

Conflict Avoidance Process (CAP)



Regulated by RICS



Conflict Avoidance Pledge

www.hardies.co.uk



What is CAP?

CAP is a Conflict Avoidance Process which has been designed by the RICS DRS (Dispute Resolution Service) to encourage early intervention to resolve disputes prior to them reaching a stage where they need referred to a formal resolution process.

The CAP is managed by an expert (CAP Professional), who will reach a final recommendation following a collaborative, open and honest process involving both parties.

The CAP professional is an experienced RICS member who has specialist knowledge in the area of the dispute and the recommendation they reach on the issue is likely to draw on their own experience and knowledge of the subject matter. For example, if the dispute was about a variation then the CAP Professional is likely to be a Quantity Surveyor.

Companies may have an 'RICS CAP List' which allows parties to choose a CAP professional and include this in their CAP Referral to the RICS. The RICS have imposed strict criteria which professionals must meet to appear on their lists (including CAP training), to ensure a fair and reasoned approach. The RICS will check the preferred member is knowledgeable on the particular issue when they review the parties' referral. More information on this is available on the RICS website.

The whole process is confidential, and the final recommendation made by the CAP Professional is for review only by the parties involved, making it an attractive first point of call should an early dispute arise. In addition to this, it is a voluntary process and neither party is obliged to agree to its use, even if it is included in the contract.

Each party is responsible for their own costs, with the costs for the CAP Professional being split evenly between the parties, unless agreed otherwise at the outset. The hourly rate for the CAP Professional is agreed between the RICS and all parties prior to the process beginning.

Advantages of CAP

- Confidential
- Quick (usually 28 days)
- Inexpensive
- Professional selected is an expert on the issue raised
- Informal process
- Recommendations not binding (gives indication of likely outcome should it be referred to adjudication)
- Encourages healthy dialogue between parties
- Avoids escalation of issues into formal disputes and processes

CAP Process



An issue is identified and parties agree to refer it to CAP.



Parties (one or both) complete the RICS DRS Referral form providing a description of the issue and its value.



Parties either include the person(s) who they agree can act as the CAP member for the process, or the DRS select someone suitable for the role if the parties cannot agree.



The CAP Professional then starts the process. They will make contact with each party and explain the process within 5 days of being appointed.



If a CAP Clause is included in the contract then the process begins, if not then the RICS will request both parties acknowledge and sign the DRS CAP Terms and Conditions.



The first stage of the process is for the CAP Professional to arrange a meeting with both parties separately and set out timescales for issue of documentation etc. prior to the meeting date.



The CAP member then carries out their investigation of the dispute. This may involve requesting further information from the parties, attending site, holding further meetings, or approaching parties with offers that may be made by the other party during the CAP process.



Within 28 days (unless agreed otherwise) the CAP Professional will make their decision. This is in the form of a recommendation and is delivered to both parties.

It should be noted that if a party disagrees with the recommendation they should advise the other party of this within two weeks of receiving the recommendation. They should outline their reasons for disagreeing.

The RICS advise that:

‘Either party may:

- Make suggestions for compromise taking into account the CAP recommendation(s)
- Propose to the other party that aspects be referred back to the CAP for further advice and recommendations
- Make a “without prejudice” offer to settle to the other party based on the recommendation(s).
- Elect to leave the CAP process and to proceed to adjudication, arbitration or court.’

If it is necessary for the CAP member to be involved again, the RICS will notify them of this and they will restart their appointment.

CAP In Contracts

If both parties are in agreement that CAP can be included within the contract then it is advisable to include a timeframe and procedure. CAP can also be decided upon at such time that a dispute arises, even if it isn't included in the contract from the outset. As a result of this, it is not intended to replace the standard contract dispute resolution mechanisms and so if CAP is added into the contract, the default of adjudication or arbitration should remain. If CAP is something both parties wish to be written into the contract, the RICS have produced a sample clause as follows:

Sample clause - RICS Conflict Avoidance Process (CAP)

'The following is a sample clause, prepared by RICS, which can be adopted (or adapted) by parties who wish to include in their contracts a Conflict Avoidance Process to help manage and resolve emerging disputes.

Parties may also utilise this clause to help them manage and dispose of legacy disputes.

1. The Employer and the Contractor, and any Subcontractor(s) will co-operate with each other in the early identification and notification of any potential or actual disagreement between them that may lead to a dispute. Where necessary this may be achieved by using the Conflict Avoidance Process (CAP) as detailed below:
2. Conflict Avoidance Process (CAP)
Any issue likely to lead to a dispute may, prior to referring the dispute to Adjudication, and by agreement of both Parties, be referred to a Conflict Avoidance Process (CAP) for a recommendation on how to resolve the issue.

Prior to the referral of an issue, the Parties should endeavour to agree upon:

- a) which Party assumes the role of starting the CAP procedure by setting out the issues on which the CAP Panel member(s) will be asked to provide a report and recommendation(s);
- b) a clear definition of the issue(s) at hand and the nature of the recommendation(s) sought from the CAP Panel member(s); and
- c) any person(s) whom the Parties consider suitable to act as the CAP Panel member(s).

Once agreement has been reached on the roles of the Parties, the CAP Panel member(s) and the definition of the issue, the Parties will jointly complete and submit a 'Request for Nomination of CAP' to the Royal Institution of Chartered Surveyors (RICS). This request should include a brief description of the issue to enable RICS to determine if the proposed CAP member(s) are suitable.'

Hardies work hard as a business to protect and empower our clients. We would always seek to avoid formal disputes wherever possible due to the cost and time implications and the lack of certainty over outcome. We have worked with the RICS to understand the CAP process and believe it has a lot to offer and sets out a mutual intention of parties to work in a collaborative manner. We would encourage our clients and contractors to include a CAP clause within their contracts as a first point of call should a serious dispute arise.

Should you wish to discuss further please contact
Murray Warner or **Jennifer Dunn**



Murray Warner BA MSc LLM MRICS MAPM MCI Arb
Edinburgh & Glasgow

Murray Warner assumed the role of Head of South Division in April 2015. Murray joined Hardies in 2008 as a Project Manager and has been involved in a wide variety of projects across a number of different sectors. He has a strong track record of delivering complex refurbishment projects and, in particular, enjoys building relationships and creating positive and motivated project teams. Murray is a Chartered Project Management Surveyor, a Member of the Association for Project Management and a Member of the Chartered Institute of Arbitrators. Murray is also an accredited RICS evaluative Mediator.

Head of Project Management & Mediation
T: 0131 557 9300
E: murray.warner@hardies.co.uk



Jennifer Dunn BSc (Hons), MRICS
Edinburgh

Jennifer graduated from Robert Gordon University in Aberdeen in 2010. She started off her career in private quantity surveying, where she gained her RICS chartership in November 2013. Jennifer then went on to work as a quantity surveyor for Barratt Homes, prior to joining Hardies in May 2017.

Jennifer has built up considerable experience and expertise from working with a wide variety of clients on a wide range of projects. This allows her to adapt her methods of working to suit the needs of a client and has given her a strong understanding of how best to meet a client's requirements. Jennifer is skilled in team working and understands the key importance of keeping people informed at all stages of a project. She is proactive in working with the other members of the design team to ensure cost control is managed efficiently during pre-contract and the construction phase. Over the last few years Jennifer has developed an interest in dispute resolution procedures and this is what has led her to becoming involved in CAP.

Associate Quantity Surveyor
T: 0131 557 9300
E: jennifer.dunn@hardies.co.uk

Unrivalled Delivery Network

The partners of Hardies and Shepherd shared a vision to realise the opportunities that could be created by combining our strengths. In 2016 Shepherd Chartered Surveyors, one of Scotland's leading surveying practices, merged with Hardies, one of Scotland's largest multi discipline Property and Construction Consultants, to form a practice unrivalled in its delivery network of surveying and construction services throughout the country.

We have 34 offices throughout Scotland and whilst each business maintains its own identity, the merged practice has a combined turnover of £25m and employs over 400 staff. We believe that our clients deserve to have access to expertise in their particular field and have created specialist departments across our areas of operation to serve all sectors of our industry.

Aberdeen
▲ 01224 202800
Ayr
▲ 01292 267987
Coatbridge
▲ 01236 436561
Cumbernauld
▲ 01236 780000
Dalkeith
▲ 0131 663 2780
Dumbarton
▲ 01389 731682

Dumfries
▲ 01387 264333
Dundee
▲ 01382 220699
▲ 01382 200454
Dunfermline
▲ 01383 731841
▲ 01383 722337
East Kilbride
▲ 01355 248535
Edinburgh
▲ 0131 557 9300
▲ 0131 2251234

Elgin
▲ 01343 553939
Falkirk
▲ 01324 635 999
Fraserburgh
▲ 01346 517456
Galashiels
▲ 01896 750150
Glasgow
▲ 0141 331 2807
Glasgow South
▲ 0141 649 8020

Glasgow West End
▲ 0141 353 2080
Greenock
▲ 01475 730717
Hamilton
▲ 01698 534288
▲ 01698 897548
Inverness
▲ 01463 712239
Kilmarnock
▲ 01563 520318

Kirkcaldy
▲ 01592 205442
Livingston
▲ 01506 416777
Montrose
▲ 01674 676768
Motherwell
▲ 01698 252229
Musselburgh
▲ 0131 653 3456
Paisley
▲ 0141 889 8334

Perth
▲ 01738 631631
▲ 01738 638188
Peterhead
▲ 01779 470766
St Andrews
▲ 01334 476469
▲ 01334 477773
Saltcoats
▲ 01294 464228
Stirling
▲ 01786 474476
▲ 01786 450438