

## **The Conflict Avoidance Pledge ('CAP')**

This is a brief writing on the Conflict Avoidance Pledge ('CAP') to outline what the pledge is and who it may benefit. The following views are my own.

The CAP Pledge is as follows:

### **"The Pledge"**

We believe in collaborative working and the use of early intervention techniques throughout the supply chain, to try to resolve differences of opinion before they escalate into disputes. We recognise the importance of embedding conflict avoidance mechanisms into projects with the aim of identifying, controlling and managing potential conflict, whilst preventing the need for formal, adversarial dispute resolution procedures. We commit our resources to embedding these into our projects. We commit to working proactively to avoid conflict and to facilitate early resolution of potential disputes. We commit to developing our capability in the early identification of potential disputes and in the use of conflict avoidance measures. We will promote the value of collaborative working to prevent issues developing into disputes. We commit to work with our industry partners to identify, promote and utilise conflict avoidance mechanisms."<sup>1</sup>

## **Benefits**

**Parties to Construction Contracts:** The most obvious benefit is to parties to construction contracts in avoiding conflicts and further financial costs of formal dispute resolution processes, and/or the cost of damaging relationships unnecessarily.

However, I have still seen some opinions on social media that the CAP does not have any force to make a difference. Based on what I have seen from these types of comments so far, they appear to generally come from a view that the intention alone, to avoid disputes, is not enough. If that were only what CAP is, then I would not disagree, but it isn't. Yes, CAP does involve promoting the mindset of collaboration to encourage parties to avoid conflicts, but this is not the only process available. CAP is aimed at integrating avoidance processes into the contract, and the processes include the option to appoint a CAP professional to assist the parties in avoiding conflict.

How the CAP professional achieves this is up to the parties. The CAP professional may be instructed to provide an independent report, advise on specific points of contention and potential outcomes, the merits of the parties' positions, or even a binding or non-binding decision on a matter; it is up to the parties how the matter is addressed.

The point is that the process is flexible and can be tailored to the specific circumstances; in this way, the process promotes agreement and control in time and cost.

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<sup>1</sup> Accessed from <https://www.rics.org/dispute-resolution-service/conflict-avoidance/conflict-avoidance-pledge> on 20/6/25.

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So, notwithstanding the subjectivity associated with merely intending to avoid conflict, CAP offers the opportunity for parties to agree to an objective process by which any type of matter can be addressed.

**Lawyers and Claims Consultants:** Some lawyers and claims consultants have asked how the CAP can benefit them when their main line of business is resolving disputes. I have to admit that I asked myself the same question when deciding whether to join the CAP because, as a Chartered Quantity Surveyor, I specialise in claims and disputes; this is my main line of work.

I came to the conclusion that I was asking myself this question because I was oversimplifying CAP. As discussed above, conflict avoidance is not just something that happens because two parties decided to join CAP and intended to avoid conflicts. Conflict avoidance is a process, just like dispute resolution is a process. Okay, sometimes parties reach a settlement by agreement by meeting midway and shaking hands, but that may happen in any event, whether the parties are signed up to CAP or not.

If parties are serious about avoiding conflict, then matters concerning entitlement, causation, and quantum need to be properly understood and considered when applying the contractual terms and relevant legal principles to the facts, so that objective outcomes are supported and evidenced. These are the types of matters that generally require professional assistance of lawyers and/or claims consultants, both during the process of agreeing terms, and during the works; the difference is that when that assistance is not provided during a formal dispute resolution process, then the costs are less for the parties, as they do not include adjudicators, arbitrators, court fees, etc.

**Adjudicators:** So, how can CAP possibly benefit Adjudicators if Adjudications are avoided? Firstly, I do not believe that CAP will significantly reduce Adjudications. The view that it will is overly simplistic in my opinion because it relies on the premise that parties are currently putting the majority of issues to be resolved through Adjudication.

The office of national statistics records that in 2023 there was £139billion of construction work in the UK<sup>2</sup>, and according to a report on Adjudication by Nazzini, R & Kalisz, A (2023)<sup>3</sup> 2,078 disputes were referred to Adjudication in 2023, with the majority carrying a value of £125,000 to £500,000. On this basis, even based on £500,000 as the average, the total value of disputes going through Adjudication equates to around £1,039,000,000 of disputed value against £139,000,000,000 of total value. On this basis, Adjudication is only relevant to around 0.75% of the total value of construction works carried out.

This poses an interesting point; if adjudication affects 0.75% of the value of construction and other financial problems form part of the 99.25%, the focus of CAP is unlikely to be on replacing Adjudication, as it would be missing the bigger picture. Also, the objective of Adjudication is to provide a quick decision, even at the expense of quality, to an extent. A quick decision will always be required in some cases, and CAP does not

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<sup>2</sup><https://www.ons.gov.uk/businessindustryandtrade/constructionindustry/articles/constructionstatistics/2023>

<sup>3</sup> Professor Renato Nazzini & Alexander Kalisz '2023 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform, (Adjudication Society), Kings College London, 2023.

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replace Adjudication in this respect; the objective of CAP is not to provide a quick decision, but to provide a fair outcome with the emphasis on avoiding conflict and damaging commercial relationships. Through CAP, the parties can choose to remain in control of the agreement process, whilst through Adjudication, the resolution of the dispute has become so urgent that a party chooses to relinquish control to a third party. It follows, therefore, that the CAP and Adjudication processes are not directly comparable; one cannot genuinely replace the other because they are different processes activated by different needs and circumstances.

From my own experiences in around 30 years of construction, parties are generally reluctant to go to Adjudication and, where possible, they seek to avoid it. I have seen many parties stay engaged in settlement discussions for very long periods of time (too long), by choice, often concerning significant sums, and even though Adjudication is an option. In my experience, this is the majority. In this way, notwithstanding Adjudication, another wider issue of conflict is not just the costs of resolving the dispute through formal dispute resolution processes, but the cashflow issue caused by protracted agreement processes out of Adjudication, which, based on the figures above, is part of the 99.25% of construction works. To what extent the 99.25% is actually incurring cashflow problems is unknown; the answer could be given context by asking how many construction projects go from start to finish with no financial issues arising that could cause potential conflicts? I will leave the answer to you.

If the parties agree to use a CAP professional, protracted conflicts can be avoided by seeking clarity on the position by instructing a CAP professional to provide a binding or non-binding decision, an independent report, advice, or any other form agreed upon by the parties, and within an agreed period of time. Logically, a professional with the skill set appropriate to the particular issue, who is also an Adjudicator, is one ideal (but not the only) type of CAP professional to assist with such matters. There is nothing stopping parties from doing this notwithstanding CAP, but the reality is that they often do not. One reason for this may be that the legal system is generally set up to be adversarial, so that parties are fundamentally encouraged by the legal system to be set against each other, which flows down into contracts. CAP can be said to be the opposite, as collaboration and mutual agreement to avoid conflict are encouraged.

It could be said, therefore, that the CAP process could create more work for persons currently acting as Adjudicators, especially if Adjudicators actively sought to be named under a CAP clause, and in doing so, potentially increase cashflow for parties in respect of protracted agreement processes.

In summary, the CAP is inclusive and has the potential to benefit all stakeholders in the construction processes to the extent that they participate in it; in other words, a participant is likely to get out of CAP what they put in.

To sign up, click here: <https://cac-uk.org/user/register>

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## **References**

### **Books**

Conflict Avoidance Pledge: Last Accessed from <https://www.rics.org/dispute-resolution-service/conflict-avoidance/conflict-avoidance-pledge> on 20/6/25

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