



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

30 October 1984

Dear Quinlan,

24TH REPORT OF THE LAW REFORM COMMITTEE
LATENT DAMAGE

I have now been able to consider in some detail the important Report from the Law Reform Committee, which you sent to me on 3 October.

The Committee's recommendations seem to achieve a reasonable balance between the interests of plaintiffs and defendants in cases of latent damage, and remove much of the uncertainty that currently surrounds this area of the law. Further, the 15 year long stop period should fit well with the insurance arrangements proposed for private certification under the Housing and Building Control Act.

I agree that you should present the Report to Parliament early this Session and invite public discussion on it. I believe the conclusions of the Committee will be widely welcomed, and while I agree that it is right to allow the expression of views on the Report before we reach final decisions, I hope it will be possible to proceed with legislation in the 1985-6 Programme.

I am copying this letter to the Prime Minister, the Lord President of the Council and Sir Robert Armstrong.

Your ever
Patrick

PATRICK JENKIN

30 OCT 1984





2 MARSHAM STREET
LONDON SW1P 3EB

My ref: J/PSO/17187/84

Your ref:

rec'd 16/4

Dear Quinlan,

Thank you for sending me a copy of the Law Reform Committee's Report on Latent Damage.

We are urgently considering the recommendations of the Committee which as you know are anxiously awaited by the construction industry.

I hope to be able to let you have our considered response very shortly.

I am copying this letter to the Prime Minister, the Lord President and Sir Robert Armstrong.

Your
Patrick

PATRICK JENKIN

The Rt Hon Lord Hailsham of St Marylebone CH FRS
DCL

Housing: POLICY Part 4.

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NBM

CEG

AT 17/10

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

15 October 1984

Dear *Yours*

24th REPORT OF THE LAW REFORM COMMITTEE
LATENT DAMAGE

Thank you for sending me a copy of your letter of 3 October to Patrick Jenkin about the Law Reform Committee Report on Latent Damage.

I am fully content with your proposal to present the Report to Parliament and invite public discussion. As regards the timing of any legislation, I assume that you will submit a bid in the normal way when we invite proposals for legislation in 1985/86; these invitations are likely to be issued early next month.

I am sending copies of this letter to the Prime Minister, Patrick Jenkin and Sir Robert Armstrong.

*Yours
L.H.*

The Rt Hon Lord Hailsham of St Marylebone CH

Housing Policy; Housing Pt 4.



HOUSE OF LORDS,
SW1A 0PW

3 October 1984

NBP
Dr

Dear Patrick:

24th Report of the Law Reform Committee
Latent Damage

- in folder attached to file.

You will be interested to see this copy of the Report which Lord Scarman has submitted to me. It is the result of four years' work by the Committee involving consultation with a wide range of interests on my reference of August 1980,

"to consider the law relating to -

- (i) the accrual of the cause of action, and
- (ii) limitation

in negligence cases involving latent defects (other than latent disease or injury to the person) and to make recommendations."

The recommendations (a summary of which I attach) are based on a compromise between the fundamentally conflicting interests of plaintiffs and defendants. The compromise couples a three-year extension of the normal limitation period, running from discovery (or discoverability), with a long-stop which bars plaintiffs from initiating actions more than fifteen years after the breach of duty. The recommendations extend beyond building and construction cases to all negligence cases involving latent damage.

I believe that both the public at large and the many different professional advisers affected by this important issue should be given time to consider this Report and its implications

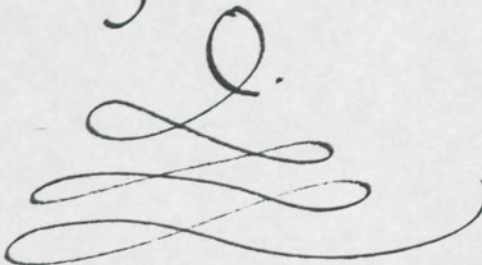
The Right Honourable
Patrick Jenkin, M.P.,
Secretary of State for
the Environment.

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and to express their views to us before we reach final decisions on it. Accordingly I propose (subject to your views and to those of the other recipients of this letter) to present the Report to Parliament very early next Session and to invite public discussion on it.

I hope that any legislation arising out of the Report will be included in the 1985/86 Programme if a space can be found.

I am copying this letter to the Prime Minister, the Lord President of the Council and to Sir Robert Armstrong.

yrs :


From: THE RT. HON. LORD HAILSHAM
OF ST. MARYLEBONE, CH., FRS, DCL.

PART V

CONCLUSIONS AND RECOMMENDATIONS

5.1 The present law is unjust to plaintiffs and defendants. In our view, it requires reform which will take care of the interests of both. Reform is, therefore, bound to be, in effect, a compromise between conflicting interests.

5.2 Suggestions were made to us by some of those whom we consulted for reforms more wide ranging than we have felt able to recommend.¹ We recognise the value of these suggestions and we believe that some of them deserve further consideration. Our terms of reference are limited to "negligence cases involving latent defects" and our recommendations are designed to improve the law of limitation in respect of that class of case.

5.3 Our recommendations can be summarised as follows:—

- (a) there should be no change in the general rule of substantive law whereby a cause of action in negligence accrues at the date on which the resulting damage occurs (paragraph 4.4);
- (b) in negligence cases involving latent defects the existing six year period of limitation should be subject to an extension which would allow a plaintiff three years from the date of the discovery, or reasonable discoverability, of significant damage (paragraphs 4.5–4.9);
- (c) there should be a long stop applicable to all negligence cases involving latent defects which should bar a plaintiff from initiating court action more than 15 years from the defendant's breach of duty (irrespective of whether damage has occurred) (paragraphs 4.10–4.13);
- (d) the effect of the long stop should be to bar the plaintiff's remedy, not to extinguish his right (paragraph 4.14);
- (e) where the plaintiff is under a disability at the "date of knowledge" it should be possible for his action to be commenced within three years of the date that his disability ceases, or he dies, whichever is the sooner; the existence of the plaintiff's disability during the long stop period should have no effect on its duration; but the extension of the limitation period by section 28 of the Limitation Act 1980 in case of disability should remain unaffected by the long stop (paragraphs 4.15–4.17);
- (f) the long stop should not apply to cases of latent damage involving fraud, deliberate concealment or mistake (paragraph 4.20);
- (g) the extended limitation period should run not only against the plaintiff but also against his successors in title (paragraph 4.21);
- (h) the preceding recommendations should be of general application to cases of latent damage and not confined to, say, building, construction or engineering cases (paragraph 4.22);
- (i) our recommendations can be effected by amendments to the Limitation Act 1980 and should be subject to the transitional provisions proposed in paragraphs 4.23–4.26.

¹ See paras. 1.6 and 3.17 above.