

CAP Rules

RICS CAP Rules

Minimising Construction Disputes through the **RICS
Conflict Avoidance Process**



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Introduction

The RICS Conflict Avoidance Process (RICS CAP) is intended to help parties address and resolve emerging and established 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 processes.

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.

RICS offers a two-part CAP service:

1. Creating a tailored panel of subject-matter experts for a specific project (**Project Panel**), and
2. Appointing CAP professional/s to help parties resolve a disputed matter (**Dispute Panel**).

Project Panels

A Project Panel is a curated register of professionals jointly established by RICS and the parties for a specific project. It comprises experts selected for their specialist knowledge in areas where disputes are most likely to arise.

Dispute Panels

A Dispute Panel is a one or three-person "tribunal" which is appointed to conduct the CAP process and help parties resolve an emerging dispute that has arisen on a project. Dispute Panel members are selected from the Project Panel according to the issue in dispute and the expertise required. Dispute Panels can also be used on an ad-hoc basis where a Project Panel has not been established.

Article 1 – Scope of Rules

1. These CAP Rules explain the process and approach that RICS, the parties and the Dispute Panel once appointed should consider adopting.
2. The parties are expected to cooperate with one another, with RICS and with the Dispute Panel in the implementation of these Rules.

Article 2 – Creating the Project Panel

In creating a panel specific to a particular project (Project Panel), RICS will work with the parties to:

- identify the areas where disputes are likely to arise
- identify professionals with the skills and experience needed to deal with areas of dispute
- introducing them to the parties and providing them with an overview of the project
- ensuring they are fully trained in CAP procedures and are subject to RICS ethics, professional standards, oversight, and complaints processes
- agree the fee structures for CAP on the project

RICS will seek to include on its CAP project panels professionals who meet the following criteria:

- Demonstrable subject matter expertise in the field to which the anticipated or identified dispute relates
- Excellent understanding of and experience in dispute resolution and/or conflict avoidance mechanisms and the RICS' CAP process in particular
- Recognised seniority in the panellist's primary profession with, ideally, a minimum of 15 years post qualification professional experience
- Proven track record supported by two comprehensive professional references attesting to the panellist's professional and dispute resolution and/or conflict avoidance experience and general suitability as a fit and proper person
- Successful completion of the RICS Ethics training and adherence to RICS professional standards
- Signature of and adherence to the RICS service level agreement for CAP panellists

Article 3 – Appointment of a Dispute Panel

1. RICS will consult with the parties and appoint a dispute panel once a disputed matter has been identified and been referred to RICS.
2. Either party may seek the appointment of the dispute panel and will do so by completing a copy of the [CAP: Dispute Panel Request Form](#) and sending it to RICS with a copy to the other party or parties involved in or affected by the dispute that has been identified.

3. RICS will aim to help the parties to appoint a suitably qualified and impartial Dispute Panel within 10 working days from a formal request by the parties to do so.
4. The parties may agree to and propose persons selected from the Project Panel to be on the Dispute 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 pre-agreed timetables and/or fee arrangements.
5. If parties fail to agree on the identity of the person(s) to be on the Dispute Panel, or if the proposed persons are unsuitable or unavailable, RICS may appoint the members of the Dispute Panel on behalf of the parties.
6. When sourcing members for a CAP Panel, RICS will assess candidates based on the attributes set out below. 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 4 – Dispute Panel attributes

Members of Dispute Panels 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).
- Available to perform the duties of the Dispute Panel without delay.

Article 5 – Confidentiality, etc.

- 5.1 Unless agreed otherwise jointly by the parties, the CAP process and all information and documents used in it are confidential and shall not be used for any other purpose or disclosed to any parties not involved in the CAP process. This includes details of any meetings between the parties and the parties and the Dispute Panel; any other steps taken during the course of the CAP process; the details of any settlement reached and/or any recommendations produced by the Dispute Panel.
- 5.2 The parties agree that the issues with which the Dispute Panel are 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.

- 5.3 The parties will not call any members of the Dispute 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 Dispute Panel. The Dispute Panel will not voluntarily act in any such capacity without the prior written agreement of all the parties.

Article 6 – Joint Meeting

1. Upon appointment, the Dispute 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 7 – Communication

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

Article 8 – Power of the Dispute Panel

The Dispute Panel shall have the power to:

1. Request any documents from each of the parties deemed essential for the Dispute Panel to perform its role.
2. Require the parties to attend meetings as the Dispute Panel deems are necessary, whether together or individually.

3. Undertake site visits, if deemed necessary.
4. Decide all procedural issues relating to meetings or site visits.
5. Question the parties, their representatives, and witnesses in any order the Dispute 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 Dispute Panel on specific or specialist issues which are outside the Dispute Panel's normal sphere of professional knowledge and expertise.
8. Implement any actions necessary to carry out its duties.

Article 9 - Conduct of Proceedings

1. The Dispute 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 Dispute 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. Analysis 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 Dispute Panel on specialist issues.
 - f. A meeting between the Dispute Panel, parties and/or their representatives, and key stakeholders to deliver and discuss the CAP Report and recommendations.

Article 10 – CAP Report and Recommendations

1. Typically, the Dispute 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 Dispute 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. Parties may choose to be bound by the recommendations or agree on a process by which, if neither party makes formal objection within an agreed period of time, the recommendations become binding.
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 Dispute Panel can talk the parties through the findings.
7. The parties and the Dispute Panel may agree that the Dispute Panel's appointment will continue after publication of the CAP Report in order to assist with the implementation of some or all recommendations.

Article 11 – Fees and Payment

1. Each party shall bear its own costs and expenses in relation to any reference of a matter to the Dispute Panel, and bear in equal shares the remuneration and expenses of the Dispute Panel.
2. No fees are payable by parties to RICS, which will recover its administrative costs from the Dispute Panel.
3. The parties shall not be invoiced directly by the Dispute Panel. At the conclusion of the CAP process, the Dispute Panel shall submit a statement of fees to RICS, who will invoice the responsible party or parties accordingly. Upon receipt of payment, RICS shall deduct a 10% administration fee (plus VAT where applicable) and remit the balance to the Dispute Panel within 30 days of receiving their invoice.
4. The Dispute Panel will be entitled to payment of their fees either as previously agreed or immediately upon delivery of the CAP Report.

5. The parties shall be jointly and severally liable for payment in full, unless other arrangements are agreed with RICS in advance of the CAP process being commenced.

Article 12 – Indemnity

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

Article 13 – Complaints

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