the issues in dispute, shall be conducted in private.
3. The CAP procedure may include, but will not be limited to:
 - a. One or more meetings with parties and/or their representatives
 - b. Mediation of some or all issues to narrow or resolve the disagreement between the parties.
 - c. Site visits and meetings with persons who have direct experience of the issues
 - d. Analyses of documents, plans and other relevant material

- e. With the agreement of the parties, the use of one or more external experts to inform the CAP Panel on specialist issues
- f. A face-to-face or virtual meeting between the CAP Panel, parties and/or their representatives, and key stakeholders to deliver and discuss the CAP Report and recommendations

Article 13 – CAP Report and Recommendations

1. The CAP Panel will prepare a CAP Report which will contain a comprehensive analysis of the issues, conclusions and recommendations for settlement of the disagreement between the parties.
2. 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 report to be completed.
3. The CAP Report will be in writing and fully reasoned.
4. The CAP Panel's recommendations will be non-binding on the parties, unless they agree otherwise.
5. Parties can choose to implement all or some recommendations or use them as a platform for further negotiations with a view to achieving resolution of the issue(s).
6. The CAP Report will normally be delivered to parties at a meeting, which may be held either in-person or online, so that the CAP Panel can talk the parties through the findings.
7. The parties and the Panel may agree that the CAP Panel's appointment will continue after publication of the CAP Report in order to assist with the implementation of some or all recommendations, and the conditions and fees relating to such continued appointment.

Article 14 – Fees and Payment

1. Each party shall bear its own costs and expenses in relation to any reference of a matter to the CAP Panel, and bear in equal shares the remuneration and expenses of the CAP Panel.
2. No fees are payable by parties to RICS, which will recover its administrative costs from the CAP Panel.

The CAP Panel will be entitled to payment of their fees either as previously agreed or immediately upon delivery of the CAP Report.

Article 15 – Complaints

Parties may raise a complaint with RICS Dispute Resolution Service if they experience an issue with the conduct of the CAP Panel, or a procedural matter. Details of the Complaints Handling Procedure are on the RICS website: [rics.org/drs](https://www.rics.org/drs)