

SUBJECT



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cc to Master

10 DOWNING STREET

From the Private Secretary

25 January 1984

Dear Paul,

Latent Damage and Defective Housing

The Prime Minister held a meeting yesterday with Mr. Gow and the Solicitor General to discuss the legal position on liability for latent damage and the problem of defective housing.

The Prime Minister said the problem had first come to light in dealing with the case of a constituent of hers, Mr. Godfrey Phillips, whose son was the owner of a Unity type house built using pre-fabricated reinforced concrete (PRC). The Prime Minister was disturbed by the position that where such a house had its origin in the public sector Government was offering assistance with the cost of repairs and in the last resort would buy back the property at 95 per cent of its defect free value. By contrast, those like Mr. Phillips son, who owned a house which had always been in the private sector, would receive no such assistance; indeed such people could find themselves contributing through their taxes to assist their neighbours. This position was difficult to defend as the loss of the matrimonial home was a major financial blow. Since this correspondence, the Prime Minister had noted that the Law Review Commission were looking at the law as it stood following the *Pirelli v. Faber* case. She asked what the Government could do and what would be the wider ramifications of taking action in such cases. The Solicitor General said the law currently provided remedies but it was unlikely that they would be of help in this case. First, with houses built in the 1940s and 1950s there might well be no-one to sue. Secondly, the House of Lords had ruled that the six year limitation period ran from the date the damage occurred rather than when it might reasonably have been discovered. Since this could be deemed to be the time corrosion started, it would be difficult to bring an action in cases of this kind. Finally, it would be very difficult to establish negligence when the houses were built using techniques that were fully endorsed within the industry at the time. Indeed, the Burke Committee had given official blessing to the use of PRC.

/The Minister

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The Minister for Housing and Construction recognised the hardship that could arise in cases of this kind but he was worried about extending the responsibility of the state. Dangerous precedents could be set both in housing and more widely.

The Solicitor General said the law was seeking to strike a balance between two objectives - providing adequate redress for negligence and providing certainty for the supplier that there would be a time beyond which he no longer had a contingent liability. It was noted, however, that in personal injury cases the period of limitation had been substantially extended. But to make the period of limitation correspond to the life of the asset might still fail to provide adequate remedy as there was a high probability that the original builder would no longer be in business. There was also the difficulty of establishing negligence referred to above.

An alternative approach would be to seek an improvement in the terms of standard insurance contracts for houses. Though this might help in the longer term it would not provide any remedy for the existing cases.

The Prime Minister asked whether the assistance provided to the owners of ex-public sector houses could be extended to those owning houses originating in the private sector. The Minister for Housing and Construction said the number of such houses was probably no more than 3,000 and so the costs of doing this would not be prohibitive. The difficulties lay in the precedent created and the degree to which it would make the Government vulnerable to pressure to step in should a similar case occur in the future on a larger scale. The Solicitor General warned that it was important to avoid any implication that the Government was endorsing no fault liability. This could be achieved if the offer of assistance were presented as a limited extension to the existing policy.

Summing up the discussion, the Prime Minister asked the Minister for Housing and Construction, in conjunction with the Solicitor General, to consider whether, without damage to the Government's wider policy concerns, owners of PRC houses originating in the private sector could be brought within the existing scheme. The implications, both in the field of housing and for the law more generally should be carefully considered. Finally, there should be an examination of the contribution which improved house insurance could make to this kind of problem.

I am copying this letter to Henry Steel (Law Officers' Department).

*Yours sincerely
Andrew Turnbull*

Andrew Turnbull

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Department of the Environment.