



CONSTRUCTION DEFECTS
ALLIANCE

Budget 2022

Submission

to

**Department of Finance
Department of Public Expenditure and Reform
Department of Housing, Planning and Local Government
and Oireachtas members**

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1. Construction Defects Alliance

The Construction Defects Alliance is an informal grouping – which has the support of the Apartment Owners’ Network (AON) – currently involving hundreds of apartment owners and OMCs from almost 100 different locations around the country which are affected by construction defects. The Alliance also has active involvement from some of the professionals who are working with the owners and OMCs concerned.

The Alliance has its origins in the Beacon South Quarter Lobby Group which has been campaigning for the last number of years for action for homeowners affected by defects. Through that Lobby Group’s campaigning work other individual owners and OMCs approached it and got involved in the campaign. Ultimately, as the numbers began to grow, the Construction Defects Alliance was set up in autumn 2019.

The Alliance has one very simple aim – the implementation of the Oireachtas Housing Committee’s *Safe As Houses?* report, which was published in January 2018.

2. Submission Context

2.1 Urgent Problem of Fire Safety

The Programme for Government – published slightly over one year ago – contains important and welcome commitments to tackle the problem of legacy defects – especially fire defects – in the country’s Celtic Tiger-era apartments.

The urgency of taking such action was set out very clearly in early 2020 by recognised fire expert, Eamon O’Boyle, in an article in the *Engineer’s Journal* (bit.ly/2Q9mCix) in which Mr O’Boyle says: “*Fire safety of apartments is one of the many ‘legacy issues’ faced by Government and it cannot be long-fingered until there is a tragedy.*”

In late March 2021, in a welcome development, the Government-appointed Working Group on Defective Homes met for the first time to begin the process of:

- Assessing the nature and scale of the defects issue in Ireland’s apartment and duplex developments;
- Recommending technical solutions for tackling these defects;
- Assessing the costs of such technical solutions;
- Making recommendations to Government on financial solutions.

2.2 Lagging Behind

While the Construction Defects Alliance is pleased that the Working Group is now up and running and recognises the importance of ensuring that its terms of reference are discharged comprehensively, it is clear that the Working Group is lagging behind from a time point of view. The Programme for Government envisaged that the examination of the defects issue would be conducted within 12 months of the Government coming to office – that 12-month period has now elapsed.

In addition to what was in the Programme for Government, the Minister for Housing, Darragh O’Brien TD, said in an interview with The Irish Times’s Jack Horgan Jones, that it was his aim is to have a report from the Working Group before summer 2021 and that the Working Group’s report would be discussed as part of Budget 2022

(<https://www.irishtimes.com/news/ireland/irish-news/state-group-to-examine-cost-of-tackling-celtic-tiger-building-defects-1.4374579>).

Based on the progress made by the Working Group to date and the fact that it is only beginning to undertake the detailed process of assessing the nature and scale of the defects issue, it will clearly not have completed its mandate in time for its recommendations to be taken into account in the forthcoming Budget. However, for

reasons that we will outline below, it is vitally important that Budget 2022 does contain measures to assist owner occupiers and social housing providers who have paid or are paying levies for remediating defects.

2.3 Need to Tackle Safety Risks Now

The vast majority of defective developments that the Construction Defects Alliance is aware of – almost 100 – have yet to commence undertaking remediation works. Many of the OMCs concerned have told us that they are waiting to see what recommendations the Working Group will make and what decisions Government will take on financial solutions before they commence the process of remediation works.

The principal reason for that is that they are afraid that the financial solutions proposed by the Working Group and adopted by the Government might not include a retrospective element. In addition, based on what the Minister has said on the record, they have a clear expectation that there will be measures to assist apartment owners in Budget 2022. So many apartment owners and OMCs have adopted and ‘wait and see approach’ before their remediation works.

As we pointed out earlier, fire expert Eamon O’Boyle has alluded to the potentially tragic consequences of long-fingering the remediation of fire defects. Unfortunately, if there are no measures in Budget 2022 then a continuing deferral of remediation works until there is certainty is what is most likely to happen. So, in order to avoid such long-fingering by OMCs and apartment owners, the Alliance strongly recommends that the Government includes measures for owner-occupiers and social landlords who have paid or are currently paying remediation levies in Budget 2022.

In the Alliance’s view, the Government needs to give a clear signal to OMCs and apartment owners that they will not lose out if they continue with or commence remediation works. It’s important too to remind all concerned that such works are to bring buildings in line with construction standards to ensure the safety of those living in apartments. This fact is often not given a high enough focus in the debate that centres on who is to blame rather than the immediate and important focus of safety.

2.4 Providing Equity and Fairness

Another aspect of the Construction Defects Alliance’s proposals is to ensure a level playing pitch and equality of treatment for all apartment owners in relation to their ability to get State financial support on their remediation costs.

As it stands, commercial landlords, who make up 60% of apartment owners (Mooney, Paul: 2020. *Owners’ Management Companies: Sustainable Apartment Living in Ireland*.

Dublin: Housing Agency and Clúid Housing Association) – including institutional owners and small landlords – can get tax relief on the levies they pay for remediation works whereas owner-occupiers and social landlords cannot. This is clearly unfair to both of these categories of apartment owners.

In addition, the lack of tax relief:

- Exacerbates the financial pressures on owner occupiers, who are having to source and pay an average remediation levy of €15,000 (based on the information available to the Alliance) on top of their mortgage payments, rising service charges (to pay for fire wardens and additional services) and massively increased insurance costs (in some instances up over 700%) due to defects;
- Significantly eats into the housing budgets of housing associations (we know from a number of organisations in the AHB sector that assessments of their remediation costs suggest that they are likely to run into tens of millions of Euros) and local authorities and directly takes money away from the provision of housing for those in need.

2.5 Limited Scope of Application

It's important to make clear that the scope of the measures the Construction Defects Alliance is proposing here is limited in a number of respects:

- The tax reliefs would only relate to 40% of apartment owners – owner occupiers, local authorities and AHBs;
- In turn, the reliefs would only apply to those owners within that 40% who have paid or are paying remediation levies – based on the information available to the Alliance that would be a maximum of one fifth of that cohort (in other words, a maximum of 8% of all apartment owners).

There is another important qualification the Construction Defects Alliance wants to set out which is that these measures are being proposed without prejudice to the recommendations the Working Group makes to Government and the decisions Government arrives at in tackling the apartment defects issue. They are a short-term solution that would enable some level of activity to begin improving safety whilst more comprehensive measures are agreed.

It's also important to make clear that the measures we are proposing here are not necessarily the measures that the Alliance will be proposing to the Working Group for inclusion in the package of measures to tackle the overall issue of apartment defects. The Construction Defects Alliance is committed to the implementation of the redress measures set out in *Safe as Houses?* report

The measures being proposed in this submission are simply designed to:

- Ensure equity and fairness in the short term for all apartment owners who have paid or are paying remediation levies;
- Encourage OMCs and apartment owners to get on with the task now of tackling fire and other structural defects in their apartment complexes rather than wait to see the final report of the Working Group with the attendant safety risks;
- Create confidence amongst apartment owners that the Government is serious about ensuring that apartment defects are resolved in a fair way.

3. Supporting Remediation Works in 2022

As stated earlier, the proposals contained in this submission are designed to address the issues OMCs and owners are facing in 2022 in tackling legacy defects while the comprehensive package of measures is being developed by Government at a maximum cost of €7.3 million during the forthcoming financial year.

3.1 Tax Credits for Owner-Occupiers

In order to ensure that apartment owner-occupiers who have paid levies or are paying levies are not left to take full financial responsibility for the costs of rectifying defects – unlike commercial landlords – the Alliance is proposing that a refundable tax credit – or similar financial benefit – be introduced for such apartment owner-occupiers on their levy payments.

If the tax relief is spread over a five-year period, we would estimate that such a measure would incur an additional cost of a maximum of €4,646,400 to the State in 2022 (see detailed financial workings at this link

https://www.constructiondefectsalliance.ie/assets/files/pdf/tax_breaks_for_owner-occupiers_and_social_landlords_-_budget_submission_2022_revised.pdf)

This estimate is based on the following assumptions:

- That 20% of owner occupiers have paid or are paying remediation levies – our experience in the Alliance is that the reality is one-in-ten or less;
- All of the owner-occupiers concerned would be able to claim tax relief at the marginal 40% rate.

3.2 VAT Rebate for Social Housing Providers

In addition to owner-occupiers, social housing providers – approved housing bodies (AHBs) and local authorities – are the other group that have received no form redress on their remediation levies. While these bodies don't pay income tax like owner-occupiers or corporation tax like companies, they do pay VAT but because they're not businesses they can't claim it back.

Therefore, we are proposing that AHBs and local authorities should be entitled to get a rebate on the VAT contained in their remediation levies (23% on professional fees and 13.5% on construction costs and products).

Again, if the VAT rebates are spread over a five-year period, we would estimate that such a measure would incur an additional maximum cost of **€2,671, 680** to the State in 2022.

Again this estimate is based on the following assumptions:

- That 20% of social landlords have paid or are paying remediation levies – our experience in the Alliance is that the reality is one-in-ten or less;
- All of the social landlords concerned would be claiming a rebate on VAT at the 23% rate – much of it will be at the lower rate of 13.5% which applies to construction costs.

4. Conclusion

The Construction Defects Alliance wishes to thank the Departments of Finance; Public Expenditure and Reform; Housing, Local Government and Heritage – as well as the Ministers at the Departments – and Oireachtas members for the opportunity to make this submission.

We trust that the views expressed will be given due consideration in the deliberations over Budget 2022 and the measures that flow from that.

We submit that the measures proposed should be raised by all in whatever forum is appropriate, in particular with the Department of Housing, Local Government and Heritage.

We would be glad to expand on our proposals at a meeting or in another appropriate forum.