

CAP Rules

# RICS CAP Rules

Resolving Construction Disputes Using the RICS Conflict Avoidance Process



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## Article 1 – Scope of Rules

1. The RICS Conflict Avoidance Process (RICS CAP) is intended to help parties to resolve emerging and established issues or disputes by providing an impartial expert assessment of the matters on which they disagree. A typical assessment of the matters will be set out in a fully reasoned, written report containing practical recommendations for settling the disagreement. These recommendations may include innovative solutions not available in adversarial dispute resolution.
2. These CAP Rules explain the process and approach that parties and the CAP Panel should consider adopting.
3. By providing parties with an assessment of their issue(s) by an impartial subject matter expert, CAP helps inform the parties' negotiations and can prevent escalation of matters to a formal, adversarial intervention such as adjudication, arbitration or litigation.

## Article 2 - Agreement to Submit to the Rules

The parties are expected to cooperate with one another and with the CAP Panel in the implementation of these Rules.

## Article 3 – CAP Panel

1. The CAP Panel will be comprised of either one or three independent persons who are qualified and experienced in the subject matter on which the parties disagree.
2. The CAP Panel will work with the parties to identify the issue(s) on which they disagree, and to establish the timetable and procedure to be followed.
3. The CAP Panel will take evidence from the parties and may also undertake an inquisitorial role to gather information and evidence, which will be used to inform the CAP Panel's report and recommendations.
4. Unless otherwise agreed by the parties, the CAP Report produced by the CAP Panel will not be binding on the parties. The parties are encouraged to accept CAP Report as binding.

## Article 4 – Appointment of a CAP Panel

1. Prior to any issue(s) being referred to CAP, parties should agree on who shall take the role of Applicant and Respondent. The Applicant shall submit a 'Request for Appointment of CAP Panel' to RICS, detailing the issue(s) on which the parties disagree.
2. RICS will aim to help the parties to appoint a suitably qualified and impartial CAP Panel within 10 working days from receipt of the Request.

3. The parties may propose persons to be on the CAP Panel. In this event, RICS will undertake due diligence checks to ascertain whether the proposed persons are:
  - willing and available to act in the matter,
  - free from conflicts of interest
  - willing to comply with any timetables and/or fee arrangements proposed by the parties.
4. If parties fail to agree on the identity of the person(s) to be on the CAP Panel, or if the proposed persons are unsuitable or unavailable, RICS may appoint the members of the CAP Panel on behalf of the parties.
5. When sourcing members for a CAP Panel, RICS will assess candidates based on their qualifications, professional experience, availability, independence, location, training, and capacity to perform the required tasks. RICS will also consider any preferences or requests of the parties and will strive to appoint a CAP Panel that aligns with attributes requested.

## Article 5 – CAP Panel attributes

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

- A neutral person acting in their personal capacity.
- Free from conflicts of interest and independent of both parties.
- Required to declare any prior or current interest related to the parties, their representatives, or the project.
- Qualified, up to date, and experienced in the relevant subject matter of the issue(s).

## Article 6 – Confidentiality, etc.

Every person involved in the CAP will keep confidential and not use for any collateral or other purpose all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the CAP proceedings. This includes details of those proceedings or any meeting between the parties and the CAP Panel. Nor shall they disclose information or details of any settlement reached through the process, and/or any CAP recommendations produced by the CAP Panel, save as set out below, or as otherwise agreed jointly by the parties.

The parties agree that the issues with which the CAP Panel is assisting are deemed to be “disputes” for the purposes of the “without prejudice” privilege rule. They further agree that all information and submissions (whether oral, in writing or otherwise) provided,

arising out of, or in connection with the CAP, will be “without prejudice” and inadmissible as evidence in legal proceedings of the facts alleged or admissions stated. As such, the information specifically produced for the CAP proceedings is not disclosable and may not be referred to or used in any current or future litigation or other dispute avoidance or dispute resolution proceedings. This does not apply to any information which would in any event have been admissible or disclosable in any such proceedings or disclosable as a matter of law.

## Article 7 – CAP Panel Agreement

1. Each member of a CAP Panel should 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.

## Article 8 – Conflict of Interests

1. Each member of a CAP Panel must be free from conflicts of interest.
2. None of the parties to the CAP Panel Agreement will call any members of the CAP Panel as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever arising from, or in connection with, the matters dealt with by the CAP Panel. The CAP Panel will not voluntarily act in any such capacity without the prior written agreement of all the parties.

## Article 9 – Joint Meeting

1. Upon appointment, the CAP Panel shall, as soon as possible, set up a Joint Meeting with the parties and/or their representatives.
2. The purpose of the Joint Meeting is to:
  - a. ensure the issue(s) and recommendations 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, the parties will present their understanding of the issue(s).

## 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 unless otherwise agreed.

## Article 11 – Power of the CAP Panel

The CAP Panel shall have the power to:

1. Request any documents from each of the parties deemed essential for the CAP Panel to perform its role.
2. Require the parties to attend meetings as the CAP Panel deems are necessary, whether together or individually.
3. Undertake site visits.
4. Decide all procedural issues relating to meetings or site visits.
5. Question the parties, their representatives, and witnesses in any order the CAP Panel considers to be appropriate.
6. Require the parties to submit written submissions and evidence.
7. 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.
8. 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 or recommendations in any written CAP Report must be based on reasoned analysis and evidence, clearly demonstrating the application of the CAP Panel's expertise.
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, will normally 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. A facilitated discussion (whether in the form of a mediation or otherwise) 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 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. Typically, the CAP Panel will prepare a written CAP Report which will contain a comprehensive analysis of the issues, conclusions and recommendations for settlement of the issues in dispute.
- 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, which extension should not be unreasonably refused.
- 3. The CAP Report will be in writing and fully reasoned.
- 4. The CAP Report will not be 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 be delivered to both parties. If required by the parties a meeting may be held so that the CAP Panel can talk the parties through the findings.
- 7. The parties and the CAP 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.

## 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.

3. 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 – Indemnity

The parties will jointly and severally indemnify and hold harmless the CAP Panel members from any claims for anything done or omitted in the discharge or purported discharge of the CAP Panel's activities, unless the act or omission is shown to have been in bad faith.

## Article 16 – 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)