

Conflict Avoidance and Early Intervention (CAP)

1. The purpose of CAP

CAP is designed to enable parties to resolve emerging issues early, before they escalate to full blown disputes. It does this by providing parties with impartial and objective assessments of issues, and recommendations for bases for settlement, provided by highly credible subject matter experts.

CAP helps parties to achieve an agreed settlement. They are able to draw on the CAP's impartial, non-binding, expert evaluation(s) on key issues to inform their negotiations. This gives the parties a realistic appreciation of how an emerging or established dispute might ultimately conclude if it was to be litigated (or arbitrated).

The CAP professional can also assist negotiations by acting as an evaluative mediator, helping the parties to maintain focus in their negotiations and preventing deadlock. The parties can draw on the CAP professional's impartial assessments of strengths and weaknesses of individual issues and/or overall positions of both parties.

CAP will:

- Promote open and honest communication between the parties
- Identify feasible options for settlement of matters on which there is disagreement
- Mitigate risks and protect the commercial reputations of the parties by ensuring the process by which settlement is achieved remains private and confidential
- Encourage compromise, where possible, and help avoid matters escalating into formal adversarial dispute resolution procedures such as arbitration or litigation
- Demonstrate the willingness of the parties to achieve a commercially viable and amicable solution, so as to prevent the need for expensive drawn-out litigation

CAP enables parties to narrow issues in dispute. In the event that the dispute, or any sub-issues, do eventually go to litigation, the parties will be able to focus on key issues and demonstrate to the court that non-litigation settlement/resolution possibilities have been reasonably explored and attempted.

2. The role of a CAP Professional

A CAP will normally consist of one professional member, who will be a credible expert in the subject matter in dispute.

It is important that the CAP professional is, and is seen to be, independent of the parties. The perception of independence is enhanced if the CAP professional is sourced from an impartial professional body, such as RICS.

The CAP professional will consult with the parties, gather and review information and compose well-reasoned evaluations and recommendations for settlement.

The CAP professional's evaluations and recommendations are intended to provide both parties with impartial guidance, which will help them to make informed judgments on the way forward. The objective is to safeguard against issues escalating uncontrollably, avoid the need for formal dispute resolution proceedings and achieve agreed outcomes.

The CAP professional's recommendations will be provided in writing and will include comprehensive reasoning. This will enable the parties to understand the rationale behind each recommendation, particularly if it does not match a party's own case. Well-reasoned recommendations can help to avoid escalation to litigation/arbitration around the same issues that have been dealt with by the CAP professional.

3. Independence and impartiality of the CAP Professional

The involvement of a neutral nominating body, such as RICS, as an interface between the Parties and the CAP professional is an important element in achieving independence, and ensuring the parties are confident that the CAP professional will be impartial at all times. The nomination of the CAP professional, which is administered independently, will involve robust checks to ensure the CAP professional is independent of the parties and that no potential conflict of interest occurs.

The CAP professional will have regard to legal requirements and official guidance and practice to act impartially.

RICS Dispute Resolution Service (DRS)
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