

LEAKY BUILDINGS – AN UPDATE

Recently the government announced significant improvements to the services available to leaky home owners through the Weathertight Homes Resolution Service ("WHRS"). The changes will come into effect early next year and include:

- a more comprehensive assessment of damage and of remedial work required to fix it;
- a broadened definition of "damage" to include probable as well as actual damage;
- more resources to reduce the time for resolving claims;
- a pilot loan scheme designed for those in the very worst circumstances. (These will be at market rates and only for those who have been declined finance by their banks).

Do the changes go far enough?

In our view, while a significant improvement, the changes do not go far enough and, in particular, the government should have made changes in the following areas:

Limitation Period.

Section 393 of the Building Act 2004 is a "long stop" limitation provision which means that you can not bring a leaky building type claim after 10 years from the "date of the act or omission on which the proceedings are based" So if you discover that your home is leaking say 11 years after it was built or from the date of the issue of the Code of Compliance Certificate in most cases you will be unable to sue. Many of the typical leaky home type houses were constructed in the early to mid 1990's and only now are signs of weathertight issues coming to light. We are aware of several cases where owners face remedial costs of many hundreds of thousands of dollars with no chance of recovery. The 10 year period is unrealistic and unfair (in the UK it is 15 years) and we believe the government should take another look at this issue.

Costs

Legal costs are still not recoverable through the WHRS and we believe they should be. Homeowners are meant to be able to represent themselves however this is simply unrealistic when they are up against developers and local authorities who engage lawyers experienced in this area. In most cases therefore it is more economic for claimants to pursue claims through the court system where at least some of the costs are recoverable.

If you are the owner of leaky home or suspect you might be

Our homes are normally our most expensive asset and it is tempting to bury ones head in the sand if you are faced with a leaky home situation. However because of the limitation issues discussed above it is important that any leak issues are investigated

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promptly and thoroughly as soon as possible. Our civil litigation team is dealing with several such claims is available to help.