

Minister for Housing, Local Government & Heritage,
Department of Housing, Local Government & Heritage,
Custom House
Dublin 1
D01 W6XO

By Email Only
15 June 2021

VERY URGENT

Re: Mica

Dear Darragh,

If you are considering amendments to the Scheme it is vital to ensure that any causes of action which the homeowner may have in respect of the defective materials is assigned to the State as a condition of getting payments. If it is not, then the State will not be entitled to sue those at fault assuming there is a cause of action and it is not statute-barred.

It will also be necessary to include a provision requiring that the homeowner provides all relevant information and full cooperation including a willingness to assist in any proceedings and give evidence.

In normal circumstances claims for breach of contract and/or tort are statute-barred after six years but the six years only begins to run from the date of damage. Identifying the date of damage in a case of this nature is extremely complicated and will in each case require technical evidence. However it is possible that the six years only begins to run from the date when the damage became manifest in some way. This is a matter we can consider in due course.

However a possibility of a cause of action against a third party owner makes it imperative that the scheme is reviewed from a legal perspective to ensure inclusion of any conditions which would enable a cause of action to be pursued against a third party. Given the Statute of Limitations the possibility, if not probability in some cases, that claims may be statute-barred it is vital that the existence of potential claims is assessed as soon as possible so that if there is a basis for a claim and more particularly if there is somebody who is a mark for damages that can be sued (something that could be doubtful at this stage) proceedings are commenced within the limitation period.

Separately, there is mention that the banks are making no contribution whatsoever. While I understand that any banking issues, including the imposition of an liability on the banks may give rise to much wider considerations this is an issue that can be considered if you think it would be of assistance. Banks would have no direct liability in respect of the damage but they are benefiting from the State payments. As these State payments will be voluntarily made, ie without legal obligation, the State cannot at present make any claim for recoupment, of any of the monies paid to homeowners, against the banks on the basis that the banks have benefited from the payments. However the banks will in fact benefit very considerably from these payments in terms of its security and as a matter of legal principle it would not be unfair to require that the banks make some contribution in respect of the

benefit received. For that to happen it would almost certainly be necessary to introduce some legislative provision giving the State the right to seek some measure of recoupment.

As you know I have not yet received any papers in this matter but I thought it important to draw these two matters to your attention immediately. You will understand that because these views are being expressed without sight of any relevant papers they may need to be revised but certainly these are matters that need to be considered urgently in the context of any proposed Scheme or amendment to the existing Scheme.

Best wishes,

Yours sincerely,

Paul Gallagher