



Annual Report of the

CANTERBURY EARTHQUAKES INSURANCE TRIBUNAL

For the 12 months ended 30 June 2020

In accordance with the provisions of section 23(3) of Schedule 2 of the Canterbury Earthquakes
Insurance Tribunal Act 2019

Canterbury Earthquakes Insurance Tribunal

Introduction

[1] The Canterbury Earthquakes Insurance Tribunal (the Tribunal) was established with effect from 10 June 2019 under s 55 of the Canterbury Earthquakes Insurance Tribunal Act 2019 (the Act). This First Annual Report, required by sch 2 s 23(3), covers the period from 10 June 2019 to 30 June 2020.

[2] The Tribunal was set up to provide fair, speedy, flexible, and cost-effective services for resolving disputes about insurance claims for physical loss or damage to residential buildings, property, and land arising from the Canterbury earthquakes.

[3] Applications filed under the Act will only be considered as claims before the Tribunal if:

- (a) the applicant was an owner of the property at the time it was damaged by any of the earthquakes experienced in Canterbury between 4 September 2010 and 31 December 2011 (the sequence);
- (b) at the time the property was damaged:
 - (i) it was insured in the name of the applicant; and
 - (ii) it was used as a residence (if the claim is against an insurance company) or 50% of the property was used as either a residence or a resthome (if the claim is against the Earthquake Commission (EQC))
- (c) one of the parties is either EQC or an insurance company; and
- (d) there is a dispute between the applicant and an insurance company/ EQC about a claim relating to that damage.

[4] The Tribunal does not deal with claims that:

- (a) solely relate to Canterbury earthquakes which occurred after 31 December 2011;

- (b) relate to earthquakes outside of Canterbury, unless there is a claim stemming from the sequence; or
- (c) relate to properties that have been "on-sold" (purchased by an applicant after the property suffered earthquake damage during the sequence).

Tribunal caseload

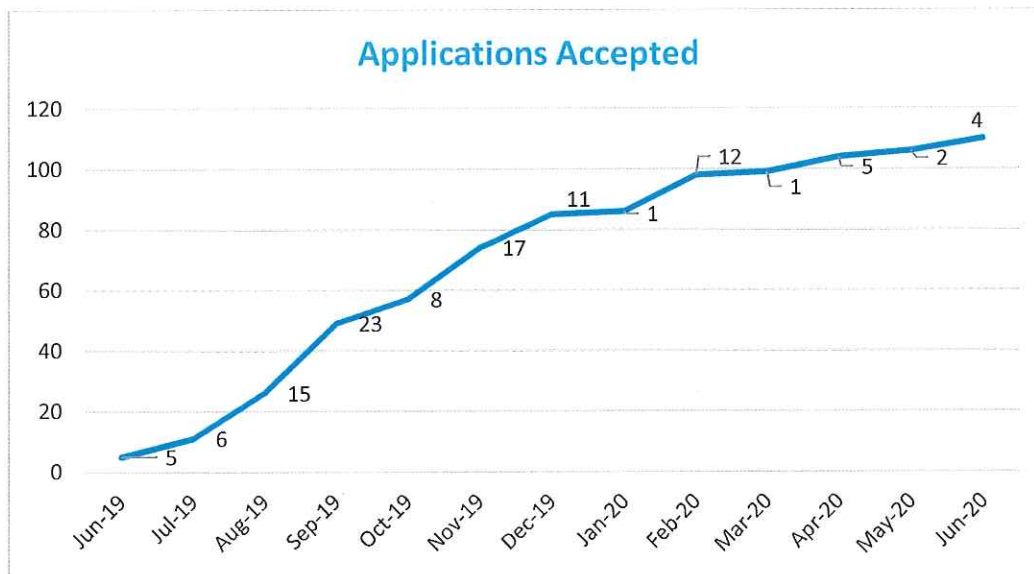
[5] Section 23(3) of Schedule 1 of the Act requires the following information be provided in the Annual Report of the Tribunal:

- number of applications filed, including those referred from another jurisdiction
- number of applications accepted as claims
- number of claims filed against each insurer and the Earthquake Commission
- the way claims were settled, and at which stage they were settled
- the timeliness with which claims have been completed
- the outcome of claims
- the number of claims still to be resolved at the end of the reporting year.

Applications filed and accepted

[6] By 30 June 2020, 116 applications had been lodged with the Tribunal, of which 110 were accepted to continue as active claims. Set out below is a graph showing that after a slow start, 49% of the claims were lodged in the three months from 1 September 2019 to 30 November 2019. That compares with 10% for the three months from 1 April until 30 June 2020.

Graph 1: Applications accepted by month 2019/20



[7] Six applications were rejected by the Tribunal as outside its jurisdiction.

[8] Although claims may only be brought to the Tribunal by homeowners, appropriate cases can be referred to the Tribunal by the High Court, the District Court, and the Disputes Tribunal. During the first year of operation, 44 claims were transferred from the High Court and two from the District Court. None were referred by the Disputes Tribunal.

[9] Homeowners typically choose to bring their disputes to the Tribunal because:

- (a) they seek early resolution of the dispute;
- (b) the process is less adversarial than in a court and is easier to negotiate without a lawyer;
- (c) the Tribunal has no filing or hearing fees; and
- (d) they do not face an award of costs against them if their claim is unsuccessful.

[10] The claims brought to the Tribunal involve nine separate insurers (if State Insurance, Lumley General Insurance, NZI and Lantern Insurance are grouped with their associate company IAG). QBE is not included in the figures as its only role is as an insurer of an insolvent building company in defective repair claims.

[11] Set out below is a list of those companies and the number of claims in which each is involved. The numbers in this list exceed the number of open claims because some claims involve multiple insurers.

Table 1: Claims by insurer 2019/20

EQC	55
IAG New Zealand Limited	43
Southern Response Earthquake Services Limited	21
Tower Insurance Limited	14
Vero Insurance New Zealand Limited	14
AA	5
MAS	2
OMPL	1
Westpac Insurance	1

Types of issues addressed by the Tribunal

[12] Many of the controversial issues have been resolved by the High Court and appellate courts, but some remain unresolved. The Tribunal has provided several rulings that are useful to those resolving disputes outside the Tribunal. Set out below is a list of the issues addressed by the Tribunal over the last year:

Flooding/liquefaction

[13] All claims brought against EQC seeking compensation for increased vulnerability to flooding/liquefaction have been settled without the need for the Tribunal to make rulings.

Proportionality

[14] The Tribunal has recently ruled that an insurer's obligations under an insurance policy are not avoided or restricted simply because the cost of repair is out of proportion to the extent of the earthquake damage.

Identification of earthquake damage

[15] The Tribunal identifies earthquake damage by looking at the strength of the earthquake, the homeowner's experience, and the strength of the structure, before considering the technical evidence.

[16] The Tribunal has two members with the technical expertise to deal with damaged homes suspected of having weathertight issues. As a result, these claims have been, or are in the process of, being settled.

Repair strategy

[17] Deciding an appropriate repair strategy requires a case by case analysis. Guidance has been provided by the Tribunal in *H Trust v Southern Response Earthquake Services Ltd* on the repair/replace quandary and in *M and M v IAG New Zealand Ltd* on balancing the cost to the insurer with the risk to the homeowner.¹

[18] The Tribunal has already given some guidance in *H Trust v Southern Response Earthquake Services Ltd* about code compliance issues. An imminent High Court decision on this issue is awaited with interest.

Defective repairs

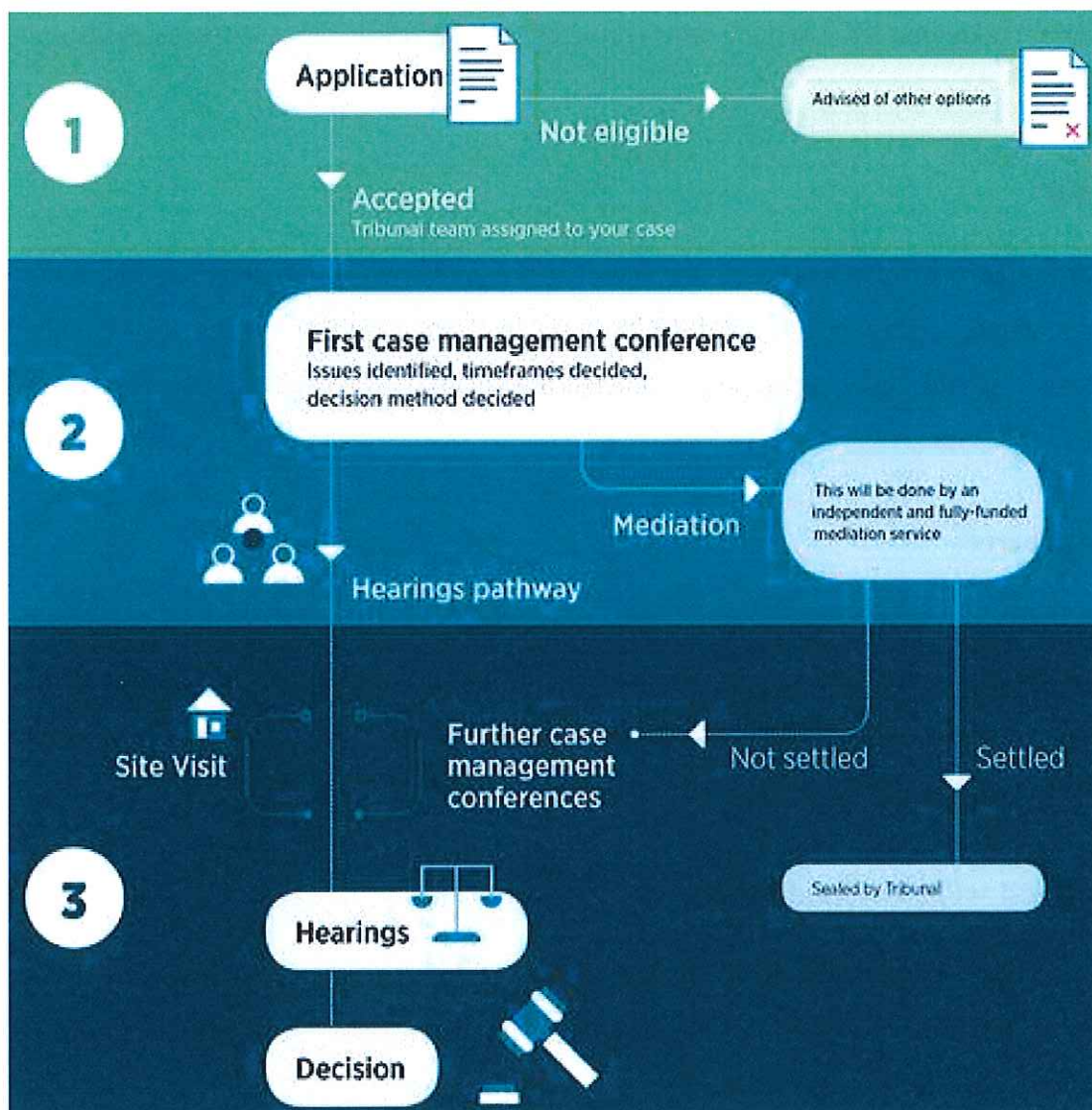
[19] Many claims involve defective repairs undertaken on behalf of EQC. Although EQC is willing to consider remediation, problems are often encountered when that remedial work takes the claim over the EQC cap. In such cases the private insurer is invariably taken by surprise, leading to inevitable delay while the insurer obtains reports.

¹ *H Trust v Southern Response Earthquake Services Ltd* [2019] CEIT 0011; and *M and M v IAG New Zealand Ltd* [2019] CEIT 0047.

[20] The most difficult claims faced by the Tribunal involve defective repairs where the insurer is not a party to the building contract. These claims typically involve deciding issues about whether all the earthquake damage was included in the scope of works, whether the scoped method of repair was adequate, whether the repairs were undertaken in a proper and tradesman-like manner, and whether those repairs were properly supervised. Whatever the outcome of an imminent High Court decision defining the insurer's liability, issues of quantum and contribution will remain.

Tribunal Processes

[21] The Tribunal's process is best outlined in this diagram from the Tribunal's website:



[22] The Tribunal continued operating during the recent COVID-19 alert level restrictions. Case management conferences were undertaken by telephone or video link. One settlement

conference was conducted remotely. However, all hearings were postponed, and some case management conferences were delayed, either because the parties/counsel were not available or until those writing specialist reports were able to carry out inspections. Protocols are in place to enable the Tribunal to continue operating in the event of a future regional or national lockdown.

Inquisitorial role

[23] The Tribunal's role is defined in the Act as being inquisitorial but is balanced by the requirement to observe the rules of natural justice. This balance is difficult, particularly where claims involving large sums of money were previously conducted in the High Court. These difficulties are compounded when the issues are complex, and/or the homeowners are litigants in person.

Complexity

[24] Most claims involve insurance law, building law, and engineering practice. The issues are often numerous, with schedules of damage occasionally running to 14 pages. The Tribunal is able to deal with this level of complexity and has not yet referred any cases to the High Court under s 28 of the Act.

Tribunal experts

[25] The Tribunal regularly appoints experts to assist it. Generally, it is not economic to seek detailed reports, but these experts have been very helpful in resolving technical issues at a facilitated conference of experts and by engaging in debate with the experts giving evidence during hearings. During the year under review the Tribunal spent \$308,000.

Mediation and settlement conferences

[26] Three claims were referred to funded mediation through MBIE. In some cases, the parties opted for private mediation with insurers meeting the cost. Without exception, all mediations have resulted in agreement.

[27] To increase the opportunities for settlement, the Tribunal has decided to conduct its own settlement conferences during the coming year.

Case stated

[28] The Tribunal had envisaged that it would be efficient to obtain rulings from the High Court on controversial issues by applying to that Court using the case stated procedure but has only done so twice. Issues that depend on findings of fact are unsuitable for the case stated process and are therefore scheduled for hearing in the Tribunal.

Hearings

[29] Eight claims have so far proceeded to hearing, many of them involving evidence taken over multiple days. Those cases have invariably involved contentious issues on which rulings were needed, not only by the parties but by the Greater Christchurch Claims Resolution Service (GCCRS) and homeowners in general.

[30] None of those eight decisions have been appealed.

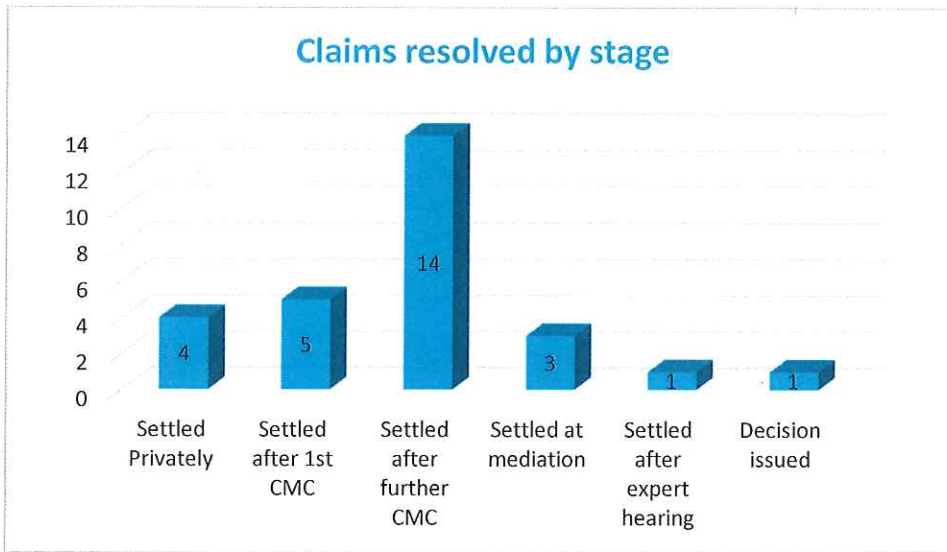
[31] All decisions of public interest are accessible on the Tribunal's website. Although no suppression orders have been made so far, every endeavour is made to anonymise the identity of claimants to protect their privacy.

Resolution

[32] The statistics show that two claims have been withdrawn, 28 have been resolved and 80 remain open, but this only tells a part of the story. Many claims involve multiple issues that cannot always be decided together. For example, one claim that went to a nine-day hearing and resulted in a decision that identified what damage had been caused by an earthquake remains open because the Tribunal was unable to resolve the dispute about the scope of works needed to repair that damage as further investigations are required. Another claim remains open despite decisions being made about the scope of works, because the issue of cost could not be resolved without further evidence. Many other claims remain open until the completion of the repair work, despite all earlier disputes being resolved by decision or agreement. It is for those reasons that only one of the eight claims decided by the Tribunal has been closed.

[33] Graph 2 below shows how those 28 claims shown as closed were resolved.

Graph 2: Claims resolved by stage 2019/20



[34] The Tribunal was initially resourced to deal with 50 claims in the first year, but the demand has been more than double that, leading to inevitable delays. Fortunately, this resourcing issue has been resolved for the coming year by the appointment of four new members.

[35] The time taken from acceptance to resolution of the claims closed during the period under review is set out in Table 2 below.

Table 2: Average time taken in days by event stage 2019/20

Events before Resolution	Avg Days
Decision issued	330
Settled after expert hearing	170
Settled at mediation	141
Settled after further CMC	189
Settled after 1st CMC	172
Settled privately	86

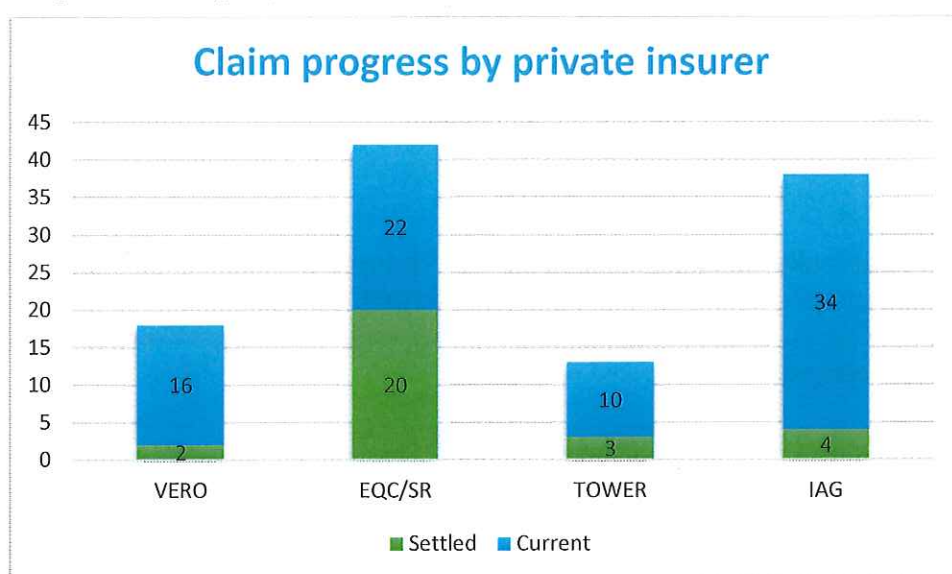
[36] These claims are not able to be easily linked to individual insurers because, for example, EQC and another insurer may each be liable on a claim. Those who claim that their

EQC funded repairs were inadequate may also join their insurer in case their claim exceeds the statutory cap for EQC. Sometimes cover is provided by two private insurers jointly.

[37] Looked at broadly, 71% of the settlements involve either EQC or Southern Response, 14 % involve IAG, and Vero and Tower are each involved in 7%.

[38] The private insurers have a greater share of their claims unresolved than do the Crown-owned insurers as shown by Graph 3 below.

Graph 3: Claim progress by private insurer 2019/20



Relationship with other providers

[39] The Tribunal works in partnership with the High Court (Earthquake List) and the Greater Christchurch Claims Resolution Service (GCCRS) to enable Cantabrians to resolve their earthquake claims and move on with their lives. The Tribunal has already resolved several claims referred to it by the High Court and has made rulings in these and other cases which it hopes will enable Cantabrians to resolve their claims, either by themselves, or with the assistance of the GCCRS.

Cantabrians are able to move on

[40] Below are a few case summaries and testimonials to show how the Tribunal is helping Cantabrians to move on.

A v EQC & State Insurance

Claim about poor EQC repairs: floor still unlevel, damp under house, and leaking roof. CEIT requested flooding report which revealed lower risk of flooding. Also requested geotech report which revealed no solid ground for foundations, repairs inadequate, and replacement foundations required. Parties settled privately with assistance from GCCRS. The settlement they received together with the value of the land was the equivalent of twice the RV of the original property.

B v EQC

Claim by vulnerable homeowner for badly executed repairs. Itinerant builder not only made appalling job of the repairs but stole large inheritance from homeowner's teenage son. Builder fled to his home country when Police became involved. Repairs were costed at about \$50,000 but homeowner's claim was doubtful because had opted to take lump sum from EQC and commissioned own repairs. Had also transferred house to son. Claim settled with an ex gratia payment of \$50,000 from EQC.

C v EQC and Tower

Multi-flat property on land badly affected by liquefaction. Homeowner retired and worried about his investment. Litigant in person. Building claim with EQC settled for \$425,000 after preliminary ruling that EQC miscalculated cap. Land claim outstanding. Settlement conference scheduled with back up hearing date.

Testimonials

"It is with great pleasure that I write this e-mail to you as one of the very first Customers who engaged with the [Canterbury Earthquake Insurance Tribunal] when it opened in July 2019. After just over a year we have now settled our claim with our insurer AMI (Southern Response). We could not have got to this point without the services of the Tribunal.

We came to the Tribunal overwhelmed and exhausted with over 9 years of turmoil as we ourselves tried for 9 years to resolve our claim. The Tribunal gave us a voice and the ability to engage with experts and 2nd opinions on matters that were well beyond our expertise. The meetings were always professional and the members focused on reaching solutions that were fair and reasonable. The Court staff running these meetings made sure everyone was informed with what they needed to know and were happy to answer any questions that came up between meetings. I would recommend anyone who is struggling or at an impasse with their insurer or EQC to use this service.

I already feel a weight has been lifted. As the saying goes "you often don't know how heavy the load is that you carry until you put it down"

.....

"I wish to make affirmative comment on the Canterbury Earthquakes Insurance Tribunal.

I have a retaining wall, damaged during the 2011 Earthquake, which was not built to specification yet signed off by the Christchurch City Council. I found that both the builder and the project

managers had gone into liquidation and over the last five years I have pursued every possible avenue using the Greater Christchurch Resolution Service, Canterbury Law and then a commercial lawyer to seek someone to take responsibility but without success.

I was advised to approach the Insurance Tribunal to see if they could assist. My experience from the beginning of the process has been very positive and with the assistance of the Tribunal, I have reached a settlement which will enable me to repair the illegal wall.

The application process was straightforward, and I was able to proceed without the assistance of a lawyer which was extremely positive. In the end there were a number of parties who had some element of responsibility, so the settlement process, set up as part of the Tribunal resolution structure, enabled a multi-party solution which had been impossible to date.

It seems to me that such a valuable service is not well enough advertised, so I would suggest that there be more promotion of it.

My thanks to the Justice Department staff who have been so professional and helpful and to the Tribunal members who facilitated the outcome."



C P Somerville
Chair
Canterbury Earthquakes Insurance Tribunal

