

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

BY EMAIL

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Insurance Policy Section
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583

15 October 2019

Dear Sirs,

Re: Public Consultation on Climate Change and Insurance

We note that this public consultation paper seeks in part to address Action 177 under the Government's Climate Plan, which is to 'Review the challenges associated with the availability of property (home and business) insurance, and possible responses to this issue'.

We further note that while the focus of the consultation is primarily on the challenges posed by flooding, the Department has asked respondents to highlight any other climate change issues which may impact insurance costs.

The purpose of this short submission is to highlight the increasing insurance cost to not-for-profit owners' management companies ("OMCs") of managed residential estates, mainly apartment developments.

The mitigation proposal in this submission is that an insurance scheme similar to the *Flood Re* model in the UK be established for OMCs in Ireland. This would reduce insurance costs for OMCs, promote sustainable high-density residential accommodation and compact urban growth, and realise objectives of Government policies on sustainable living, including those in the Climate Action Plan.

1. Insurance for OMCs

1.1. Background about OMCs

OMCs are the collective structures employed by homeowners in managed estates to look after the common areas integral to their homes. Common areas include roofs, external walls, corridors, stairwells, lifts, waste collection points, etc. They are any parts of a managed estate not within the exclusive demise of the individual home, which can be an apartment, a duplex property, or a house.

Homeowners in managed estates use the OMC to pay for insurance of the common areas. The OMC contracts with the insurance provider on behalf of all the owners. The insurance policy is usually referred to as "block insurance". The individual owners pay their portion of the insurance premium via their annual management fee, also known as a service charge.

1.2. OMC insurance cover – challenges

OMCs are facing considerable challenges in the insurance market. Cover is increasingly difficult to obtain. The discovery of fire safety and other latent construction defects in many estates is contributing to a perception of a higher risk profile attaching to the sector. Premiums are seen to be increasing at an unsustainable rate. For large estates in Ireland, the main providers are restricted to a small number of London-based insurers.

Knock-on increases in annual service charges are presenting financial challenges for OMCs. Difficulties in the recovery of historical debts, as well as failures to provide for future non-routine maintenance through sinking funds, are a drag on successful estate management. Cost increases negatively affect the sustainability of apartments, and the attractiveness of higher density residential housing. Rising costs pose barriers to achieving the objectives of Government policies for increased residential densities in urban areas, as set out in Rebuilding Ireland, the National Planning Framework, and the Climate Action Plan.

It is submitted that if national policies on increased residential densities in urban areas are to be realised, the underlying barriers to successful realisation must be addressed. The parlous state of the finances of OMCs is one such barrier. Insurance premiums form a significant portion of OMCs' annual costs.

Reference is made to the recommendations of the independent report commissioned by the Housing Agency and Clúid Housing, entitled "*Owners' Management Companies – Sustainable apartment living for Ireland*"¹. Particular attention is drawn to Recommendation 13 which proposes reform of the law governing insurance for OMCs, to strengthen cover, and improve owners' understanding of risks insured.

2. Submission - adapt UK *Flood Re* model to insurance cover for OMCs in Ireland

We submit that an insurance scheme similar to the *Flood Re* model in the UK be established for OMCs in Ireland. In short, this would provide affordable block insurance to OMCs that cannot currently secure cover, or that face prohibitively expensive premiums. The scheme would extend beyond flood cover, to capture risks such as fire, public liability, etc.

We refer to Chapter 9 of the Consultation Paper, and in particular the following commentary in Chapter 9.1.1 about the criteria for inclusion in the UK *Flood Re* scheme-

"Apartment blocks are excluded due to the freehold being owned by a management company resulting in them being considered commercial properties."

It is important to note that the model of property title for apartments in Ireland is not the same as that in the UK.

In Ireland, apartments are sold on the basis of long leases, e.g. 999 years. These long leases are effectively freehold in nature. There is an absolute right for the reversionary interest in the long lease for each apartment to be held by the OMC for the development. However, as noted in section 1.1 of this submission, the OMC is made up of and it is owned by all of the apartment owners.

¹ <http://www.housingagency.ie/sites/default/files/2019-06/HA19011%20OMC%20report%20p1-100%20onlineV3.pdf>

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In contrast, in the UK the ownership of the freehold or reversionary interest is not tied to the apartment owners, nor to an OMC controlled by the apartment owners. Instead, the freehold interest in an apartment block is held by a third party landlord, often the original developer, or other commercial property company. In this way in the UK the freehold interest in the block may be sold to other parties. The freeholder of the block retains the right of forfeiture over the apartments in the block. In the UK there is commercial value in the common areas, whereas in Ireland there is no commercial value in the reversionary interest in the common areas.

From the foregoing it may be seen that in Ireland OMCs and apartment blocks are not commercial properties. The OMC is a not-for-profit entity. It is comprised of all the apartment owners, and is a legal mechanism by which to hold title, and deal with the complexities of fractional ownership in a multi-unit development. This may be contrasted with the UK model, where the management company is owned by a for-profit commercial landlord, which may dispose of its interest, and has power of title over the apartments.

It would therefore be important that any proposals for reform of insurance for apartments in Ireland would not simply replicate the UK position. Rather, proposals should recognise that in Ireland OMCs are not commercial entities, and the blocks they control and manage are residential and are not commercial properties. A scheme in Ireland mirroring the *Flood Re* scheme should therefore be open and available to apartment blocks.

It appears to us that comments at the conclusion of Chapter 9.1.1 in relation to the unfeasibility of such a scheme in Ireland may require further consideration in the context of apartments. The comments do not reflect the position that much of the block insurance cover for Irish apartments already issues from the UK market. This should mean that reinsurance should not be as difficult to acquire as may initially be thought. The impacts of a so-called “no-deal” Brexit will also require consideration.

3. Conclusion

Our submission is in line with the objectives of Government national policy plans and statements.

We trust our comments will be given due weight in the Department’s work. We would be glad to expand on any of the matters raised by way of further correspondence or meeting.

Kind regards,

Yours faithfully,

*[*By email and bears no signature]*

Bryan Maher
Director