



PROPOSED SCHEME TO REIMBURSE OWNERS AND OMCs FOR DEFECTS REMEDIATION WORKS COSTS

Paper prepared by the Construction Defects Alliance, July 2024

1. Introduction

The Construction Defects Alliance is made up of apartment owners — including representatives of the Apartment Owners’ Network, a number of approved housing bodies (AHBs) and the Not Our Fault group — as well as OMC directors and construction professionals all of whom are committed to the implementation of the Housing Joint Oireachtas Committee report, *Safe as Houses?*.

The Alliance was set up in 2019 to put the implementation of that report on the agenda of all of the political parties as well as the Government emerging from the 2020 general election. Since that election, the Alliance has been working with Government, all political parties and other stakeholders to ensure the delivery of a remediation scheme which ensures that apartment owners are not on the hook for the costs of remediating construction defects.

This paper sets out our proposals as to how the issue of making retrospective payments to reimburse apartment or duplex owners who have paid or are paying towards remediation costs can be managed on a just, equitable and efficient basis.

2. Background

The issue of reimbursing owners through retrospective payments has arisen in the first place because only a tiny number of the original builder/developers have contributed to the costs of defects remediation. On top of that, there have been very few payouts by insurers so the burden of paying for defects remediation has — to date — unfairly rested on apartment and duplex owners.

The injustice of this situation was recognised in the *Safe as Houses?* report which made clear that:

Ordinary owners who purchased in good faith should not be liable for the costs of remediation caused by the incompetence, negligence or deliberate non-compliance of others.

However, the reality is that tens of thousands of these owners are the very people who have been made liable for these costs.

The Working Group on Defects in Housing — set up on foot of the commitment in the Programme for Government to examine the issues of defective housing having regard to the recommendations of *Safe as Houses?* — addressed the issue of reimbursing owners in its 2022 report. It stated that it was satisfied from its deliberations and having regard to information supplied to it that up to 46,000 apartments or duplexes have already been remediated either partially or fully with the owners having paid or currently paying for this work.

Commenting on this situation, the Working Group's report stated:

The Working Group considered the potential of a moral hazard arising, should necessary safety works be delayed or deferred to ensure the ability to avail of any potential remediation support scheme that might come into effect. Such a scenario might give rise to unnecessary risk to health and safety arising from the deferral of important works or where necessary works have only partially been completed within a development. The Working Group considered that the inclusion of a relief for retrospective expenditure on remedying defects could mitigate the risk of such a moral hazard materialising.

The Government in its decision to proceed with the setting up of a remediation support scheme for defective apartments and duplexes on 18 January 2023 'agreed that the principle of retrospection will be provided for, with the details for making retrospective payments to be worked out'.

The Minister in his statement on the Government decision on 18 January 2023 expanded on this decision as follows:

Government have approved the principle of allowing remediation costs already incurred or levied to be covered under the legacy defects scheme, within the scope and defined parameters of said scheme. The details and mechanics of this will be worked out as the legislation is drafted.

The Minister has further stated — in response to questions in the Dáil on 15 February 2024 — that:

The other area I am looking at relates to retrospective payments for people who have already remediated and paid for the remediation. I do not believe I will need to wait for the permanent legislation for that to do be done. I am looking at options to refund, obviously on a whole-of-building basis, hard-earned money that people had to borrow or levies that they paid. Again, it will go back to those who have actually paid for remediation. We envisage about a third of the properties have been remediated already-----

This answer to a Parliamentary Question copper fastens what the Minister made clear, in a welcome contribution at a public webinar on 29 January last, that he envisaged the retrospection scheme being set up on an administrative basis first in 2024 — like the Interim Remediation Scheme — and that it would be incorporated into the legislation when it is published.

In the rest of this paper, the Alliance sets out our views on the qualifying criteria and key requirements that should be applied to such a scheme as well as how it should be administered and managed.

3. Key Principles

The following are a series of principles that the Construction Defects Alliance believes need to underpin the retrospective payments scheme.

3.1 Initial Qualification

To qualify for the scheme, each building or complex has to:

- Have been built within the time period 1991-2013 — in other words the lifetime of the original Building Regulations.
- Have had an assessment carried out by a competent construction professional demonstrating that there have been fire safety, water ingress or serious structural defects in the building or complex.

3.2 Key Requirements

Key requirements for eligibility for the retrospective payments scheme should include:

- Some, or all, of the defects in the building or complex concerned have been remediated and the works have been certified by a competent construction professional.
- An OMC applying for funding under the scheme must demonstrate that it has the support of its members at an extraordinary general meeting for such an application.

- Where an OMC is applying for retrospective payments on behalf of owners, the OMC must open an escrow account into which the retrospective payments will be placed until the monies concerned are transferred to the owners.

3.3 Who gets paid?

In relation to who gets paid under the scheme, the Alliance's view is that:

- As per the Minister's comments in the Dáil on 15 February last, where an individual owner (current or former) has paid for remediation costs — through a levy or other means — the owners in question should be paid back by the scheme via their OMC.
- Where an OMC's Sinking Fund monies have been used for remediation works, then the scheme should replenish that fund.

3.4 What Gets Paid For?

In terms of what costs should be covered by the retrospective payments scheme the Alliance proposes that the following should be included:

- Construction costs for the remediation works including professional fees.
- Additional insurance costs due to the presence of defects.
- Relocations costs during remediation works.
- Storage costs due to remediation works.

4. Applications

All applications for retrospective payments will be made by OMCs:

- On behalf of their member owners who have paid or are paying for defects remediation costs;
- On their own behalf for the reimbursement of sinking fund monies used for remediation works;
- Or a mixture of both.

In relation to OMCs applying for retrospective payments to reimburse their sinking funds or service charge budgets, the following information will be required:

- Company name and registered address.
- Details of the EGM – date, time and resolution empowering the OMC to apply for retrospective payment signed off by the directors.

- Proof that the building or complex had defects (the original assessment by a competent building professional demonstrating that there were defects in the building or complex).
- Certification by a competent professional that the defects in the building or complex have been remediated and certification of the monies spent on same.
- Where an OMC itself is seeking a retrospective payment on its own behalf, then it will have to provide proof of such expenditure.
- Where an OMC is applying for payments on behalf of owners it must list out the owners concerned with the monies owing to them and have proof of these payments available for inspection by The Housing Agency.
- Details of the escrow account into which the retrospective payments for owners will be held pending transfer to the owners.

5. Administration

The Alliance understands that The Housing Agency will be responsible for administering the retrospective payments scheme and we fully support this given the Agency's excellent work on the Interim Remediation Scheme and other remediation schemes.

From an administration perspective we would envisage the following being the main tasks:

- Managing the application process – in particular, getting information out to owners and OMCs so that they can make their applications.
- Verifying applications to ensure that they meet the eligibility criteria and key requirements.
- Managing the payments process to OMCs.
- Also managing an appeals process in relation to payments for OMCs and owners.

6. Next Steps

The Construction Defects Alliance is looking forward to intensively engaging over the coming weeks with Minister Darragh O'Brien, his officials and The Housing Agency so that the retrospective payments scheme can commence before the end of 2024.

Ends.