

NEC4 Contract Conflict Avoidance Z Clauses

Conflict remains a recurring feature in construction projects, often undermining relationships and increasing time and cost exposure. In the period May 2023 to April 2024, 2,264 referrals were received by UK Adjudicator Nominating Bodies, an increase of 9% from the previous year.¹ Recognising this persistent issue, the Royal Institution of Chartered Surveyors (RICS), alongside the Conflict Avoidance Coalition Steering Group, introduced the Conflict Avoidance Pledge. The initiative promotes early intervention and collaborative practices across the construction industry to prevent disputes from escalating.

The Pledge has received support from several key institutions, including the Institution of Civil Engineers, the Dispute Resolution Board Foundation, the International Chamber of Commerce, the Chartered Institute of Arbitrators and the Royal Institute of British Architects. Signatories commit to developing conflict avoidance capability, allocating internal resources, and working proactively with partners to address disagreements before they evolve into disputes.

To support these objectives, the NEC published a Practice Note in March 2025 providing guidance for incorporating conflict avoidance Z clauses into the NEC4 Engineering and Construction Contract (ECC) dispute resolution options W1 and W2. The Z clauses offer a structured process for using a Conflict Avoidance Panel, aligning with the principles of the Pledge.

NEC4 ECC Framework of Dispute Resolution: W1, W2 and Z Clauses

The NEC4 ECC provides three core routes for dispute resolution: Options W1, W2 and W3. Option W1 applies where the Housing Grants, Construction and Regeneration Act 1996 (the Construction Act) does not apply. Option W2 is used where the Construction Act does apply and includes a statutory right to adjudicate at any time. Option W3 introduces a Dispute Avoidance Board, though it is thought to be generally unsuitable for contracts subject to the Construction Act.

Z clauses allow parties to amend or supplement the standard form. The March 2025 Practice Note introduces Z clauses that incorporate a Conflict Avoidance Panel process into Options W1 and W2. This introduces a structured method to resolve disagreements early, offering an alternative to traditional reactive mechanisms.

NEC4 Practice Note March 2025

The March 2025 Practice Note was issued during Conflict Avoidance Week and formalises the integration of dispute avoidance into NEC4 contracts. It builds on earlier NEC guidance and Government recommendations by providing optional clauses that support early-stage resolution through a Conflict Avoidance Panel. The Note includes guidance and draft Z clauses applicable to both W1 and W2. It sets out how to integrate them into the contract, including updates to the Contract Data and the identification of a nominating body.

The Conflict Avoidance Panel

The central feature of the conflict avoidance Z clause is the Conflict Avoidance Panel. The Panel is appointed by the parties or nominated by an agreed nominating body. Its role is to provide a non-binding recommendation to resolve referred disagreements.

¹ 2024 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform – Professor Renato Nazzini & Aleksander Godhe; Centre of Construction Law & Dispute Resolution, Kings College London, November 2024.

The process begins with a formal notice of disagreement.² The parties must then meet within one week to agree on the issue, the outcome sought and the panel composition.³ If no agreement is reached, the nominating body appoints the panel.⁴ All members of the Panel must act personally, disclose relevant interests, and have suitable qualifications and experience.⁵ There is no specified time limit for appointing the Panel allowing for the possibility that panel members may not be immediately available.

A scoping meeting follows within one week of the panel's appointment.⁶ The referring party submits a referral within one week of that meeting, followed by a one-week response period.⁷ The panel then issues a recommendation notifying the parties within two weeks of the response.⁸ The recommendation includes a summary of the Panel's findings, reasons for the recommendation and how it should be implemented.⁹

The recommendation by the Panel becomes binding if both parties accept and implement it.¹⁰ Otherwise, the matter may be escalated to the Senior Representatives under the normal W1 or W2 procedures (see below). The entire process may be concluded within six weeks (see flow chart), providing an efficient mechanism for resolution. The Panel is not intended to determine fault but to assist in early resolution. Its structured but flexible process, combined with the expertise of its members, supports timely and informed recommendations and allows opportunity for reflection and resolution before resorting to formal processes.

Costs incurred as a result of using the Conflict Avoidance Panel are shared equally and, under Options C to F, are treated as Disallowed Cost.¹¹

Interface of the Conflict Avoidance Z clauses with the Senior Representatives

Options W1 and W2 both provide for referral to the Senior Representatives before adjudication. Under Option W1, referral to the Senior Representatives is a mandatory first step in the dispute resolution process. Under W2 the parties may agree to refer a dispute to the Senior Representatives before adjudication; thus preserving the right to adjudicate at any time as provide by the Construction Act. The Conflict Avoidance Z clauses aim to operate alongside or as an alternative to the Senior Representatives. This is particularly advantageous in complex projects, where familiarity with the project, legal issues and regular involvement of the Conflict Avoidance Panel can provide more informed and effective dispute resolution.

Under both Option W1 and W2, referral to the Conflict Avoidance Panel temporarily displaces the role of the Senior Representatives. Under Option W1 the timetable for referral in the contract (Dispute Reference Table)¹² is replaced with the timescales set out in clause Z1.3(1). If a party does not accept a recommendation given by the Conflict Avoidance Panel, the dispute must then be referred to the Senior Representatives within two weeks.¹³

² Z1.3(1)

³ Z1.3(2)

⁴ Z1.3(3)

⁵ Z1.3(4)

⁶ Z1.4(1)

⁷ Z1.5(2),(3)

⁸ Z1.5(5)

⁹ Z1.6(1)

¹⁰ Z1.6(2)

¹¹ Z1.8(2)

¹² W1.1(1)

¹³ W1 - Z1.7

Under W2, the parties must first agree to refer a dispute to the Conflict Avoidance Panel.¹⁴ If not satisfied with the recommendations of the Conflict Avoidance Panel, the parties may agree to refer the dispute to the Senior Representatives. The need for these agreements is to ensure compliance with the Construction Act and the right to adjudicate at any time.

The objective of the Conflict Avoidance Panel role is to complement that of the Senior Representatives by providing an additional layer of expertise and impartiality. While the Senior Representatives may focus on negotiating resolutions, the Conflict Avoidance Panel can offer independent advisory opinions or recommendations, which the parties can use to guide their discussions.

Conclusion

The NEC4 ECC conflict avoidance Z clauses represents a regime for resolving disputes early in a non-adversarial manner. The principles of early intervention align with the objectives of the Conflict Avoidance Pledge and offer a framework that supports both efficiency and relationship management. While the Z clauses do not displace the existing dispute resolution mechanisms of the NEC4 ECC, they offer a valuable early-stage tool that enables informed decision making and reduces the risks associated with formal adjudication. In practice, conflating the Z clauses and the existing provisions of Option W1 or W2 may prove difficult to follow. Clients wishing to avoid any such difficulties may consider writing a single consolidated dispute resolution clause incorporating all relevant provisions.

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¹⁴ W2 - Z1.3(1)

NEC4 Engineering and Construction Contract Conflict Avoidance Process with Option W2

General notes:

1. The flow chart is based on the NEC4 ECC Practice Note – March 2025
2. The CAP means the Conflict Avoidance Panel defined in Z1.1(1).
3. The *conflict avoidance nominating body* should be identified in Contract Data Part One.
4. Option W2 is used where the HGCRA 1996 applies.
5. If the HGCRA 1996 applies, the Parties may refer a dispute to adjudication at any time.
6. The flow chart is provided for guidance only. Dispute resolution procedures stated in the contract and as required by law must be followed.

