



UCEM Institutional Research Repository

Title	APC Workshop slides on ethics and professional standards, business planning, data management, accounting principles and procedures, conflict avoidance, conflict management and dispute resolution, RICS Rules of Conduct, sustainability.
Author(s)	David Hourihan, David Hourihan, David Hourihan and David Hourihan
ORCID	https://orcid.org/0000-0003-1405-3130 ; https://orcid.org/0000-0003-1405-3130 ; https://orcid.org/0000-0003-1405-3130 ; https://orcid.org/0000-0003-1405-3130
Type	Conference or Workshop Item
Publication title	
Publisher	
ISSN/ ISBN	
Publication Date	14 January 2020
Version	
DOI	
Repository link	https://ube.repository.guildhe.ac.uk/id/eprint/206/
Link to publication	

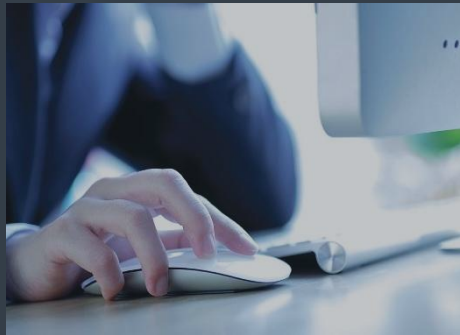
Copyright:

UCEM aims to make research outputs available to a broader audience via its digital [Repository](#). Where copyright permits, full text material held in the Repository is made freely available. URLs from GuildHE Research Repositories may be freely distributed and linked to. Please refer to each manuscript for any further copyright restrictions.

Reuse:

Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page, and the content is not changed in any way.

Conflict Avoidance, Conflict Management and Dispute Resolution



Conflict Avoidance, Conflict Management and Dispute Resolution



Summary Profile



Module Leader:

David Hourihan

MSc Pro Invest FSCSI FRICS FHEA

Industry

- Chartered Surveyor and specialist in office agency, retail asset management and valuation.
- 17 years of commercial real estate experience across the UK and Ireland.
- Previous positions with international firms including JLL and Colliers International.
- Acquisition and asset management instructions for clients including Société Générale, Metzler Bank, Mobil Oil, Scottish Widows, Aviva and British Land.

Research

- Member of the Investment Property Forum (IPF) Research Steering Group.

Academia

- Completed MSc in Property Investment at UCEM in 2008.
- Programme Leader for the MSc Real Estate.
- Module Leader for 'Real Estate Investment' module on the MSc RE and BSc REM programmes.

APC

- **APC Chairman for the RICS.**

Contents

1. RICS APC Requirements
2. Conflicts/disputes
3. What sort of character are you?
4. Thomas & Kilmann (1977) Conflict Management Model
5. Techniques to Avoid Conflict
6. Conflict Management
7. Dispute Resolution Procedures

RICS APC Requirements

Demonstrate knowledge and understanding of the techniques for conflict avoidance, conflict management and dispute resolution procedures including for example adjudication and arbitration, appropriate to your pathway.

LEVEL 1 REQUIREMENT ONLY – MANDATORY COMPETENCY

The RICS provide different examples according to the individual Pathway. All APC Candidates need to examine their Pathway Guide carefully in order to gain knowledge in as many of the examples given as possible.

Conflicts/Disputes

1. There are several definitions of conflict:
 - A serious disagreement, a lack of agreement between opinions, principles etc – Oxford English Dictionary
2. In a business context, conflict can be defined as:
 - A process which begins when one party perceives that another party has negatively affected, or is about to negatively affect, something the first party cares about – David Buchanan and Andezej Huczynski Organisational Behaviour An Introductory Text 2004
3. The word conflict can be used in other contexts such as:
 - Long lasting armed struggle – Oxford English Dictionary
 - Conflict of interest – Oxford English Dictionary

Conflicts/Disputes

4. We look at conflicts of interest as Level 2 under Ethics, Rules of Conduct and professionalism.
5. Dispute is a related term – argue about, question the truth or validity of, an argument or disagreement, a disagreement between management and employees – O.E.D.
6. We will look at conflicts/disputes:
 - between fellow employees within and between organisations.
 - Contractual disputes between organisations.

Types of conflicts between fellow employees

Workplace conflicts – categorised as 3 groups:

1. **Task** – functional conflicts; that is differences in ideas and opinions:
 - A functional dispute can be useful as it may produce constructive and innovative thinking.
 - Care is required to ensure they do not lead to a dysfunctional dispute.
2. **Interpersonal** – concerns people and centre around the character of the employees not the task:
 - Considered dysfunctional.
3. **Process** – concerns how work is handled and delegated:
 - Disputes of this nature may mean tasks take longer and can lead to interpersonal disputes.

Functional conflict – supports an organisation's goals and supports performance

Dysfunctional conflict – hinders an organisation's performance

Dysfunctional Conflicts and Character

What sort of character are you?

<p>High Red Task-orientated, go-getters, interested in results. Fast paced and work well by themselves</p>	<p>High Yellow Outgoing, friendly and enthusiastic. Fast paced, positive with people, and build alliances to achieve goals</p>
<p>High Green Serious, analytical, persistent, systematic and task-orientated. Research, determine risk and then take action</p>	<p>High Blue Warm, supportive and develop strong people networks. Excellent team players.</p>

Source: <http://www.advice-management.eu/en/ima-dialects.html>

Thomas & Kilmann (1977) Conflict Management Model



Thomas & Kilmann - 5 conflict resolution strategies

1. **Competing –**

- Objective – to get your own way.
- Appropriate:
 - quick decision required
 - Unpopular action e.g. cost cutting, discipline etc

2. **Avoiding –**

- Objective – avoid dealing with conflict
- Appropriate:
 - More important issues are pressing
 - Potential disruption outweighs benefits of resolution
 - Cooling down period and regaining of perspective

3. **Compromising –**

- Objective – reach an agreement quickly
- Appropriate:
 - When opponents have equal power
 - Achieve temporary settlements

Thomas & Kilmann 5 conflict resolution strategies

4. Accommodating

- Objective – avoid upsetting the other party
- Appropriate:
 - Harmony and stability are important
 - Issues more important to others

5. Collaborating

- Objective – solve the problem together
- Appropriate:
 - Find an integrative solution, where compromise on important points not possible
 - Gain commitment by striving for a consensus

Each strategy is based on a combination of assertiveness and cooperativeness.

Techniques to Avoid Conflict

What is Conflict?

“a serious disagreement or argument, typically a protracted one”.

“be incompatible or at variance; clash”.

Synonyms include: clash, be incompatible, be inconsistent, be incongruous, be in opposition, be at variance, vary, be at odds, be in conflict, come into conflict, differ, diverge, disagree, contrast, collide

For Surveyors, conflict usually occurs in respect of contractors carrying out work (Quantity Surveyors, Building Surveyors), surveyors not carrying out their services diligently, disagreements over value, ambiguity, not understanding the client's objectives/expectations, contractual disputes, money and time disputes

Techniques to Avoid Conflict

- Any surveyor adopting a good practice approach should seek to avoid disputes and should understand the basic principles of dispute resolution.
- An understanding of the range of techniques is particularly important, as is understanding when a client should be advised to seek assistance from an appropriate consultant or lawyer.
- Surveyors should avoid the danger of straying into an area that is beyond the scope of their expertise and should recognise when and what type of assistance might be required.

Techniques to Avoid Conflict

- Carefully and properly planning the strategy for executing a project as disputes often arise from ambiguity or an unclear definition of risk.
- Adopt proactive conflict avoidance approaches such as the carrying out of a risk analysis; the production, updating and maintenance of a risk register as well as proactively managing those risks; and adopting where appropriate a proper approach to partnering.
- Dispute resolution is about recognising when a dispute has arisen and appreciating the escalation of that dispute. In addition, it is understanding the range of techniques that might be available to resolve the dispute including seeking immediate guidance as appropriate.

Techniques to Avoid Conflict – What are they?

- Good management – proactively managing, planning and the early raising of issues.
- Clear contract documentation – ensure contracts are in place, avoid ambiguity, identify risk.
- Partnering and alliancing – building cooperation, team working, joint problem solving, an emphasis on successful project delivery.
- Good project management – proactively managing all aspects of time, money and risk. If not the designated PM then proactively managing your own services is equally important.

Techniques to Avoid Conflict – What are they?

- Good client management – understand the client's objectives, expectations and their approach to risk. Maintain a good line of communication.
- Good constructor management – This depends on the surveyor's role and Pathway, but regardless, be proactive and be aware of delay and risk.
- Provision of services – do these well, efficiently, proactively and on time. Understand fully the required objectives.
- Good payment practice.
- Record keeping – keep good, accurate records. Do not rely on word of mouth or verbal communication. Respond in a timely fashion.
- Regular reporting and proactivity – think about your Pathway and services. If costs/time change then report it immediately

Conflict Management

Stay calm and take a considered view

- Stay calm and take a considered, rational and impartial approach to the situation. Be careful that you are not “conflicted” – you may need to ask a colleague or a more senior manager to get involved. Avoid the temptation to ‘fight or flight’
- Avoid passive behaviour - do not take an apologetic stance and accept all points of view whether they are right or wrong. Similarly, avoid aggressive behaviour – do not take an authoritarian approach and listen carefully to all reasoned arguments.
- Do not be afraid to take an assertive stance, but, treat all parties with respect and listen to all points of view. Take care with your use of language and your body language while dealing with people involved in conflict situations. Careless or thoughtless comments can cause offence and exacerbate the conflict. Listen carefully to any evidence offered and take notes. Most importantly, be neutral and focus on the facts.

Conflict Management

Investigate

- Do not jump to conclusions.
- Take time to find out the facts.
- Be smart and take time to understand each parties position.
- Are the other parties genuine (many times they are not as they can merely be attempting to improve upon a losing or false position).
- Do not pre-judge the issue or jump to conclusions.
- Understand the other parties points of view. This can be checked by summarising what they have said and reflecting it back to them.
- Be aware that those involved may have differing perceptions of the same situation.

Conflict Management

Let everyone have their say

If you are able to get the parties together, you may be able to reach a satisfactory solution.

Take a positive, friendly and assertive approach to the meeting and set ground rules for the session. Assertive behaviour will encourage the parties to express their thoughts honestly and openly, understand the causes of conflict and find solutions.

Make sure that everyone has the chance to explain their point of view and concerns. People will be more willing to relinquish entrenched positions and consider compromise if they feel that their point of view has been understood and their concerns taken on board.

Conflict Management

Resolution – the “challenging” part

- Ensure that you have all the facts.
- Ensure that you have thoroughly checked the contract – you’d be amazed how many people create disputes when they know that they have no contractual right.
- Go through the facts carefully and deal with each issue one at a time.
- Create a positive atmosphere.
- Do not be afraid to concede where justified. This gives the other party an impression of fairness on your behalf.

Conflict Management

Resolution – the “challenging” part (Cont’d)

- Quickly identify mistakes, misconceptions and misunderstandings.
- Identify common ground.
- Do your homework – if you do not prepare you will not succeed.
- Be prepared to negotiate and seek win/win solutions which take the interests of all into account
- Write down the solutions.
- **Record the agreed solutions on a signed document.**

Conflict Management

Implement what has been agreed

- It is important to ensure that everyone is clear about what has been decided and takes personal responsibility for any actions which have been agreed. In some cases a written agreement may be appropriate. Be careful here if there is any embarrassment of any of the parties involved, for example if it involves public apologies.
- Learn from the solutions so that the same issues do not occur again in the future.

Finally, do not feel as though you have to negotiate every dispute or area of conflict. If you are contractually or legally right, why negotiate?? Of course there may be many reasons why a dispute needs to be resolved other than due to contractual/legal; politics can play a big part!!

Dispute Resolution Procedures

Dispute Resolution Procedures:

1. Negotiation (ADR)
2. Mediation and Conciliation (ADR)
3. Expert Determination (ADR)
4. Adjudication (ADR)
5. Arbitration
6. Litigation

ADR (Alternative Dispute Resolution) – alternative to Litigation and Arbitration

Dispute Resolution Procedures

1. Negotiation

- The process whereby the parties work out between themselves how to resolve any issues that have arisen. Power to settle the dispute rests with the parties.
- In the event of failure to agree then all the other dispute resolution procedures are available.
- Generally non-binding but can be binding if a contract is produced out of the agreement.
- Cheapest form of dispute resolution.

Dispute Resolution Procedures

2. Mediation and Conciliation

- The parties agree on an independent, third-party neutral system to facilitate discussions between them, with the goal of reaching a settlement. The power to settle remains with the parties, but the process is led by the mediator.
- In the event of failure to agree then all the other dispute resolution procedures are available.
- Generally non-binding but can be binding if a contract is produced out of the agreement.
- Cheaper than Litigation or Arbitration.

Dispute Resolution Procedures

3. Expert Determination

- The parties agree by a contract that a third party will make a binding decision on them. The terms are therefore governed by the contract.
- In most cases the decision of an expert will be final, and it will not be possible to appeal that decision. This means that the decision of an expert finally determines the dispute without further recourse.
- Cheaper than Litigation or Arbitration.
- An expert who understands the technical issues but not necessarily the law, makes the decision rather than somebody who understands the law but not necessarily the technical issues.

Dispute Resolution Procedures

4. Adjudication

- Adjudication under the Housing Grants, Construction and Regeneration Act 1996 (HGRCA) as later amended.
- It has been widely used in the construction industry and applies not only to building contracts but also to professional appointments.
- If the Act applies to a contract then either party may request the appointment of an adjudicator to be made within seven days of serving a Notice of Dispute, and the adjudicator has 28 days from issue of the Referral within which to issue a decision. That decision will bind the parties and in most cases be readily enforceable in the Technology and Construction Court (TCC). The TCC is the part of the High Court that deals with construction related litigation. Adjudications are rarely successfully overturned in the courts.
- Usually the first recourse in the event of a construction dispute.
- Cheaper than Litigation or Arbitration.

Dispute Resolution Procedures

5. Arbitration

- Arbitration is the process of bringing a dispute before a disinterested third party for resolution. The third party, an arbitrator, hears the evidence brought by both sides and makes a decision. Sometimes that decision is binding on the parties.
- For arbitration to apply, the contract between the parties must contain a written agreement to arbitrate. Where it applies the parties might choose to refer to or incorporate an arbitration procedure, such as the Construction Industry Model Arbitration Rules. Alternatively, the arbitration can simply be covered by the applicable legislation, such as the Arbitration Act 1996.
- At its core, arbitration is a form of dispute resolution. ... The disputing parties hand over their power to decide the dispute to the arbitrator(s). Arbitration is an alternative to court action (litigation), and generally, just as final and binding (unlike mediation, negotiation and conciliation which are non-binding).
- Generally cheaper than litigation but can still be expensive.

Dispute Resolution Procedures

6. Litigation

- The courts have inherent jurisdiction to hear a dispute in respect of just about anything. In the absence of any other procedure, the parties will have a right to refer their matter to an appropriate court.
- The procedure is governed by the Civil Procedure Rules, and the nature, complexity and value of the dispute will determine which court will hear a particular dispute. Courts have the widest jurisdiction and in addition to determining disputes and declarations, they can also issue Charging Orders, summon witnesses and involve the third parties in the dispute as necessary.
- The most expensive and time consuming form of dispute resolution.

Dispute Resolution Procedures

ADR means alternative dispute resolution, and refers to processes which are alternative to the traditional binding procedures of litigation and arbitration.

- It is alternative in that it is faster and more economic. A broader definition could include adjudication, negotiation or mediation, or indeed some other form of contractual dispute resolution technique.
- More recently, the debate has moved from 'alternative' to 'appropriate'. In other words, what is the most appropriate dispute resolution procedure. The important point is that the appropriate dispute resolution procedure should aim to resolve the dispute in an appropriate economic manner, taking into account the circumstances of the dispute.
- Business relationships should be maintained, while resolving disputes at the lowest cost and within a sensibly fast timetable. Confidentiality and flexibility can also be maintained leading to greater dispute resolution satisfaction for the parties.

Conflict Avoidance, Conflict Management and Dispute Resolution

Do go onto the RICS's Toolkit website as there is a great deal of information on there that will provide you with added information:

<https://www.rics.org/uk/footer/dispute-resolution-service/dispute-resolution-toolkit/>

Note: Presenters to go into this link and run through what is in the RICS's toolkit.

RICS APC Requirements

Note: It is unlikely that the Final Interview will devote a great deal of time to any one of the Mandatory Competencies as, generally, the Technical Competencies are given greater emphasis.

However, know the basics and know the different dispute resolution procedures (ADR).

Conflict Avoidance, Conflict Management and Dispute Resolution

Links

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/construction/black-book/conflict-avoidance-and-dispute-resolution-in-construction-1st-edition-rics.pdf>

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/drs/conflict-avoidance-information-guidance.pdf>

<https://www.rics.org/uk/footer/dispute-resolution-service/conflict-avoidance-pledge/>

<https://www.rics.org/uk/footer/dispute-resolution-service/dispute-resolution-toolkit/>

Quiz (15 minutes)

1. Name 5 techniques for avoiding conflict.
2. List the different Dispute Resolution Procedures.
3. In respect of 2) above which are Alternative Dispute Resolution (ADR) procedures?
4. Which is the most expensive form of Dispute Resolution Procedures?
5. Are Mediation and Conciliation legally binding?
6. Is Adjudication legally binding?
7. Name an RICS guidance document that advises on dispute resolution.
8. What is the principal difference between arbitration and independent expert?

Quiz Answers

1. Name 5 techniques for avoiding conflict.

Look at slides 8 and 9

2. List the different Dispute Resolution Procedures.

- Negotiation (ADR)
- Mediation and Conciliation (ADR)
- Expert Determination (ADR)
- Adjudication (ADR)
- Arbitration
- Litigation
- Dispute Boards (ADR)

Quiz Answers

3. In respect of 2) above which are Alternative Dispute Resolution (ADR) procedures?

- Negotiation (ADR)
- Mediation and Conciliation (ADR)
- Expert Determination (ADR)
- Adjudication (ADR)
- Dispute Boards (ADR)

4. Which is the most expensive form of Dispute Resolution Procedures?

Litigation

5. Are Mediation and Conciliation legally binding?

No

Quiz Answers

6. Is Adjudication legally binding?

Yes, subject to points of law.

7. Name an RICS guidance document that advises on dispute resolution.

The RICS's "*Dispute Resolution Toolkit*"

8. What is the principal difference between arbitration and independent expert?

Arbitration is governed by statute; the Arbitration Act 1996. Independent Expert is governed by the contract between the parties.

Conflict Avoidance, Conflict Management and Dispute Resolution

42



Write down two (2) things you have learnt today.