

PERTH AND KINROSS COUNCIL**Housing and Health Committee – 4 November 2015****UPDATED COMMON REPAIRS POLICY****Report by Director (Housing and Community Care)****PURPOSE OF REPORT**

This report seeks approval for amendments to the Council's Common Repairs Policy.

1 BACKGROUND / MAIN ISSUES

- 1.1 Ensuring we have well maintained, secure, sustainable housing is key to providing attractive, well managed neighbourhoods that support our communities and economic growth. Attractive neighbourhoods enable personal and community aspirations. The Common Repairs Policy provides an essential framework to support the ongoing maintenance and improvement of the Council's housing stock and privately owned housing for tenants and residents within our estates.
- 1.2 Housing and Health Committee approved the current policy for common repairs (Appendix 1) for full implementation on 15 January 2015 (15/49 Common Repairs Committee Report). The purpose of the policy is to make sure Housing services have a consistent and clear approach managing common repairs and improvements.
- 1.3 The Council frequently faces problems where individual owners refuse to participate in, and pay their share of the costs of common repairs. Housing Repairs and Improvement staff consult regularly with owners and try to secure their agreement, but sometimes this is difficult and prolonged and can cause delays in carrying out the work.
- 1.4 The Tenement Management Scheme established in terms of the Tenements (Scotland) Act 2004 ("TMS") is applied by staff in order to carry out improvement or repair work to common parts in multi tenure blocks. It should be noted that it is necessary to have the agreement of a majority of the owners in a block before common repair works can go ahead and this can sometimes be to the detriment of the condition of the building.
- 1.5 From 2013 to date the TMS has been implemented on 97 occasions, successfully securing the agreement of other owners to common repair works going ahead and the payment of their equal share of costs.
- 1.6 The Tenements (Scotland) Act 2004 contains a provision that will allow the Council to pay any missing share or shares of common repair costs, where

owners are unwilling or unable to pay their share of these costs or cannot be found. The Council can use these powers, if it wishes to do so, to make such payments and to enter into arrangements with the owners to recover the money in instalments.

- 1.7 The Council can cover its administrative costs for this, but can't charge interest on the missing share or shares which it has paid. If the Council decides to use this power, it will secure the sum repayable to it by registering a repayment charge in the Land Register against the title of the relevant flat or flats.
- 1.8 Guidance from HMRC means that VAT is only able to be recovered for an entire contract where the charges for the common repairs are considered to be in relation to a non-business activity. This would fall outside the scope of VAT. Works to common parts that are required to bring the property up to, or to maintain, the repairing standard are considered to be non-business activity.
- 1.9 The majority of common repairs undertaken are to meet the repairing standard and will be considered as non-business activity and therefore outside the scope of VAT. However there will be types of work where VAT will need to be applied. These are for major improvements e.g. upgrading of an existing controlled door entry system, as this will be considered to be business activity.

2 PROPOSALS

The report seeks approval from Committee for the following amendments to the Common Repairs Policy:

- 2.1 Discretion to pay any missing share or shares of common repairs costs where the private owners are unwilling or unable to pay their share(s) of the cost of common repairs, or where the private owner cannot be found.
- 2.2 The Council will secure the sum repayable to it by registering a repayment charge in the Land Register against the title of the relevant flat or flats.
- 2.3 VAT will now be applicable to types of works that are considered to be business activity.

3 CONCLUSION AND RECOMMENDATIONS

- 3.1 The above amendments will ensure the Council consistently applies HMRC guidance relating to the charging of VAT for common repair works. In line with recent legislative changes the Council can now apply discretion to the payment of missing shares allowing common repairs to go ahead where a private owner is unwilling or unable to pay their share(s) or where the owner cannot be found.
- 3.2 The Committee is asked to approve the amendments to the Common Repairs Policy outlined in Section 2 above.

Author(s)

Name	Designation	Contact Details
June Beverley	Service Manager - Housing	JBeverley@pkc.gov.uk 01738 476321

Approved

Name	Designation	Date
John Gilruth	Director (Housing and Community Care)	8 October 2015

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	Yes
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	Yes
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	Yes
Legal and Governance	None
Risk	None
Consultation	
Internal	Yes
External	None
Communication	
Communications Plan	None

1. Strategic Implications

Community Plan/Single Outcome Agreement

- 1.1 The Perth and Kinross Community Plan/Single Outcome Agreement 2013-2023 and Perth and Kinross Council Corporate plan 2013-18 have five concurrent outcomes which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. The following are relevant to this report:

- Promoting a prosperous, inclusive and sustainable economy.
- Supporting people to lead independent, healthy and active lives.
- Creating a safe and sustainable place for future generations.

Corporate Plan

- 1.2 Proposals contained in this report address the following Corporate Plan Priorities:

- Promoting a prosperous, inclusive and sustainable economy
- Supporting people to lead independent, healthy and active lives;and
- Creating a safe and sustainable place for future generations.

2. Resource Implications

Financial

- 2.1 Resource implications arising directly from this report are contained within the HRA Capital Investment Programme.

Workforce

- 2.2 There are no direct workforce implications regarding this report.

Asset Management (land, property, IT)

- 2.3 There are no asset management implications regarding this report.

3. Assessments

Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 The proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:
- (i) Assessed as **relevant** for the purposes of EqIA;
 - (ii) Equalities monitoring of private owners engaging with the Council on common repairs is required as part of the performance monitoring of the new policy;
 - (iii) The policy requires the Council to assist owners from across all equality groups to access financial advice and assistance to fund their contribution to the cost of common repairs.

Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals. However, no action is required as the Act does not apply to the matter presented in this report. The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

- 3.4 These proposals meet the following sustainability criteria;
- Where possible, using materials from sustainable sources.

- Energy conservation through improved insulation measures.
- More efficient heating systems.
- More efficient lighting systems.

Legal and Governance

- 3.5 The Head of Legal Services has been consulted and there are no direct legal implications of this report.

Risk

- 3.6 The Housing and Community Care Senior Management Team regularly review capital monitoring reports that highlight individual project progress and risks.

4. Consultation

Internal

- 4.1 The Head of Legal Services has been consulted on this report.

External

- 4.2 The Tenant Report Panel have been consulted on this report and noted that for the sake of protection and management of tenant's safety and properties they commend these proposals.

5. Communication


- 5.1 No direct communication issues with regard to this report.

2. BACKGROUND PAPERS

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

3. APPENDICES

Appendix 1 to this report is the Common Repairs Policy.



COMMON REPAIRS POLICY AND PROCEDURE

(FOR MIXED TENURE FLATTED
PROPERTIES)

Revised November 2015

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Revised Common Repairs Policy
Summary of Report 4 November 2015 to
Housing and Health Committee

Status	Existing Policy introduced in January 2015
Scope	All mixed tenure flatted properties within previous Council stock
Reason for amendments	To ensure that there is a consistent and clear approach to common repairs and improvements, managed or carried out by the Housing Service.
Key Points and amendments	<ul style="list-style-type: none"> • VAT will be applicable to repairs and improvements considered as business activity. Updated in Section 7 - Page 8. • Completion of Works – clarified by including an update on the sign off process. This now includes the Project Manager and/or Planned Maintenance Co-ordinator as being responsible. (Section 11 - Page 10) • Inclusion of section on 'missing shares' and how the Council will deal with this situation. This has been included in Section 11 – Page 11.
Next Steps	<ul style="list-style-type: none"> • Implementation of amended policy and operational procedures in November 2015

SECTION 1

COMMON REPAIRS POLICY

1 Introduction

Since the introduction of the Right-To-Buy legislation in the early 1980's, approximately 10,000 properties have been sold to sitting tenants. Many of these have been subsequently re-sold to new private owners. As at March 2015, Perth and Kinross Council still owned approximately 7,415 affordable homes for rent, including a high percentage of flats. This has resulted in clusters of mixed-tenure housing blocks across the area.

As landlord of the affordable homes in these mixed-tenure blocks, the Council has a vested interest in their repair and maintenance, including the replacement of essential building elements such as roofs, fascia and soffits. Seeking the engagement and co-operation of the owners in the blocks is essential if the value and quality of these assets is to be preserved for the mutual benefit of both parties.

This policy sets out the actions the Council will take in order to try to secure the agreement of owners for common repairs, maintenance and improvement in mixed-tenure blocks where we own one or more properties or have any other interest in the repair and maintenance including any work required within the curtilage of the building.

2 Context

The difficulties experienced in Perth and Kinross are very similar to those being experienced by most local authorities and relate to the following circumstances:

- Common repairs where there are owners in blocks comprising from four to ten flats or multi-storey property – this particularly relates to work needed to repair communal doors, windows, internal close areas and most commonly repair or replacement of door entry systems to improve security measures;
- Structural repairs or work being proposed as part of our Capital Investment Programme, to upgrade or replace elements of the external fabric, such as the external walls, roofs, doors, fascia, soffits and rainwater goods which are classed as common repairs;
- Repairs within the curtilage of the building where there are a mix of owners and tenants, this includes, footpaths, steps etc.

- **It should be noted that the Policy applies only to flatted properties and not to terraced, semi-detached or detached properties, as these do not generally have common parts.**
- It should be noted that under the scope of the Tenement Management Scheme the definition of 'maintenance' includes repairs and replacement (the installation of insulation), cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement building, but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance.

Problems arise where owners are unsure or refuse to participate in, and pay their share of the costs of, repairs to the common parts and areas. Staff spend a great deal of time consulting owners and trying to secure their agreement and this can, and does, cause delays in carrying out the work. Tenants and owners can often be left dissatisfied with our actions. However, the rights of owners must be respected and the Council must act properly and lawfully in dealing with issues relating to property which it owns in common with others.

3 Objectives and Principles

The specific objectives underlying the Common Repairs Policy are:

- To provide clear information on how we manage common repairs in mixed-tenure properties;
- To comply with legislation and good practice in respect of common repairs;
- To explain how the Tenement Management Scheme (TMS) operates;
- To outline the planned approach by the Housing Repairs and Improvement Service (HRIS) to communication and engagement with owners on common repairs;
- To explain how the policy will operate through detailed procedures and practices applied uniformly across the service;
- To explain the rights and responsibilities of the Council and owners in respect of common repairs;
- To ensure that the policy complies with our Equal Opportunities Policy;
- To make the policy and other documents on common repairs available in different languages and other formats such as large print, audio and Braille; and
- To ensure that the management of common repairs is continuously improved by review, monitoring and feedback from customers

4 Legal Framework

The organisation of common repairs and general property maintenance in mixed tenure property within any multi-owned property is based upon the shared legal obligations that flow from shared ownership. Within any block of flats, or other multi owned property, there are common parts such as roofs, stairs, garden area and external walls, which are normally the joint property and responsibility of more than one, or all, owners.

The title deeds granted by the Council under the RTB specify each owner's responsibility for the upkeep, management and maintenance of the common parts. This policy seeks to make provisions for the management of such repairs or renewals.

Where the title deeds for all the flats in a block are silent, incomplete or inconsistent in setting out how the responsibility for common repairs is to be shared among the flats the responsibility of owners is determined by the Tenements (Scotland) Act 2004 ("the 2004 Act"). The 2004 Act clarifies the common rights of owners of flats in tenement buildings which are in separate ownership and sets out rules for managing common repairs where the title deeds do not specify procedures on how decisions may be reached to carry out repairs and maintenance. The 2004 Act establishes the Tenement Management Scheme (TMS). This is a default scheme which ensures every tenement has proper rules for maintenance and management of common repairs where this is not provided for in the title deeds.

The Council uses the TMS for managing the majority of common repairs carried out in mixed tenure blocks. This is because the title to the Council-owned properties within mixed tenure blocks is the original title granted in favour of the local authority at the time when the land for the entire estate (e.g. Letham or North Muirton) was purchased. There are no individual titles for the Council-owned properties, setting out liability for common repairs, as there are for those which have been sold to tenants. This means that, when read together, the title deeds for most mixed tenure blocks present an incomplete picture.

Title deeds are generally silent on improvements. This policy makes additional provisions for the procedure to be followed for improvement works. It should be noted that the 2004 Act and the Tenement Management Scheme do not deal with improvements, unless these are reasonably incidental to repairs.

Where shops and commercial properties form part of the block, the title deeds may refer to the use of rateable values to apportion the costs of repairs among the owners of both commercial and residential properties. There will still be instances when an incomplete picture is presented as described above.

5 Common Repairs

Owners are responsible for repairs and improvements to their individual flat in a tenement or block. Owners are also responsible for a share of the cost of the maintenance and repair of the common areas or parts of the building. The common parts or areas include:

- Foundations and outside walls;
- Chimneys, stacks and vents;
- The close and staircase;
- Bin stores and back courts;
- The roof;
- Gutters, downpipes and drainage system;
- Door entry system;
- Common paths.

If the common areas of the building need to be repaired, every owner who is entitled to use that common area must pay their share of the cost of the repairs.

We must consult owners in a block about any common repairs or improvements we are proposing and will always try to get their agreement. However the Tenements (Scotland) Act 2004 enables common repairs to be carried out if a majority of the owners in the block agree to the work and after those who are not in favour of the work have been given the opportunity to appeal and the appeal process has taken its course. In mixed tenure blocks, it is likely that it will be the Council which takes the initiative in organising and managing repairs, although any owner can do this.

6 Engagement with Owners – Our Standards

We are committed to the highest standards of customer engagement in all our repair and maintenance programmes and, as well as the specific steps set out in the following paragraphs, we will ensure that we contact, engage and communicate with owners at every stage.

We will make all our communication, by letter, by telephone, by email and by personal contact with our staff, clear and unambiguous about every aspect of each contract and give owners every opportunity to ask questions and receive clear answers.

7 Tenement Management Schemes (TMS)

The Council will make use of the TMS set out in the 2004 Act, to manage common repairs proposed by the Council in mixed tenure blocks. Appendix 1 – Tenement Management Scheme: Basic Procedure sets out how we will manage this.

Where the Council are proposing to carry out common repairs and maintenance to a block of flats, we will first instruct the Head of Legal Services to check the relevant title deeds and advise us as to the responsibility of the owners in the block for the common parts.

We will then write to each of the relevant owners not less than 12 months in advance informing them about our plans and our intention to use the procedure set out in the TMS to manage the programme of work in their block, enclosing a guide explaining how it works. We will inform all tenants and private owners that our staff will be surveying the block to prepare the schedule of work required.

Where possible we will also give owners an estimate of the cost of the repairs, with a cautionary note that the final cost may be higher or lower.

The Council is able to recover the VAT for the entire contract where the charges for the Common Repairs are considered to be in relation to a non-business activity falling outside the scope of VAT. Works to common parts which are required to bring the property up to, or to maintain, the Scottish Housing Quality Standard are regarded as a non-business activity. Where works of that nature are needed, we can advise owners of the saving in VAT which they will achieve by agreeing to allow the Council to arrange for the work to be done. This saving would not be made if any owner other than the Council were to organise the work.

All other improvements or works that are considered as business activity will have VAT applied.

When we have prepared the contract and appointed a contractor, we will

- send a further letter 12 weeks in advance to inform each owner that we will be using the TMS to manage the project
- We will explain the work which will be carried out, how long it is likely to take and each owner's share of the cost.
- We will also enclose a voting paper asking each owner to vote for or against the work proposed with a closing date for receipt of their vote.
- We will also enclose another copy of the TMS guide.

We can only proceed with the works with the consent of the owners of a majority of the flats in the block, which includes the Council. This is known as a 'scheme decision'.

We will arrange meetings with owners where the repairs are more substantial or part of a larger programme of improvement works, for example involving more than one block across a specific neighbourhood. We will include this information in the letter.

We will contact and/ or visit any owner who has not returned their voting slip by the closing date as a matter of urgency and use our best endeavours to get their decision.

We will confirm the result of the vote in writing to all the owners in the block usually within 10 working days of the closing date informing them about the scheme decision.

Where a majority have voted in favour we will also inform each owner about

- The repairs which will be carried out;
- The cost;
- The contractor's name and contact number; and
- A named Council contact.
- The right of any owner who does not agree with the scheme decision to apply to the sheriff to have it set aside.

Owners can appeal to the Sheriff Court against the scheme decision within 28 days. Work cannot start until this period has expired and it has been confirmed by the Sheriff Clerk that no application to annul the decision has been received by him. If an application has been made, the work cannot be started until the application has either been withdrawn by the applicant or rejected by the Court and any further appeal has been unsuccessful. If the majority decision is not to do the work and an application to have that decision set aside is unsuccessful, the work cannot be done at all and further efforts would have to be made to try to persuade owners of the need for the work.

It should be noted that the Council is in the same position as any other owner as regards the management of common repairs in a mixed tenure block and it is open to any owner to put repairs in hand, provided that the procedure set out in the TMS is followed.

8 Multi-storey flats

In April 2014 we introduced a Factoring Agreement in our multi-storey flats for residents who own their flats. Under the agreement owners pay an annual management fee of £20. We can instruct repairs and maintenance up to an individual shared cost of £50. We must secure the agreement of the majority of owners for common repairs and maintenance above £50, using the TMS procedure.

9 Emergency repairs

Where emergency common repairs or maintenance are required, particularly if a repair directly affects a Council-owned property, we can carry out the work without the agreement of the other owners and then recharge.

It should be noted, however, that the 2004 Act defines emergency work as work which needs to be done to prevent damage to any part of the tenement or in the interests of health and safety and **where there is no time to get a scheme decision organised**. We will write to owners informing them of their responsibility for their share of the costs involved.

The title deeds of sold properties specify that other owners in the block, which includes the Council, may take access, to inspect, maintain, repair and renew their property and the common areas/ parts. Where the Council needs to take access to adjoining property, we will always give owners reasonable notice when we ask for access to their properties.

10 Improvements

If we are proposing to make improvements, we will generally need every owner in the block, and not just the majority, to agree before we can carry on with the work, because they will need to meet their share of the cost of the improvement and its future maintenance. We will consult owners by organising a meeting well in advance of the project to explain what work we are proposing, the estimated costs and a timetable to complete the project.

11 Invoicing arrangements/ Financial assistance for owners

Within six weeks from the date the work has been completed and signed off by the Project Manager or Planned Maintenance Co-Ordinator, the Council will send an invoice to each owner for his/her share of the costs. The TMS requires each owner to pay an equal share of the total cost of the repair to the block.

The Council has standard terms for invoices, which is settlement within 30 days of issue. In most cases owners will have had a significant period of time which to save funds to pay for the works being carried out and the Council will expect the invoice to be paid within the 30 day term.

It is recognised that in exceptional circumstances some owners may experience financial hardship. Where appropriate the Council's Sales Ledger Team will discuss a reasonable repayment plan with each owner. The Council's debt recovery process will deal with any defaults, which include the recovery of any monies due in accordance with Scots Law. This may also include when an owner refuses to pay their share of costs, the registration of a Notice of Potential Liability for Costs against the title of the defaulting owner. This will not prevent the property from being sold before the debt to the Council has been repaid, but it is likely that a purchaser will insist on

settlement of the outstanding sum to discharge the Notice, before proceeding with the purchase. At the same time, the debt recovery process should commence to ensure that the Council does not lose its ability to recover the money through the passage of time.

The Tenements (Scotland) Act 2004 now contains provisions which allow the Council to pay any missing share or shares of common repair costs, where owners are unwilling or unable to pay their share of these costs or cannot be found. The Council can use these powers, if it wishes to do so, to make such payments and to enter into arrangements with the owners to recover the money in instalments.

The Council can recover its administrative costs for this but cannot charge interest on the missing share or shares which it has paid. If the Council decides to use this power, it has the advantage of enabling the Council to secure the sum repayable to it by registering a repayment charge in the Land Register against the title of the relevant flat or flats.

12 Planned Maintenance

The Housing Repairs and Improvement Service carries out a substantial programme of planned/ cyclical maintenance to around 1200 properties a year, including blocks which are mixed tenure. This work involves painting closes and minor repairs to rhones and gutters. We use the TMS process described in Section 8, to source the agreement from other owners within the block before carrying out planned maintenance works. Again the majority of owners within the block must agree with the works going ahead and to pay their equal share of costs before any work can commence.

We will write to owners whose properties are included in a programme, in January each year informing them what work we propose to do in their block and how much it will cost them. We will manage the work using a TMS and will enclose a voting slip and guide to the TMS process. If all the owners in the block agree, the work will start from April each year.

13 Appeals

Any owner who is dissatisfied with a scheme decision may apply to the Sheriff Court to have the decision set aside within 28 days of being notified about the decision. There is a further right of appeal on a point of law within 14 days of the Sheriff Court's decision. Repairs to common parts cannot be commenced until the appeal process has run its course. If a majority decision to carry out work is set aside by the Court, the work cannot be done.

14 Performance Monitoring

In order to comply with its service commitments, we will monitor the application of this policy as follows:

- number of occasions on which the TMS scheme is used
- number of improvements completed; [Note that, unless these are reasonably incidental to repair work, the consent of all owners will be required].
- cost of common repairs;
- payments recovered from common repairs;
- number of repayment plans;
- management of repayment plans;
- number of occasions on which debt recovery process commenced
- household characteristics such as age, disability, ethnicity and gender;
- number of disputes and their outcomes
- customer satisfaction in the processing of common repairs
- the number of applications to the Sheriff Court to have scheme decisions set aside

15 Policy review

The Common Repairs Policy will be reviewed every two years to ensure it complies with the law, good practice and best value.

Glossary

Capital Investment Programme	The programme through which the Council funds and organises major improvements and repairs to its housing stock.
Common parts or areas	Parts of the tenement or block of flats that are not within the boundaries of individual flats but are owned jointly by two or more owners in the tenement or block.
Common repairs	Repairs to the common parts or areas of a building for which all the owners of the relevant common parts or areas are responsible.
Factoring agreement	An agreement through which the Council as property manager provides owners of residential properties in blocks of flats (including multi-storey flats) with services such as managing repairs, district (communal) heating and servicing and maintenance of lifts, emergency lighting, fire alarm and detection equipment and firefighting equipment and recovers the costs of these services from the owners.
Scheme decision	A decision taken by the owners of a majority of the flats in a tenement or block of flats relating to repairs to the common parts.
Scottish Housing Quality Standard	A standard introduced by the Scottish Government in February 2004 as a measure of housing quality in Scotland which all local authorities and social landlords must meet by 2015.
Tenement Management Scheme	The management scheme contained in the Tenements (Scotland) Act 2004 which the Council uses to manage common repairs in mixed-tenure flatted properties.
Title deed	A legal document registered in the Register of Sasines or the Land Register which states who owns a property, and sets out the rights and obligations attaching to the property.

