



01-405 7641 Extn

Prime Minister ⁽²⁾

To note the SG's reservations. Ian Gow
in doing more work on the extent of the problem

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

AT

2/2

2nd Feb. 1984

PRIME MINISTER

1988 Prime Minister,

MT

DEFECTIVE HOUSING

I have seen Ian Gow's letter to you of 27 January, in which he sets out the dangers which he still sees in the extension of the financial assistance to owners of privately built prefabricated reinforced concrete (PRC) houses.

There is great hardship for these people, as you illustrated so vividly at our meeting. But for my part the primary consideration must be that the Government should do nothing to suggest that it has embraced the principle of non-fault liability for compensation. The basic common law rule (that, in the absence of culpability or an express contractual term, any loss lies where it falls) of course does produce serious hardship in some cases. This, together with the hazards and difficulties of litigation, has led to a vociferous campaign for reform. The pecuniary loss caused to a victim should, it is said, be spread more widely, and without regard to whether there has been culpability on the part of another person.

The Pearson Report on Civil Liability and Compensation for Personal Injury, which advocated a shift away from the traditional principles of tort in road accident cases towards an expanded social security system, went some way in this direction.

I think we should retain very substantial reservations about this philosophy. It conflicts with our belief in the concept of personal responsibility. We should prefer to see pecuniary risk covered by private insurance rather than achieve universal compensation (at huge public expense) by eradicating the criteria of culpability. We have



- page two -

in fact resisted pressure to implement the Pearson recommendations, which remain in limbo. The reasons we have given are that implementation of Pearson would involve preferential provision for road accident victims as against victims of other accidents, and have unacceptable public expenditure implications.

We should, therefore, in any event need to avoid recasting the present scheme for assisting people who have bought PRC houses from local authorities, in any form which would increase pressure to implement Pearson.

Here we could point to the distinguishing fact that past Governments gave their approval to this kind of construction technique. There is also an arguable analogy with the background to the Vaccine Damage Payments Act 1979: see the annex to this letter. But I have a strong hunch that by mitigating now the losses suffered in these "hard cases" we should call forth a clamour for equal treatment for other cases, whose number and characteristics we cannot now foretell.

A remaining point is that we should be accused of putting the claims of those who own property before those of the victims of personal injury, whose loss can be more catastrophic even than in the cases of the people we are now considering.

These are the reasons why I think that if we eventually decide to move in the way you would like we should have to do everything possible to show that our policy stems from our earlier administrative decision to help those who have bought similar houses from local authorities.

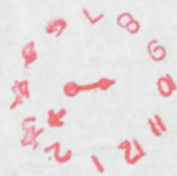
*Yours ever,
Patrick*

VACCINE DAMAGE

The Vaccine Damage Payments Act 1979 obliges the Secretary of State to make a payment of £10,000 in any case where a person is seriously disabled as a result of vaccination for one of the diseases specified in the Act. If the Secretary of State decides that an individual's disablement does not result from vaccination or that the disablement is insufficiently serious to qualify for the £10,000 payment the claimant has a right of appeal to an independent medical tribunal.

The Compensation Scheme was set up in the light of an interim recommendation by the Pearson Commission but the details of the Scheme differ from that finally proposed by Pearson. The policy justification for Government intervention in this area was that the Government wished to maintain public confidence in the vaccination campaign.

Housing Policy Pt 4



-2 FEB 1984

6 February 1984

Defective Housing

The Prime Minister has seen the Solicitor General's minute of 2 February and has noted the points which he made.

I am copying this letter to Paul Britton in the Minister for Housing and Construction's Office.

Andrew Turnbull

Henry Steel, Esq., C.M.G., O.B.E.,
Law Officers' Department.

NR



10 DOWNING STREET

MB

From the Private Secretary

Prime Minister

The subject of latent damage and defective housing came up in correspondence with Mr Godfrey Phillips. (the issue was also raised in the briefing for the RIBA reception).

You can use the meetings:

- (i) to ask the Solicitor General to put you in the picture on legal developments on the liability for latent damage
- (ii) to discuss with Mr Gow whether the Government should maintain its line that it will help those with defective houses only when the houses have been bought from the public sector

AT
23/1

010
01-405 7641 Ext.

Communications on this subject should
be addressed to
The Legal Secretary
Attorney General's Chambers

ATTORNEY GENERAL'S CHAMBERS
LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, W.C.2

A Turnbull Esq.
Prime Minister's Office
10 Downing Street
London SW1

23 January 1984

Dear Andrew,

LATENT DAMAGE

I enclose the one-page note for which you asked.

I am copying this letter and enclosure to Paul
Britton.

Yours sincerely,

John Wheldon.

Miss J L Wheldon

LATENT DAMAGE: LEGAL ISSUES

1. Can a house owner, who has suffered from latent damage claim damages?

The most likely cause of action is negligence but the owner will need to establish:

- (i) that there has been a breach of the duty of care owed to him by e.g. the builder or architect,
- (ii) that there is a defendant to the action who would be able to satisfy a substantial claim for damages; and
- (iii) that the action has not been time-barred.

Each of these steps may be difficult.

(i) Duty of care: It is far from certain that e.g. the builder or architect should have known of the risk of any latent damage.

(ii) Defendant : The longer the period between the building of the house and the defect coming to light the more likely that the builder or architect concerned will have disappeared or will be unable to satisfy the claim for damages e.g. for insurance reasons.

(iii) Limitation: Following the House of Lords Judgment in the Pirelli case [1983] a litigant is statute-barred if he begins his action more than 6 years after the date when the damage to his house actually occurred and not the date when he might reasonably have been expected to discover that damage. The House of Lords themselves found this thoroughly unsatisfactory and said there was a need for legislation.

2. Are there proposals to reform the law?

The problems on (i) and (ii) are part of the general law of tort and we know of no current legislative proposals which would affect them. The Law Reform Committee is looking at (iii), the limitation problem, and is expected to report soon. Its deliberations are confidential. The Lord Chancellor's Department have asked QL for a place in the programme for the legislation which the Committee is expected to seek; the Lord Privy Seal has recommended against its inclusion. Such legislation might change the date when the right of action accrues and/or introduce a judicial discretion to extend the ^{limitation} period (as exists already for personal injury cases).



Department of the Environment
2 Marsham Street London SW1P 3EB
Telephone 01-212 7601

Minister for Housing and Construction

Andrew Turnbull Esq
PS/Prime Minister
10 Downing Street

23 January 1984

Dear Andrew,

DEFECTIVE HOUSING

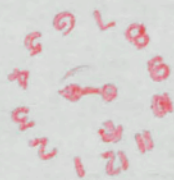
I enclose the note on defective housing
for which you asked.

I am sending a copy of this letter
and its enclosure to Juliet Wheldon.

Yours sincerely

Paul Britton

P J J BRITTON
Private Secretary



23 JAN 1994



DEFECTIVE DWELLINGS

THE PROBLEM

From the 1920s, prefabricated reinforced concrete (PRC) components have been used in building some types of houses and flats. After both Wars, the Government, confronted by a shortage of skilled building workers and traditional building materials, promoted building by the public sector in PRC. In 1980, the Airey type was found to be suffering from structural defects. One defect was the result of gradual carbonation of the concrete and/or the inclusion of chlorides when they were manufactured.

In February 1983, the Government introduced a discretionary scheme of assistance for owners of Airey houses. However it has since become clear that the carbonation and chlorides problem extends to all types of PRC house of the period before 1960 (see the Building Research Establishment's conclusions at A, and Mr Gow's statement at B).

EXTENT OF PROBLEM: PUBLIC AND PRIVATE

In the UK, some 170,000 PRC houses were built by the public sector before 1960. About 16,500 of these houses have been sold, mainly to tenants. Few houses of these types were built by the private sector: we know only of 20 in Egham, about 112 in Buckinghamshire (including Mr Phillips'), 50 in Bromley, and a small group in Dartford. To extend the proposed scheme of assistance to these owners would open the door to Government protection of privately-developed houses generally against structural defects.

NEGLIGENCE

It is unlikely that a private owner of a privately-developed PRC house could mount a successful action because of the carbonation/chlorides problem, on the grounds of negligence on the part of those who designed, approved or manufactured PRC houses, for two reasons. First at the time of design and manufacture, understanding of these chemical processes was

imperfect. It could be argued strongly that the problems could not have been foreseen in the 1940's and 1950's. Even if there were negligence, the designers and builders may have died or ceased trading. Any duty of care owed by the Government in recommending the designs would be owed only to the local authorities to which the recommendations were made, not to private owners whose houses were built by private developers. Second, in the recent case of Pirelli v Faber the Lords held that a claim in negligence accrues when damage occurs not when damage becomes apparent. Damage would probably be held to have occurred when the processes first began to operate within the structure. Any action would therefore be barred by the Limitation Act.

The structural condition of some prefabricated reinforced concrete houses of Boot, Cornish Unit, Orlit, Unity, Wates and Woolaway construction

Following the statement by the Minister for Housing and Construction on 8 February 1983¹, the Building Research Establishment has undertaken structural evaluations of the present condition of six common types of prefabricated reinforced concrete house built after the First World War and between 1945 and 1960 (Boot, Cornish Unit, Orlit, Unity, Wates and Woolaway). This paper summarises BRE's findings and suggests some implications for the stock of these types of house. Detailed reports on the investigation of each of the types, including suggestions for inspection, maintenance and repair, have been prepared; they are listed at the end of this paper.

THE HOUSE TYPES EXAMINED

The main load-bearing components of each type of house examined are made of concrete. The chief features of each design are as follows:

Boot houses have precast reinforced concrete columns and ring beams with unreinforced breeze concrete wall panels.

Cornish Unit houses have precast concrete columns and ring beams with unreinforced concrete wall panels.

Orlit houses have precast reinforced concrete columns, main beams and secondary beams. The walls are clad with precast reinforced concrete panels and flat roofs decked with precast reinforced concrete slabs.

Unity houses have precast reinforced concrete columns clad with unreinforced concrete panels.

Wates houses have precast reinforced concrete wall panels and ring beams joined by an in-situ reinforced concrete frame.

Woolaway houses have precast reinforced aerated concrete columns, wall panels and ring beams.

Concrete floor and roof components are used in Orlit houses. Concrete floors are used in flats. In houses of the other types, first-floor and roof construction are usually of timber.

INVESTIGATIONS

The evaluation is based on investigations on site by BRE comprising visual inspections of about 2000 houses and detailed examinations of the structural components of 55 houses, supported by examination of available documentation on design and construction and review of technical data on present condition available from local authorities and others. Although the investigations were limited it is believed that they provide a broad guide to the range of structural conditions in the stock of the particular types.

The investigations concentrated on the condition of the structure, particularly the reinforced concrete load-bearing components, although deterioration of other concrete components such as cladding and window frames, and evidence of roof leakage and condensation, were noted. The condition of other components of the houses was not examined.

The investigations on site consisted of visual inspection of the outside and inside of dwellings as far as access would allow, noting any signs of deterioration or of structural distress. Where owners permitted, detailed examination of concrete components was made by sampling the concrete to determine cover to reinforcement, condition of reinforcement, carbonation depths, chloride contents and cement contents. Examination of components was limited because components were often hidden in cavities behind wall facings and ceilings and in roof spaces and because only very local damage during the sampling of components was acceptable.

The most important indication of the structural condition of these reinforced concrete components was whether they were uncracked or cracked due to the corrosion of their reinforcement. (As corrosion proceeds, bursting forces are produced which cause the concrete to crack and spall.) The implication of this cracking is that the component is reaching the point at which it will no longer perform the function intended by the designer. In the case of uncracked components, the important consideration is the length of their future life before any reinforcement corrosion is likely to cause cracking. Where there is carbonation to, or almost to, the reinforcement, or the presence of a high content of chloride in the concrete, cracking is likely to occur within a few years, with the possible exception of those components in dry environments where cracking is likely to be delayed.

Building Research Station
Garston
Watford WD2 7JR
Telephone: Garston (Herts) 74040
Telex: 923220

Fire Research Station
Borehamwood
Hertfordshire WD6 2BL
Telephone: 01-953 6177
Telex: 8951648

Princes Risborough Laboratory
Princes Risborough
Aylesbury
Buckinghamshire HP17 9PX
Telephone: Princes Risborough 3101
Telex: 83559

Building Research Establishment
Scottish Laboratory
Kelvin Road, East Kilbride
Glasgow G75 0RZ
Telephone: East Kilbride 33001
Telex: 778610

▲ Technical enquiries to ▲

The evaluation of the condition of the houses included an assessment of the effects of deterioration on structural safety.

THE FINDINGS

Overall, the investigations revealed that the reinforced concrete components are gradually deteriorating. They are doing so because of carbonation of the concrete and, in some cases, the presence of high levels of chloride, leading to corrosion of the steel reinforcement² and the consequent cracking of the concrete.

The great majority of the houses studied were found to be in structurally sound condition, but there was a wide range in the rate of deterioration both between and within types. Some cracking was found in all types and the nature of the process is such that deterioration will continue, albeit very slowly in some cases, and all houses will eventually be affected by cracking. Cracking in a proportion of houses of all types will not occur for some years, and a few houses may not display any evidence of deterioration for, say, the next 30 years or more.

Cracking of the concrete is now present in a small proportion of components in all six types. The most advanced deterioration appears to be in the main and secondary beams of Orlit houses and in columns of Boot, Unity and Woolaway houses, but some cracking is also present in columns in Cornish Unit houses, in structural concrete in Wates houses and in the infill panels in Woolaway houses. Cracking of reinforced concrete cladding components and other precast non-structural components is present in some types.

No structurally unsafe conditions were found. However, in some houses of some types early action is desirable to maintain safety. The inspection of Orlit houses to determine the condition of concealed secondary and main beams should be put in hand unless this work has been completed recently.

The processes of carbonation and attack by chlorides are likely to affect all prefabricated reinforced concrete houses of this period in the manner described above.

IMPLICATIONS FOR INSPECTION OF INDIVIDUAL HOUSES

Deterioration of structural concrete components in these houses may lead eventually to an unsafe condition. They should therefore be inspected regularly and adequately maintained in the future.

Normal survey practice should record the presence of any visible cracking in Cornish Unit and Wates houses³. If no cracking is visible it may be reasonable to assume that in these types the concrete components are in sound condition at the time of survey. Where components are hidden, eg in Boot, Orlit, Unity and Woolaway dwellings, access will be required to cavities or by removal of render in order to

assess the condition of the components. If cracking is found, its cause and structural significance should be determined. Analysis of the concrete and examination of the reinforcing steel will have to be made to determine whether components uncracked at the time of survey may crack in the near future⁴.

REPAIR AND REMEDIAL WORK

There are no practicable techniques which can halt deterioration altogether. Its emergence can be deferred for some years by measures such as those described in BRE Digest 265⁵.

The practicability of repair and replacement of components at economic cost, in order to give these houses a life comparable to that of houses of other designs, depends upon the individual characteristics of each type. The detailed reports on the individual types of house refer to the feasibility of repair in each case.

REFERENCES

- 1 *House of Commons Official Report. Parliamentary Debates (Hansard)*. Tuesday 8 February 1983, Vol 36, No 54, Col 893. London, HMSO, 1983.
- 2 **Building Research Establishment**. The durability of steel in concrete: Part 1. Mechanism of protection and corrosion. *BRE Digest 263*. London, HMSO, 1982.
- 3 **The Royal Institution of Chartered Surveyors**. Structural surveys of residential property: a practice note. London, RICS, 1981.
- 4 **Building Research Establishment**. The durability of steel in concrete: Part 2. Diagnosis and assessment of corrosion-cracked concrete. *BRE Digest 264*. London, HMSO, 1982.
- 5 **Building Research Establishment**. The durability of steel in concrete: Part 3. The repair of reinforced concrete. *BRE Digest 265*. London, HMSO, 1982.

This Information Paper summarises the following BRE reports:

- The structural condition of Boot pier and panel cavity houses*
- The structural condition of Cornish Unit houses*
- The structural condition of Orlit houses*
- The structural condition of Unity houses*
- The structural condition of Wates prefabricated reinforced concrete houses*
- The structural condition of Woolaway houses*

Copies of these reports are available, price £5 each (including postage), from the Distribution Unit, Building Research Establishment, Garston, Watford, WD2 7JR.

 B

DEFECTIVE HOUSING

1. On 7 September 1982 my hon Friend, the Member for Tonbridge and Malling, announced a scheme of financial assistance in the form of repairs grants or repurchase to owners of Airey houses which had been sold by public bodies and which had subsequently been discovered to be subject to serious defects or potential defects. On 8 February, he told the House that he had asked the Building Research Establishment to study possible deterioration in other types of prefabricated reinforced concrete houses built before 1960. The Establishment is publishing today an Information Paper summarising its findings of separate reports on 6 of the most common types - the Boot, Cornish Unit, Orlit, Unity, Wates, and Woolaway designs. A copy of the Information Paper has been placed in the Library.

2. The Building Research Establishment has found that the reinforced concrete components in all 6 types are gradually deteriorating as a result of carbonation of the concrete and, in some cases, the presence of high levels of chloride, leading to corrosion of the steel reinforcement and consequent cracking of the concrete. The great majority of the houses studied were found to be in structurally sound condition. There were significant differences in the rate of deterioration both between and within types. Some cracking was found in all the types and the nature of the process is such that deterioration will continue, although in some cases very slowly. All houses of these types will eventually be affected by cracking. Cracking in a proportion of houses will not occur for some years and a few houses may not display any evidence of deterioration for the next 30 years or more.

3. No conditions were found which were structurally unsafe. Risk to stability would be preceded by visible serious cracking in Boot, Cornish Unit, Wates and Woolaway houses. In Orlit houses, concealed main and secondary beams should be inspected now, if this has not been done already following the Department's letter to local authorities of 2 September 1982. Concealed columns and steel bracing in those Unity houses which have plasterboard or other dry lining should be inspected within the next year. Where serious cracking is present, professional advice should be sought.

4. The processes of carbonation and attack by chlorides are likely to affect all prefabricated reinforced concrete houses built before 1960. There are about 170,000 of these houses in the United Kingdom which were built by public bodies. Approximately 16,500 have been sold, mostly to sitting tenants.

5. I stress that the Building Research Establishment's studies are only of prefabricated reinforced concrete houses. The conclusions carry no implications for houses of non-traditional design which use other load-bearing materials.

6. Private owners will find themselves in a difficult position as a result of the effect of these findings on the value of their houses. The Government has decided to introduce early legislation to provide a scheme of assistance to private owners of houses sold by the public sector and since found to be defective or potentially defective. This will be on lines which are broadly similar to those of the scheme for owners of Airey houses which is already in existence.

7. The essential feature of the proposals will be a right of assistance. This will arise where the Secretary of State determines that houses of a particular category built by a public body should fall within the scheme because he is satisfied that, as a result of their design or construction, they suffer from or can be expected to suffer from structural defects not discoverable by normal survey at the time they were sold and which have resulted in a substantial loss of value in real terms as compared with the value at purchase. In respect of these houses local authorities will be under a statutory duty to assist either by way of a repairs grant or repurchase.

8. A grant of 90% of eligible expenses on repairs is intended to be the main form of assistance. But there will be cases in which repair will be uneconomic, or will not give the house a further useful life of at least 30 years, or will still not make the house mortgageable in the private sector. There will be other cases in which there would be hardship for the owner if repair were the only form of assistance possible. In these cases we propose to lay a duty on local authorities to acquire the dwellings if the owner wishes. Owners will receive 95% of the defect-free value of the house.

9. We have in mind that the scheme should apply to all types of prefabricated reinforced concrete house built before 1960. However, no final decisions have been taken on the initial coverage of the scheme and the BRE is studying six further types to supplement its findings.

10. In addition to the mandatory scheme, local authorities will be given a discretionary power to assist owners of defective houses which meet these criteria but in respect of which the Secretary of State has made no order requiring the local authority to give assistance. This power will enable local authorities to assist where there are local problems.

11. The local authority associations will now be consulted about these proposals. I will be asking them to comment before 16 December on a consultation document which is being sent to them today; a copy is being placed in the Library. A Bill to give effect to these proposals in Great Britain will be introduced as soon as possible thereafter. Separate legislation will be introduced for Northern Ireland.

12. The need for expenditure by individual local authorities on this scheme, and on defective houses remaining in their own stock, will be taken into account in determining their housing investment programme allocations.

13. The BRE has also studied the Smith house, which uses a different system of construction. A detailed report will be published next month. I shall be considering whether local authorities should be under a duty to give assistance to private owners of that type of house.

14. The Department is writing to local authorities to inform them of the BRE's findings and of the proposals for legislation. Copies of the letter to local authorities and a table giving figures of prefabricated reinforced concrete houses in each local authority area have been placed in the Library.

15. The Scottish Development Department and the Welsh Office will be writing in similar terms to local authorities there. The Scottish Development Department will also be writing to the Scottish Special Housing Association and will be holding consultations with the Convention of Scottish Local Authorities.

16. Mr Speaker, I apologise to the House for the length of this statement and for the fact that the texts of the seven separate reports which have only just been finalised are not yet available for publication. But I wanted to make a statement just as soon as possible. The reports will be published very early next month, and will be sent to local authorities with a request that they be passed on to private owners of these houses in their areas.