Backgrounder on *Dodds v Southern Response* case

What happened in the *Dodds* High Court case?

Karl and Alison Dodds sued Southern Response in the High Court for costs that were listed in the "Office Use Section" of an internal scope of works document (administration costs, professional fees, and contingency) that were not included in the settlement of their insurance claim.

Justice Gendall ruled that by not providing the Dodds with these costs, Southern Response made misrepresentations to the Dodds in breach of section 35 of the Contract and Commercial Law Act 2017, and engaged in misleading and deceptive conduct contrary to section 9 of the Fair Trading Act 1986. In reaching his finding on liability Justice Gendall was careful to say that he did not believe that Southern Response had acted fraudulently.

The Judge awarded the Dodds damages of $178,894.30, plus interest since the date the Dodds' insurance claim was settled on 23 December 2013, and costs. The damages sum of $178,894.30 includes professional fees, contingency sum, Arrow Contract costs and Arrow Construction costs, but does not include all of the costs that were listed in the Office Use section of the internal document.[1]

Why did Southern Response not pay those costs at the time?

When the Dodds reached full and final settlement under the 'Buy Another House' option of their AMI policy, there had been a recent High Court ruling (*Avonside* High Court) in Southern Response's favour, that confirmed contingencies were not payable for a notional rebuild of the same property on the same site and that only some professional fees were required. It was therefore Southern Response's understanding that the Dodds were not entitled to the costs within the "Office Use Section" according to the law at the time.

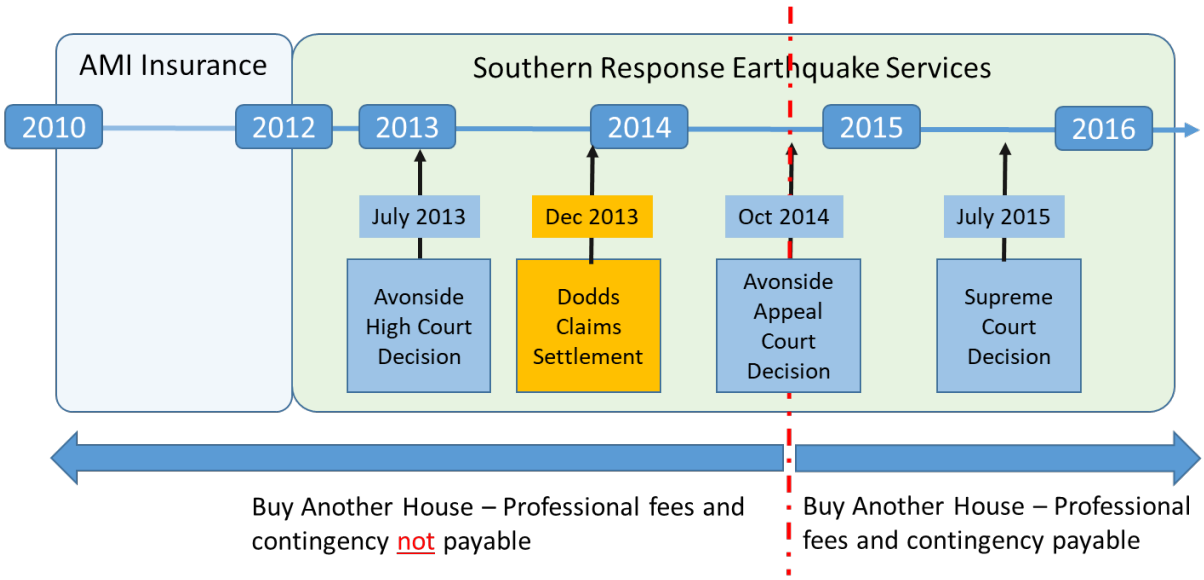
It was only after the Dodds settled that higher appeal Court decisions (*Avonside* Court of Appeal and Supreme Court) held that professional fees and contingencies are part of the calculation for the value to purchase another house.

When the Supreme Court decision was announced, Southern Response moved quickly to pay those additional costs to customers who had settled on the Buy Another House option since the Court of Appeal decision (ie. the first time the Court had said that these costs

[1] It does not include demolition costs because the Dodds' acknowledged Southern Response had already carried out and paid for the demolition work; nor does it include Arrow PMO and Arrow DRA costs as the Judge correctly concluded those were internal insurance claim administration and management costs of Southern Response to which the Dodds would never have been entitled

were payable). Mr and Mrs Dodds were not included in this group of customers because they settled prior to the Appeal Court decision.

The following table represents the timeline of events in relation to the *Avonside* case and Mr and Mrs Dodds' settlement:



One of the issues that Southern Response is hoping to gain clarity on through the appeal Courts is whether there is a legal obligation to go back in time and re-open claims that have been settled on a full and final basis according to the law at the time, if that law subsequently changes.