A close-up of a chain

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**CAP Case Study (1) – July 2023**

*The following text refers to a recent, real-life, case where the RICS Conflict Avoidance Process (CAP) was used to resolve complex and potentially costly issues between an employer and a contractor on a major construction project in the UK. The identity of the parties and the project have been withheld for reasons of confidentiality.*

An independent CAP professional was appointed in January 2023, with the agreement of both parties. The process took four months to complete, which is longest period between the appointment of a CAP by RICS and the publication of the independent CAP report and recommendations, since the process was launched around six years ago. But it appears to have been time well spent. It is evident that CAP report and recommendations has enabled the parties to achieve an agreed outcome, which they are currently implementing.

In the two years before the CAP professional was appointed, the parties had been embroiled in lengthy and challenging negotiations about differences of opinion they had regarding several compensation events, and a completion date. The issues first began to develop during the Covid-19 emergency. To the credit of both parties, they actively sought to resolve matters in a spirit of collaboration and without recourse to costly litigation, or other adversarial measures such as adjudication or arbitration, which could have damaged their long-term relationship.

It seems that key factors, which motivated the parties to use CAP included:

1. It is immensely cheaper than going to court, and it gets results in a fraction of the time
2. Unlike litigation, CAP is a private and confidential process. This is particularly attractive to parties who wish to avoid damaging their brands. It is particularly attractive to employers who are funded by the public purse and wish to avoid costs escalating as a result of legal spend dealing with disputes.
3. The CAP process involves an impartial subject matter expert providing both parties with impartial answers to questions they are grappling with, and this is used to inform their negotiations and help them achieve an agreed solution.
4. CAP is non-adversarial. It helps maintain good commercial relationships between parties.
5. It provides both parties with an indication of the potential outcome of litigation if the parties were to maintain their positions and pursue matters through lengthy and costly litigation.

In this recent case, the parties appear to be satisfied that the CAP process provided them with impartial and informed assessments of each side’s position and gave them a solid platform on which to resolve their differences quickly and cost-effectively and enable the project to move forward.

**CAP Case Study (2) – 2021/2022**

The following text is another real-life case. This demonstrates the flexibility of CAP in adapting to particular situations where the contracting parties want to have issues resolved.

The parties involved were a Major national services contractor and a SME M&E subcontractor. They had been in discussions for a considerable period in trying to agree the final costs of the Sub-Contract.

The sub-contractor’s adviser recommended that matters be resolved utilising CAP of which both sides were in agreement. An experienced professional was appointed, whom had previous experience acting as a CAP on TFL projects, utilising the RICS processes.

Within a few days of appointment, the CAP met the parties online and a timetable was agreed. To ensure finality both sides agreed to accept the CAPS recommendations as binding. Neither party wanted further procedures.

A robust timetable was set resulting in both sides making simultaneous submissions and allowed for some short further submissions by each side. The CAP raised questions which were responded to, and the CAP then issued binding Recommendations which were implemented. It had been agreed that the CAPS fees would be split 50-50 between the parties.

The benefits of this process were a significant reduction in timetable and costs, and both sides avoided the necessity of tying up senior management time if, for example, an Adjudication had been commenced.

The process was conducted with efficiency, without acrimony and legal advisers were not involved.

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