

Guidelines for Settlement Conference

These guidelines are to assist parties preparing for Settlement Conferences

Settlement conferences are a useful and effective tool for resolving disputes in the CEIT. Settlement conferences allow for open and frank discussion to be had about the issues in dispute. The aim is to try and reach an agreement on how the claim can be resolved.

Settlement conferences are confidential; what is said at a settlement conference cannot be referred to again outside of the conference. The process is “*without prejudice*” meaning that if you (or another party) make a concession to try and settle the claim, you will not be held to it if the claim does not settle.

A settlement conference in the Tribunal is a facilitated discussion with the Tribunal Member leading the discussion. At a settlement conference the parties can control the outcome in a way which they cannot if the Tribunal issues a decision.

Because the Member has handled the file, knows the background, and is able to robustly “reality check” the parties during the conference, Tribunal settlement conferences have been a very effective way of assisting parties to resolve claims.

The Tribunal can also offer settlement mechanisms which are not available in other forums. For instance, claims have been settled by the parties agreeing to a repair or remediation process with oversight from the Tribunal, others have been settled by the parties agreeing to processes and outcomes which the insurance policy did not strictly cover. The Tribunal Member can help provide perspectives and approaches to assist settlement.

Settlement conferences are about agreement, the Tribunal does not make a decision, instead the parties decide how much they are prepared to compromise to reach a settlement. Compromise can be difficult, but the parties have control over the outcome. You decide whether or not to accept, or to make, a proposed settlement offer.

Preparing for a settlement conference

It is useful to prepare a short position paper which sets out the issues in dispute and how you think the issues can be resolved. An example is available from the case manager on request.

Any evidence you want to rely on in the settlement conference should be shared with the other party(s) well before the conference. Being transparent is an important part of negotiating. If you are seeking a cash settlement it is important to include how the amount you are seeking is calculated. This should be backed up by evidence, such as a builder’s quote, or QS costing.

Usually engineers, builders or other experts will attend, although often they are only necessary for the morning session.

The conference

The conference is in effect a series of meetings; large meetings where all parties, experts and the Member are present, and smaller caucus meetings where parties and their experts meet separately with the Member to discuss whether what has been said by the other party has led to changes in bargaining positions.

The conference will usually take a full working day. The Court facilities are available no later than 7pm for security reasons.

It is important to be flexible, there are benefits to settling claims rather than risking the uncertainty, expense and delay that going to a hearing involve. However, you should not accept any offer that you are not comfortable with as the settlement is binding and can only be changed under very limited circumstances.

The outcome of the conference

The outcome can be anything the parties can agree to. This may include an ongoing process such as a rebuild or repair, it may include an apology, payment of costs, or cash settlement of a claim. One claim was settled when the insurer agreed to pay above the policy limit for the re-instatement of a highly treasured ornamental garden which would need to be destroyed for house repairs to occur. Think carefully about what it is that you want and need for the settlement to be acceptable to you.

The outcome can be recorded by the Member in a minute and is enforceable as a decision of the CEIT.