

Guidelines for Hearings

These guidelines are to assist parties preparing for a hearing

Hearings are the final step in the CEIT process. After the hearing the Member will issue a final, binding, decision and the issue in question cannot be re-opened, unless appealed.

Hearings in the CEIT are less formal than in a Court. However, because the Member is reaching a final and binding decision, there are some formalities, which must remain, including:

- evidence is given under oath;
- some evidence cannot be considered by the member when making a decision;
- both sides can question witnesses and present arguments without interruption by the other party; and
- the Member can decide who may talk and when, what evidence can and cannot be given, and the order in which evidence and arguments will be heard.

These formalities are necessary as the Member must allow both parties the opportunity to be heard and needs to have the quality of evidence to allow them to make a well-reasoned and supported decision.

The CEIT is a body with inquisitorial powers. This means that it is not bound to consider only the evidence and arguments the parties put before it as in an adversarial Court or tribunal. This also means that the focus of the Member is on getting to the truth of an issue, rather than requiring that a particular point is proven by one or other party.

Evidence

Evidence need not be written documents or records. A witness' recollection of what they have personally observed is also evidence when given under oath.

It is the Member's job to decide the significance of events and this means that opinions about an issue, such as the cause of damage, can only be provided by an expert. A person is an expert when they have the qualifications or experience to provide a knowledgeable opinion that will be useful for the Tribunal.

Experts are employed by the parties, but when they give evidence before the Tribunal their duty is to the Tribunal. Experts may not act as advocates for the party that employs them and must behave impartially.

In the CEIT expert witnesses in the same field may give their evidence one after the other or their evidence can be given simultaneously. The process of giving evidence simultaneously is sometimes called "hot-tubbing" and allows the experts to question each other and discuss topics which they know more about than the Member, parties, or advocates.

Evidence needs to be tested by questioning. This means some evidence, such as hearsay statements, cannot be admitted as the person who made the original statement cannot be questioned. Other evidence, such as details of things discussed at a settlement conference, cannot be discussed as the settlement process is without prejudice, to allow parties to negotiate freely (this is discussed in the *Guidelines for Settlement Conferences*). However, as the CEIT has wide inquisitorial powers to admit any evidence which may be of use, there are limits on when

evidence will be excluded. The discussion in *PWFE & JEE v IAG*¹ shows the approach the Member may take in dealing with evidence issues.

Hearings “on the papers”

Some issues are about purely legal issues or have uncontested evidence which does not need to be tested through questioning. In these situations, the Member may decide that the issues can be dealt with “on the papers” that is with each side presenting its case in a written form, and without the need for a hearing. There is no need for a particular format or form to be used.

The Member will set a timeframe for the parties to make submissions and respond to each other’s submissions. The Member may also issue questions for the parties to answer. Once this process has been completed the Member will then consider the matter and issue their written decision and the reasons for it.

Preparing for a hearing

If a matter cannot be heard “on the papers” an in-person hearing is necessary. Before the hearing the Member will set down a timetable of the steps in preparation for the hearing. This will include what witnesses will appear, how many days the hearing will take, when expert conferrals are to happen, and when witnesses’ statements and parties’ written submissions are to be filed. It is important to stick to these timetables as the inquisitorial process requires the Member to fully prepare for the hearing as they are more closely involved in questioning witnesses than a judge in regular court.

When preparing your case think about:

- the issues
- how the evidence relates to the issues
- what you need show to prove your case
- what witnesses are needed to prove your case

While these issues can at times be complex, the Member will talk through and identify the issues with the parties before the hearing.

The hearing

At the hearing the Member will listen to the parties’ arguments and the witnesses’ evidence. Hearings are public unless an application for a private hearing is made.² Evidence is on oath, which means that a witness who gives false testimony perjures themselves. The CEIT has powers of contempt to protect its Members, staff and witnesses during hearings and to regulate those appearing before it.³

Witness evidence is recorded and transcribed in CEIT hearings and will be made available to the parties.

¹ *PWFE & JEE v IAG* (CEIT-013-2019) 16 December 2022 at paragraphs 36 to 61 provides assistance on these issues.

² Section 42 Canterbury Earthquake Insurance Tribunal Act 2019

³ Section 64 Canterbury Earthquake Insurance Tribunal Act 2019