



Conflict avoidance and dispute resolution

Martin Burns – RICS, Head of ADR Research and Development



The cost of disputes in construction and engineering



Create an adversarial project environment



Distract leaders from core tasks of project delivery



Turn companies and talent off working in the market



Add significant costs to doing projects



Increase frequency and length of project delays



Increase costs and reduce availability of project insurance

The cost of disputes in construction and engineering

The HKA CRUX Insight 7th annual report, “Why engineering and construction projects continually lose time and money” – gives testimony to the immense scale of the problem globally.



The report examined over more than **2,000 projects** across **107 countries**



Total capital investment expenditure measured at more than **\$2.25 trillion**.



The total value of disputes/claims on these projects was over of **\$84 billion**.



Cumulative delays amounted to nearly **1,000 years**.

Key causes of disputes

- Inaccurate, incomplete and late designs
- Clashes over contract interpretation
- Poor management or administration of contracts
- Poor management of subcontractors and supplier interfaces



www.hka.com/crux/crux

The Conflict Avoidance Coalition

- The Conflict Avoidance Coalition is comprised of around **100 industry and professional bodies** who are committed to reducing disputes in the construction industry by promoting best dispute avoidance & mitigation practices and encouraging collaborative approaches to resolving differences.
- The Steering Group includes: RICS, ICES, CIArb, DRBF, ICC (UK), RIBA, Network Rail, Transport for London, Houses of Parliament Restoration and Renewal, Balfour Beatty, Skanska.
- The Coalition is currently Chaired by Richard Bayfield, ICE Senior Vice President.



Balfour Beatty



SKANSKA



Conflict Avoidance Pledge



The Pledge – Initiated by the Conflict Avoidance Coalition Steering Group.

• Belief in collaborative working and the use of early intervention techniques, with the aim of resolving differences before they escalate into disputes.

• Recognition of the importance of embedding conflict avoidance mechanisms into projects with the aim of identifying, controlling and managing potential conflict whilst trying to prevent the need for formal dispute resolution procedures.

• Commitment to:

1. work proactively to avoid conflict and facilitate early resolution of potential and emerging disputes.
2. work with our industry partners to identify, promote and utilise conflict avoidance mechanisms
3. promote the value of collaborative working to prevent issues developing into disputes

Signing the pledge is free and easy to do.

www.rics.org/capledge



Conflict Avoidance Pledge

The Pledge:

- We commit to working proactively to avoid conflict and to facilitate early resolution of potential disputes.
- We believe in collaborative working and the use of early intervention techniques 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 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 from developing into disputes.
- We commit to work with our industry partners to identify, promote and utilise conflict avoidance mechanisms.

www.rics.org/capledge

The Pledge commits signatories to:

Adopting early intervention techniques throughout the supply chain, to try to avoid, manage and/or resolve issues before they escalate into disputes

Embedding conflict avoidance mechanisms into projects with the aim of identifying, controlling and managing potential conflict, whilst preventing the need for formal dispute resolution procedures

Early identification of potential disputes and using conflict avoidance measures in practice

Working with the industry to identify, promote and use these mechanisms



Conflict Avoidance Pledge

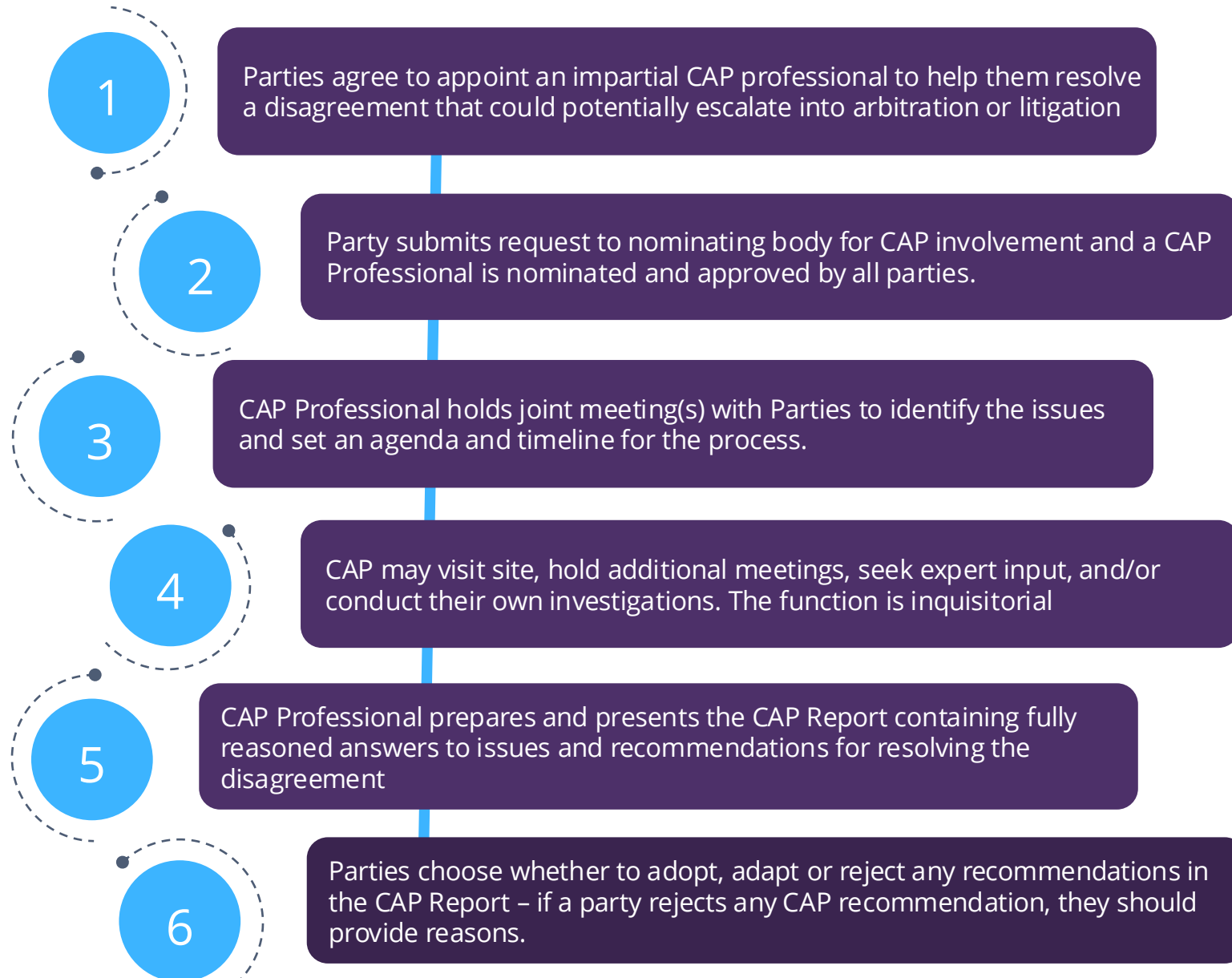
By signing the Pledge, employers and clients will see that a firm/organisation:

- Is committed to maintaining good business relationships and working collaboratively to ensure projects are delivered on time, on budget and on par.
- Will cooperate to prevent needless conflicts and work collaboratively to achieve agreed outcomes.
- Will adopt procedures and techniques to identify emerging disagreements, and resolve them early, amicably and cost-effectively.

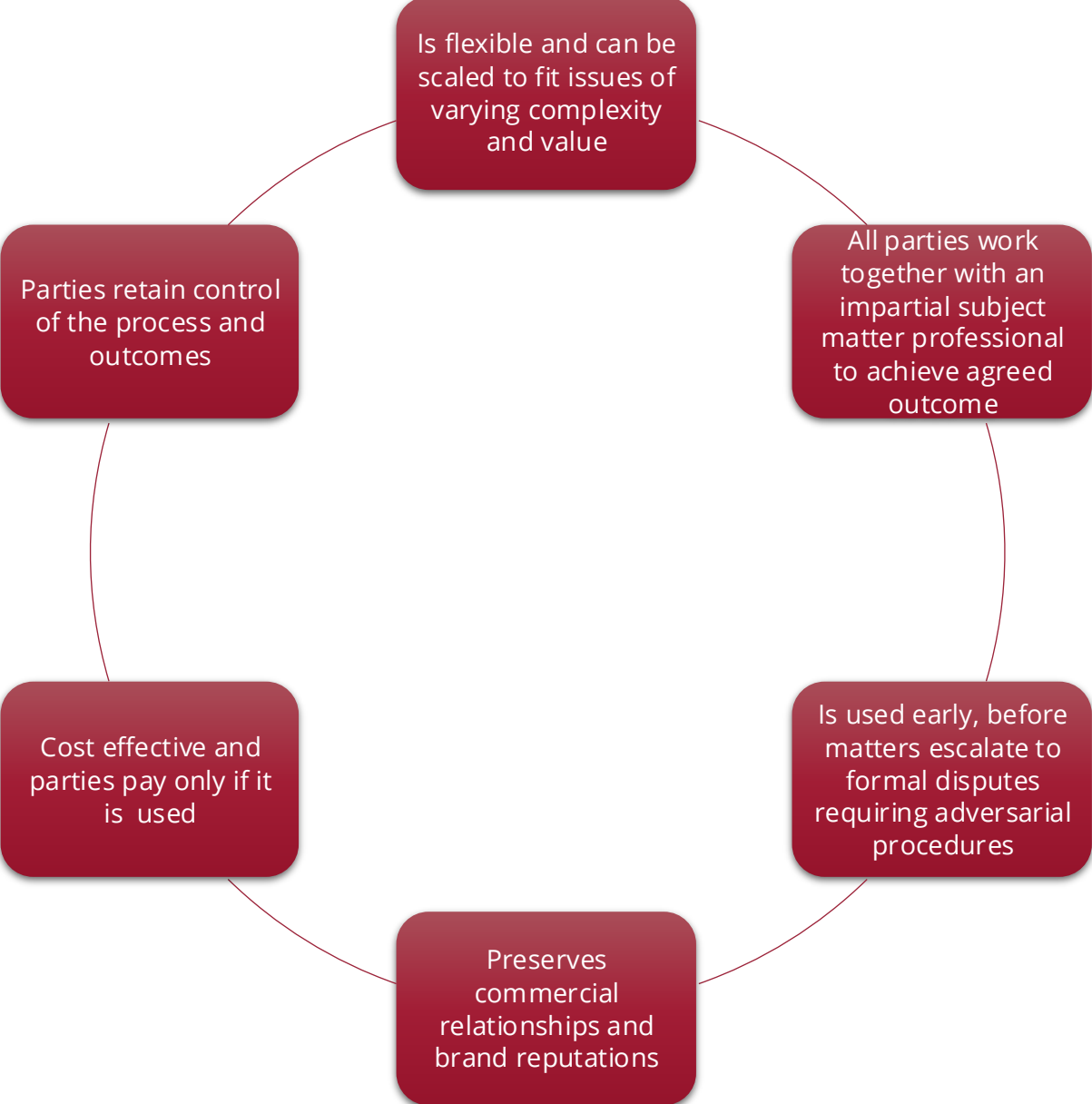
[See who's signed up \(rics.org\)](https://www.rics.org) - 500+ signatories to date

www.rics.org/capledge

Conflict Avoidance Process



Key components of CAP



CAP - Implementation on Projects

- No need to amend Contracts in many cases
- CAP is a conflict avoidance/management procedure and timetable that can be included in the main contract between the parties or agreed by the parties separately.
- CAP measures can operate alongside the main contract. It does not suspend the operation of the main contract unless the parties agree that it should.
- Any notices, steps or processes under the main contract will, normally, continue as they would were the CAP measure not in place, save that the parties will provide any third-party neutral appointed under the measures with copies of any such notices or inform them of the nature of such steps or processes without delay.
- CAP is voluntary, and any party may withdraw from it at any time.
- CAP is confidential and is non-binding unless parties agree otherwise

Desire to avoid “same old, same old”

Projects have commercial challenges before they start

Clients encourage contractors to submit a compliant bid for the best price

Contractors have commercial bid strategy to win, then try to manage contracts to their terms

Increases the number of Project Manager Assessments (PMAs) and Compensation Events (CEs)

On average, the cost of construction projects end up c.30-40% higher than the original contract target price

Both parties end up not focusing on the successful delivery but arguing over 20% of the overall costs (Other Change Events)

What TfL wanted instead

Certainty of Outcome

Final Account Closed

Project Delivered on Time

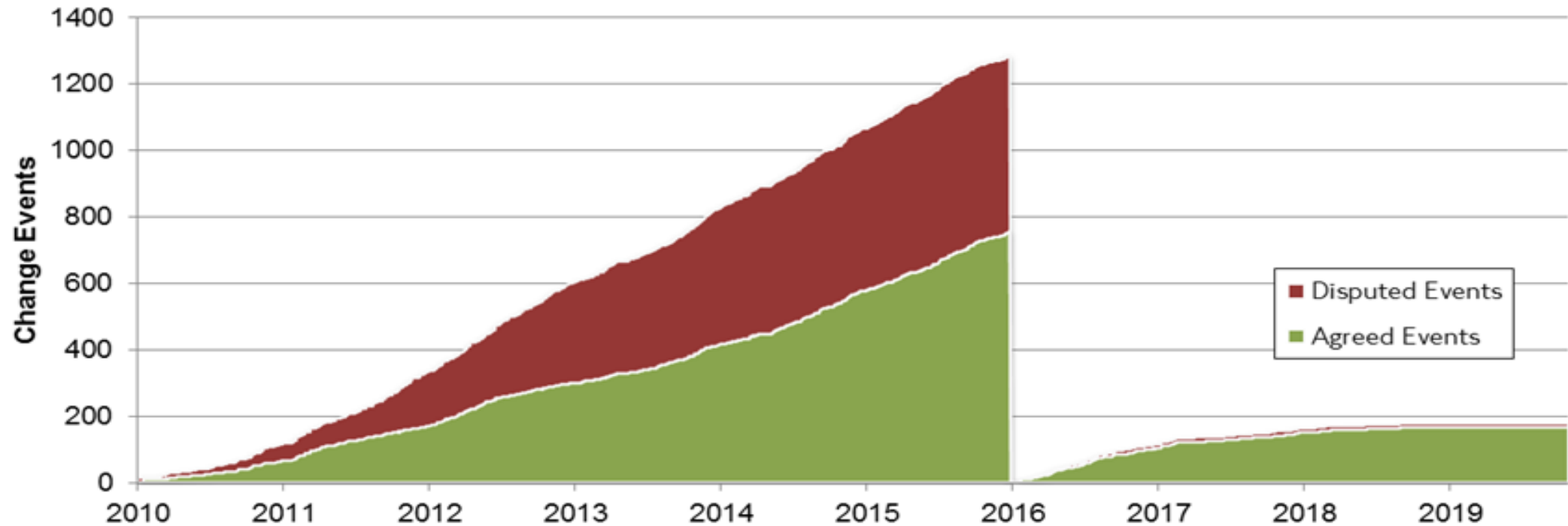
No Outstanding Disputes

Contractors Making Fair/Reasonable Profit

Results of using CAP

The decline in disputed events since the introduction of the Conflict Avoidance Process in 2016

CAP not only resolved the conflicts that had already accrued, but also dramatically reduced further claims developing.



Using CAP, TfL delivered £2.2bn station upgrade programme with a contract cost increase of 46% compared to industry average of 79.8%

RICS has published Conflict Avoidance Process (CAP) guidance and procedural rules as part of its ongoing campaign to promote collaboration and use of measures which help parties to avoid and manage contractual disputes.

Read about it here:

[Conflict Avoidance Process \(CAP\)](#)



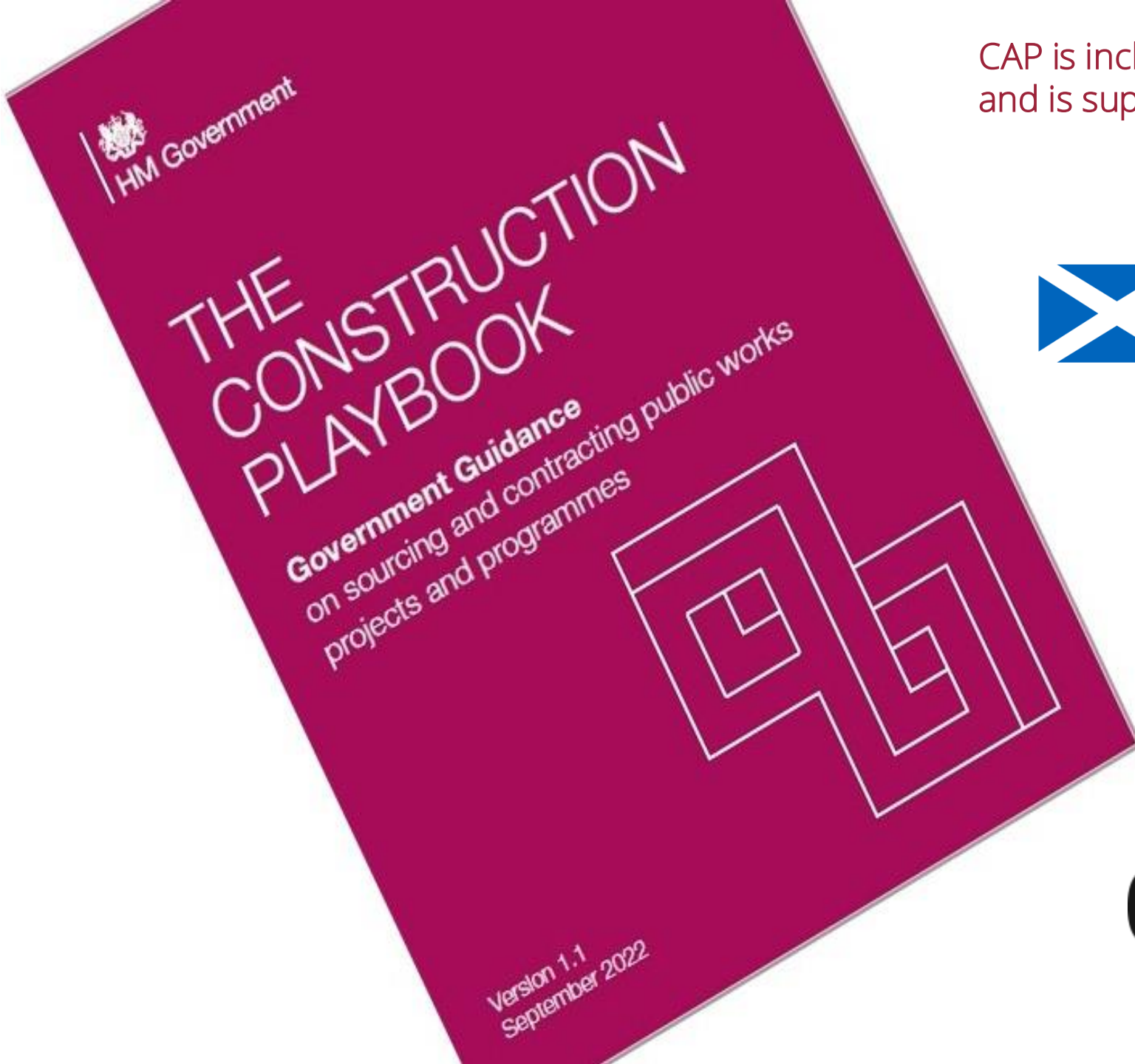
CONFLICT AVOIDANCE

'The new CAP Rules mark a significant advance in improving conflict management.'

John Fletcher
Executive Director, Dispute Resolution Service, RICS

[Learn more](#)





CAP is included in UK government guidance and is supported by major industry bodies



Scottish
Government
Riaghaltas
na h-Alba



Infrastructure
Ontario



Transport
for London



Conflict avoidance and early intervention

Martin Burns – RICS, Head of ADR Research and Development