

EQC ON-SOLD CLASS ACTION

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY
CIV-2021-009-02441

NOTICE OF OPT IN RIGHTS

This is an important notice issued by the New Zealand High Court. You have received it because the Court considers you may be affected by the EQC on-sold class action.

If you purchased a home in Canterbury where EQC repairs had been assessed and settled under EQC's statutory cap, and where the actual cost of repair has been reassessed after you bought the home as likely exceeding EQC's statutory cap (and private insurance is unavailable to pay the over-cap cost), you should read this notice carefully.

What you need to do in response to the notice

As explained below, you may do one of two things in response to this notice:

1. **You can opt in** to the class action by **5.00pm, 22 September 2023**, which means:

- **if the proceeding is successful or there is a negotiated settlement**, you will get to share in the benefits, including any compensation that EQC is required to pay; **but**
- **if the proceeding is unsuccessful**, you will not be able to take the same claim against EQC to the Court again; and
- you may lose the opportunity to pursue alternative settlement pathways with EQC (see **Section J** of this Notice).

Section K of this notice tells you how to opt in to the class action.

2. **You can do nothing**, which means:

- you will not have a right to any compensation that comes out of the proceeding or negotiated settlement with EQC; but
- you keep your right to seek some compensation yourself by resolving your claim directly with EQC (see **Section J** of this Notice), or by pursuing a claim in the courts if you are within a relevant limitation period.

The opt in deadline is 5.00pm, 22 September 2023

A Why is this notice important?

1. A representative proceeding ("**class action**") has been commenced in the High Court of New Zealand, Christchurch registry, by Carol Ann Mathias (the "**representative plaintiff**") against the Earthquake Commission ("**EQC**").
2. The High Court has ordered that this Notice of Opt In Rights ("**Notice**") be published and sent to persons who may be affected by this class action to inform them of the class action and enable them to determine whether or not they wish to participate.
3. You have been identified as someone who may be affected by the class action. Please read this notice carefully. Any questions you have concerning the matters contained in this Notice should NOT be directed to the Court. If there is anything in it that you do not understand, you should:
 - (a) visit the website www.eqconsold.co.nz;
 - (b) contact the lawyer for the representative plaintiff at grant@grantshand.co.nz / 027 434 5489; and / or
 - (c) seek independent legal advice.
4. This class action is about Canterbury homes damaged in the Canterbury Earthquake Sequence (between 4 September 2010 and 23 December 2011) where:
 - (a) EQC assessed the value of the claim for earthquake damage to the house to be under-cap (i.e., up to \$115,000 including GST);
 - (b) EQC chose to settle the under-cap claim by way of payment, replacement or reinstatement;
 - (c) that under-cap settlement did not meet the standard required by the Earthquake Commission Act 1993 ("**EQC Act**");
 - (d) the property was under-cap when you bought it, and the cost of repairs needed to achieve the standard required by the EQC Act now likely exceeds EQC's statutory cap; and
 - (e) private insurance is unavailable to pay the over-cap cost.
5. It is alleged that EQC was negligent, ie it owed a duty of care to future purchasers which it breached when determining and settling the claims on those homes. The class action is seeking compensation (money) for people who own the rights to the EQC claims, in the form of cash, which they can decide what to do with.
6. This Notice contains important information about class actions generally, the EQC on-sold class action, and your rights as a person who may be affected by it. In particular, it tells you about your right to opt in to the class action (see **Section K** of this Notice).

B What is a class action?

7. A class action is where a person (the representative plaintiff) sues on behalf of, or for the benefit of, all persons with the same interest in the subject matter of a proceeding (class members) against another person or persons (defendants).¹ A representative plaintiff can bring a claim in this way if they and the class members have claims that share questions of law or fact that can be resolved together (common issues).
8. Class members are "bound" by the outcome of the class action on common issues, whether favourable or adverse. A binding result on common issues can happen in two ways: either by **judgment** issued by the Court or a **settlement** negotiated with the defendants at any time. A binding result through a Court **judgment** means that:
 - (a) if the class action is successful, class members will get to share in the benefits, including any money that the defendants are required to pay; and
 - (b) if the class action is unsuccessful, class members **will not** be able to pursue the same claims against the defendants. Class members will not have to pay EQC's costs associated with the class action, as any costs will be met by a litigation funder (see **Sections F and G**).
9. To receive compensation through a Court **judgment**, class members will eventually need to prove issues specific to their individual claim, including that they have individually suffered loss or damage because of EQC's actions.
10. Alternatively, there may be an out of court **settlement** of the class action, in which case any individual access to settlement funds would be agreed between the parties and approved by the Court.

C What is *this* class action about?

11. The representative plaintiff is bringing this class action against EQC on her own behalf and on behalf of, or for the benefit of, all persons who meet the class definition as approved by the High Court (See **Section D** of this Notice).
12. This class action relates to Canterbury homes where EQC settled earthquake claims within its statutory cap (i.e. for up to \$115,000 including GST), but where it was discovered after the property was sold that the settlement did not meet the standard required under the EQC Act, and where the cost of repairs now likely exceeds EQC's statutory cap, and where private insurance is unavailable to pay for the over-cap portion of the repair cost.
13. The representative plaintiff alleges that EQC is liable in negligence as it owed obligations to exercise reasonable skill and care when carrying out its obligations under the EQC Act. The representative plaintiff alleges EQC failed to exercise reasonable skill and care to identify all earthquake damage, scope the repair, and ensure that any repairs completed complied with the EQC Act, causing her loss.
14. The representative plaintiff seeks damages (money) for the alleged cost to restore the house to the standard required under the EQC Act (plus interest and costs). The representative plaintiff is also bringing this class action on behalf of, or for the benefit of, other people who may be in a similar situation.

¹ High Court Rules, r 4.24.

15. See **Section L** of this Notice for information about how to access a full copy of the statement of claim.
16. EQC, as the defendant, denies these allegations and is defending this class action.
17. The class action is being run by Grant Shand Barristers & Solicitors, who are the solicitors of the representative plaintiff. The costs of bringing the class action will be met by a litigation funder. Costs are discussed further in **Sections F and G** of this Notice.

D Do you meet the class definition?

18. You meet the class definition if your claim meets this description:
 - (a) The owner of a residential building insured by s 18 of the Earthquake Commission Act 1993 ("**Act**") during the Canterbury Earthquake Sequence that commenced on 4 September 2010 and ended on 23 December 2011 ("**CES**").
 - (b) The residential building suffered natural disaster damage in an earthquake in the CES.
 - (c) Claims(s) made to the EQC for the natural disaster damage.
 - (d) EQC accepted the claim(s) for natural disaster damage to the residential building.
 - (e) In relation to the claim(s) for natural disaster damage to the residential building, EQC by itself, or its agents, produced a:
 - (i) Record of the natural disaster damage to the residential building;
 - (ii) Scope of repairs required to reinstate the natural disaster damage to the residential building;
 - (iii) Costing to repair the natural disaster damage to the residential building.
 - (f) EQC then determined the amount of natural disaster damage to the residential building under s 29 of the Act to be under the statutory cap of s 18 of the Act.
 - (g) EQC then chose to settle the under-cap claim(s) for natural disaster damage to the residential building under ss 18 and 29 of the Act by way of payment, replacement or reinstatement.
 - (h) The owner purchased the residential building subsequent to the purported EQC under-cap claim(s) settlement for natural disaster damage in paragraph (g) above.
 - (i) At the time of the purchase in paragraph (h) above the owner was aware of the previous purported under-cap settlement of the claim(s) for natural disaster damage to the residential building by EQC.
 - (j) EQC's purported settlement of the claim(s) for natural disaster damage in paragraph (g) above did not meet the standard required by the Act.
 - (k) The cost to reinstate the residential building to the required standard now exceeds the statutory cap for the property under s 18 of the Act.

- (l) There is no policy of insurance to pay the reinstatement costs above the statutory cap for the property under s 18 of the Act.
- (m) The relevant act or omission on which the claim is based occurred within six years of 3 June 2021 where EQC or its agents carried out the remedial work to the building, and within six years of 2 September 2021 for other class members, or such longer period permitted by the late knowledge provisions of the Limitation Act 2010 (as qualified by the Building Act 2004).
- (n) There is no binding settlement agreement between the EQC and any owner of the residential building in respect of claim(s) made for natural disaster damage to the residential building in the CES.

19. If you are unsure whether or not you meet the class definition, you should, without delay:

- (a) contact Grant Shand at grant@grantshand.co.nz; 027 434 5489; and / or
- (b) seek independent legal advice.

E What is "opt in"?

20. The representative plaintiff in a class action does not need to seek the consent of class members to commence a class action on their behalf. However, class members will only be part of the class action if they choose to take part. This is called "opting in". An explanation of how class members can opt in is found in **Section K** of this Notice.

F How is the class action being funded?

21. The representative plaintiff has signed a litigation funding agreement ("**funding agreement**") with Canterbury Litigation Funding Limited ("**the funder**"). Under the funding agreement, the funder is liable for all costs involved in pursuing this class action against EQC. The costs that are covered by the funder include:

- (a) legal / professional fees and disbursements of Grant Shand Barristers and Solicitors (and any other lawyer engaged in this class action);
- (b) any costs orders made by the Court (including any security for costs orders by the Court or as agreed between the parties);
- (c) court filing fees and all other court fees;
- (d) experts' fees and expenses;
- (e) witnesses' fees and expenses; and
- (f) third party fees necessarily incurred assisting the lawyers with claim management and administration.

G Will you need to sign a funding agreement?

22. To join this class action you will need to sign a funding agreement with the funder. Under the funding agreement, the funder is liable for all of those costs that are noted in Section F of this Notice.

23. The funder will deduct a maximum fee of 15% (including GST) from the proceeds of any settlement or judgment you receive. Nothing is required to be paid up front, and if the class action is unsuccessful you will not be required to pay or reimburse any of the costs that the funder has paid in **Section F** of this Notice.
24. If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you will not have to pay any costs. The funder will cover all costs associated with proving your individual claim at a later stage.
25. A copy of the funding agreement that you will need to sign is available at www.eqconsold.co.nz. It is important that you seek independent legal advice on the funding agreement.

H Will you be liable for legal costs if you opt in and become a class member?

26. No. You will not become liable for any legal costs if you opt in to this class action and become a class member. The funder is liable for legal costs (which are part of those costs listed in **Section F** of this Notice).

I What will happen if you opt in and become a class member?

27. If you opt in to the class action and become a class member, you will be bound by any settlement or judgment (whether successful or unsuccessful) of the class action.
28. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the representative plaintiff and class members, although you may have to prove issues specific to your claim before your entitlement arises. Should the class action be successful, you can decide what to do with any compensation (money) received.
29. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against EQC in other legal proceedings.

J Resolving your claim with EQC directly

30. If you are an owner of a Canterbury home with insufficient or incomplete earthquake damage assessment / repairs which now exceed EQC's statutory cap and for which private insurance is unavailable to pay the over-cap cost, you may, instead of opting in to this class action and becoming a class member, seek to resolve your claim with EQC directly.
31. EQC may be able to resolve your over-cap claim via the following settlement pathways:
 - (a) **Government on-sold policy:** if you have already applied within the timeframe provided to the Government's on-sold policy, you may receive an ex gratia payment to allow your property to be fully repaired by covering the cost of repairs that exceed EQC's statutory cap. It is a condition of receiving an ex gratia payment under the Government on-sold policy that any funds received be used for repairing your property; and / or
 - (b) **resolution of other on-sold homeowners' claims:** if you failed to apply to the Government's on-sold policy within the timeframe provided or were ineligible for it and private insurance is unavailable, EQC may, in appropriate cases, make ex gratia payments to resolve claims where the costs of repair exceed EQC's statutory cap.

32. If you opt in to this class action, there may be **risks**. If you choose to opt in:
- (a) you may lose access to entitlements, or only be eligible for a reduced sum of compensation, under the Government on-sold policy (if you have applied to it); and
 - (b) you may lose the ability to resolve your claim with EQC under the resolution of other on-sold homeowners' claims settlement pathway as set out in 31(b) above.
33. You should obtain independent legal advice about opting in and / or seeking to resolve your claim through the Government on-sold programme.

K What you need to do

(a) I want to participate in the class action

34. If you want to participate in the proceeding and become a class member, you must **opt in** to the class action.
35. Once you opt in, the representative plaintiff will continue to bring the proceeding on your behalf to obtain a Court judgment determining the common issue or a settlement. Unless the class action is settled, you will then need to prove issues specific to your claim at a later date.
36. **If you wish to opt in** to the class action, you **must** meet the class definition (see **Section D**) and complete an "**Opt In Form**" in the form shown below.

IMPORTANT: The Opt In Form must reach the Registrar of the Christchurch High Court by no later than 22 September 2023, otherwise it will not be effective.

37. Please also send a copy of the form to theteam@cfl.co.nz.
38. Each class member seeking to opt in should fill out a separate form. If you are opting in on behalf of a legal entity, please provide your name, the name of the legal entity and your role in respect of that entity.

(b) I do not want to participate in the class action

39. If you do not want to participate in the class action and become a class member, there is **nothing you need to do** at the present time.
40. You should seek independent legal advice about your options before deciding to (or not to) opt in to this class action.

L Where can you obtain copies of relevant documents?

41. Copies of relevant documents, including the application for representative orders, statement of claim, and statement of defence, may be obtained by downloading them from the Claim Documents tab on the EQC on-sold class action website (<http://www.eqconsold.co.nz>).

IMPORTANT: Please consider the above information carefully. If there is anything of which you are unsure, you should contact Grant Shand at grant@grantshand.co.nz / 027 434 5489 or seek your own independent legal advice. You should not delay in making your decision.

EQC ON-SOLD CLASS ACTION OPT IN FORM

CIV-2021-009-2441

High Court of New Zealand
Christchurch Registry

CAROL ANN MATHIAS
Representative Plaintiff

THE EARTHQUAKE COMMISSION
Defendant

To: The Registrar
Christchurch High Court
Justice & Emergency Services Precinct
20 Lichfield Street
Christchurch

The person named below gives notice that they are opting in to the EQC on-sold class action.

Name (if you are opting in on behalf of a legal entity, please provide your name, the name of the legal entity and your role in respect of that legal entity)	
Postal address	
Telephone / mobile number	
Email address	
Insured property address	
Insurer at time of earthquake(s)	

If you are signing this form as the solicitor or authorised representative of the person opting in:

Name of person completing this form	
Authority of person completing this form	
Postal address of person completing this form	
Telephone / cellphone number	
Email address	

Date:

Signed by _____

Person opting in / Solicitor or authorised person for the person opting in