



# Common Repairs Policy





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<b>Capital Investment Programme</b>	The programme through which the Council funds and organises major improvements and investment in its housing stock.
<b>Balustrades</b>	The railing system that encloses one or both sides of a staircase.
<b>Gable Wall</b>	The whole end wall of a building or wing having a pitched roof.
<b>Common Parts or Areas</b>	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.
<b>Common Repairs</b>	Repairs to the common parts or areas of a building for which all the owners of the relevant common parts or areas are responsible.
<b>Factoring Agreement</b>	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.
<b>Prescribed Debts</b>	Where debts are written off, normally after a 5 year interrupted period.
<b>Scheme Decision</b>	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.
<b>Solum</b>	The area of ground that lies inside the walls or foundations of a building.
<b>Tenement Management Scheme</b>	The management scheme contained in the Tenements (Scotland) Act 2004 which the Council uses to manage common repairs in mixed-tenure flatted properties.
<b>Title Deed</b>	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.

# 1 Introduction



Across Perth and Kinross there are 795 mixed-tenure blocks, where there are people renting flats from the Council and those who bought their flat under the Right to Buy (or from someone who had already bought their property from the Council).

The Common Repairs Policy relates to flats in these mixed-tenure blocks where the Council still has a vested interest. Problems often occur where owners are unsure or refuse to participate in, and pay their share of the costs of, repairs to the common parts and areas.

All properties were sold with an equal share of the responsibility for the repairs and maintenance of common parts, ie roof and roof space, rhones/downpipes, external walls, door entry, stairwell etc.

The Council has the same legal obligation as other owners with regards to the management of common repairs. The responsibility is equally shared and any owner can take the lead on repairs.

We are committed to working with owner occupiers to provide good quality homes to our communities. All properties require

repair and maintenance. In tenement buildings, it is important that all owners are aware of potential maintenance/defects.

This policy will state how these properties can be repaired and also how to ensure that the property is properly maintained to reduce the potential for high cost repairs in the future. The Council has an interest in the repair and maintenance of all mixed-tenure blocks.

It is essential that owners in multi-tenure blocks co-operate with the Council. Working with owners through engagement and having their co-operation means that the value and quality of these assets can be preserved for the mutual benefit of both parties. We use the Tenement Management Scheme, where title deeds do not state who is responsible for common repairs.

This policy sets out the actions the Council will take in order to try to secure the agreement of owners for common repairs. This is for maintenance and improvement in mixed-tenure blocks where the Council own one or more properties in the block.



## 2 Context



**This policy only applies to flats and not terraced properties. This is due to terraced properties not sharing common parts.**

The legal 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 occur where owners are unsure or refuse to participate in, and pay their share of the costs of, repairs to the common parts and areas.

However, to try and resolve this problem we, spend a great deal of time working with owners trying to secure their agreement. This can, and does, cause delays due to the legal timeframe before we are able to carry out work.

In some cases, the Council, tenants and owners can be left unhappy with the outcome of this process. However, we will always respect the rights of owners and will ensure that any issues are managed.



### 3 Objectives and Principles



The tables below show the specific objectives and principles of the Common Repairs Policy.

<b>Our Objectives</b>
To meet current and future requirements of the law and good practice and explain how the Tenement Management Scheme works.
Explain the rights and responsibilities of the Council and homeowners.
Provide clear information to tenants and owners on how we manage and charge for common repairs in mixed-tenure properties.
To make the policy and other documents on common repairs available in different languages and other formats such as large print, easy read, audio and Braille, in line with our Equal Opportunities Policy.
To ensure that the management of common repairs is continuously improved by reviewing, monitoring and feedback from customers and staff.

<b>Our Principles</b>
Tenants, homeowners and staff are involved and consulted in the development of the service and its operational procedures.
The service that we give to tenants and homeowners is continually improved through monitoring and feedback.
Our communication with tenants and owners is always clear, appropriate, easily understood and easily accessible in line with our Equal Opportunities Policy.
Our staff are supported by ongoing training.



## 4 Legal Framework



Section 27 and Schedule 4 of the Housing (Scotland) Act 2001 and the Scottish Secure Tenants (Right to Repair) Regulations 2002 requires the Council to include basic repairing obligations in their Scottish Secure Tenancy Agreements.

The organisation of common repairs, and general property maintenance matters, within any multi-owned property is shared between all owners and based on their shared legal obligations. Within any block of flats, there are communal parts such as roofs, stairs, garden area and external walls, which are normally the joint responsibility of all owners.

Rules detailing owners' specific responsibilities for the upkeep, management and maintenance of the common elements are normally found within the title deeds.

Although title deeds granted by the Council specify liabilities and the Council can currently carry out common repairs and recharge as per the deeds, the deeds do not provide a decision-making process for all owners. The Tenement Management Scheme applies not just to privately-owned tenements where the deeds are deficient, but to mixed-tenure tenements.

The Tenements (Scotland) Act 2004, sets out the Tenement Management Scheme (TMS) and shows the steps that owners need to take when making decisions which affect all owners about maintaining and repairing common parts. These rules can be used if your title deeds don't specify how decisions should be made, or if different owners' title deeds say conflicting things.

The title deeds are generally silent on improvements. This policy seeks to make provisions for the procedure to be followed for improvement works.

For more information on how the Tenement Management Scheme works in Perth and Kinross, please see [Section 7](#).



## 5 Common Repairs



Owners are responsible for repairs and improvements to their own property. Where owners live in a mixed-tenure block they 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 are:

- *the roof - which includes all slates or tiles, timbers, the loft space, roofing felt, flashings, leadwork, gutters, parapets, chimney heads and chimney stacks;*
- *external stonework (where this is defined in the title deeds), roughcast, brickwork and gable ends (where the tenement is not adjoined by another tenement);*
- *downpipes;*
- *the rising cold water main pipe on the homeowners of the building;*
- *the common close and staircase including steps, bannisters and balustrades;*
- *the front steps and any porticos or decorative entranceways;*
- *external steps, balustrades and wrought iron works;*
- *a controlled entry door and common electrical circuitry;*
- *close tiles and/or plasterwork;*
- *a rear close door or gate, any stairs leading to the back court and any rear close access areas;*
- *all parts of the back court including fences, railings, gates, bin stores or bin shelters, common drying areas including washing poles, grassed or earthed areas, gravel beds and hard standing areas, retaining walls;*

- *some (but not all) front garden areas;*
- *drains and underground pipes;*
- *the solum and foundations;*
- *gable wall (unless shared with adjacent tenement where both sets of tenement owners have to take responsibility).*

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.

### Owner-Led Repairs

All homeowners have the right to instigate a common repair. In such circumstances:

- *homeowners should supply a minimum of 3 quotes for major repairs (eg roof replacements, chimney repairs) or 2 quotes for minor repairs (eg fence replacement) to the Housing Repairs Team. However, discretion can be used by the council, depending on the repair;*
- *contractors should provide evidence that they have public liability insurance;*
- *the preferred contractor will be selected based on best value for homeowners and the Council and suitability;*
- *the selected contractor must complete a contractor's declaration form confirming adherence to health & safety guidelines and quality of work guarantees;*
- *the lead owner is responsible for paying the contractor and recovering shared costs from other affected owners.*



## 6 Engagement with Owners - Council's Standards



The Council is committed to working with our tenants and owner-occupiers, in all our repair and maintenance programs.

The Council must work with 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 as described in **Section 5**, any owner can do this.

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



# 7 Tenement Management Schemes (TMS)



The Tenement Management Scheme sets out the steps that flat owners need to follow when making decisions on maintaining and repairing common parts. This is used where the title deeds don't specify how decisions should be made, or if different owners' title deeds say conflicting things.

Any decisions made under the TMS are known as '*scheme decisions*'. Unless the building's title deeds say otherwise, flat owners can use the rules set out in the TMS to make scheme decisions about:

- *carrying out maintenance work, including repairs and replacements, cleaning, painting, gardening and other day-to-day tasks;*
- *delegating power to a manager to inspect the building or make decisions to carry out maintenance;*
- *arranging inspections of the building to decide whether maintenance work is required;*
- *arranging insurance for common areas;*
- *authorising any maintenance of scheme property already carried out by an owner;*
- *installing a new door entry system;*
- *excusing an owner from paying a share in maintenance costs;*
- *changing or taking back any previous scheme decisions.*

The Tenement Management Scheme (TMS) sets out the legal procedure to be followed by any owner (PKC or private) within a block for the making of scheme decisions. This is on the basis that each owner has one vote and on a majority rules basis.

The Council is able to recover them for VAT where the charges for a common repair is considered to be in relation to a non-business activity, falling outside the scope of VAT.

Work to common parts required to bring the property up to, or to maintain, the Scottish Housing Quality Standard are regarded as non-business activity. Where works of this type are needed, we advise owners of the cost saving which they will receive, by agreeing to the Council arranging 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. For example, administration costs for controlled door entry

## The Voting Process

Any decisions that are made are done through a voting process. For the work to go ahead there needs to be approval from the majority of the owners in the block (this includes the Council).

Where the Council is proposing to carry out common repairs and maintenance to a block of flats, we will:

- *check the relevant title deeds and confirm responsibility for costs;*
- *write to owners confirming the scope of works, estimated costs and enclose an owners' guide to TMS;*
- *follow the TMS voting process and timescales, allowing three weeks for voting slips to be returned.*

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 aim 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.



## **Full Agreement**

Where there is 100% agreement each owner and tenant will be informed about:

- *the repairs that need to be carried out;*
- *the cost;*
- *the contractor's name and contact number, and a named Council contact.*

## **Majority Agree**

Where a majority vote in favour, each owner and tenant will be sent a letter confirming the scheme decision. An owner who is not in favour of a scheme decision or a new owner who was not the owner at the time the decision was made can appeal to the Sheriff Court. The appeal cannot be later than 28 days from the date of the decision being notified. The work will not start until after the 28 day period has passed and there has been no appeal applications.

If no one has appealed within the 28 day period, then the work will go ahead.

## **Majority Disagree or 50/50**

Where the majority of owners have disagreed or there is a 50/50 outcome then no works can be completed at this time. We will write to all tenants and owners confirming the outcome.

On a 6-monthly basis we will review the scheme decisions that resulted in Majority Disagree or 50/50. We will write to owners again as circumstances may have changed.

## 8 Multi-Storey Flats



In all multi-storey flats we have a Factoring Agreement for homeowners. Under the agreement, all owners pay an annual management fee of £20 (and pay their share of recurring annual costs where applicable):

- *Stair Lighting*
- *Heating*
- *Caretaker Service*
- *Lifts*
- *Fire Extinguishers*
- *Fire Alarms*
- *Emergency Lighting*
- *Lightning Conductors*

The Council can carry out repairs and maintenance up to an individual shared cost of £50 (excluding VAT). The Council must have the agreement of the majority of owners for common repairs and maintenance that cost above £50 excluding, as set out in the deed of condition. Any additional repairs and maintenance charges will be recharged to homeowners based on their share.

Charges are reviewed yearly, and up-to-date charges can be found in the Annual Charging Statement on our website.





## 9 What Happens in an Emergency?



Where emergency common repairs or maintenance are required, particularly if a repair directly affects a Council-owned property, work can be carried out without the agreement of the other owners. We can use our legal powers to serve a notice, carry out the repair and divide the cost between other owners.

Emergency work is defined 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. This is stated in the 2004 Act.** We will write to owners informing them of their responsibility for their share of the costs involved where there is an emergency repair.

Examples of an emergency repair:

- *Close lights not working and leaving the stairwell in darkness.*
- *A roof tile which has broken and is dangerous or letting in water.*
- *A piece of rhone which is hanging from the building.*
- *A loose step or slab which is causing a trip hazard.*
- *Burst pipes within communal areas.*

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

# 10 Improvements



If the Council is proposing to make improvements, it will generally need every owner in the block, and not just the majority, to agree before work can be carried out. This is because they will need to meet their share of the cost of the improvement and its future maintenance.

The Council will work with owners by organising a meeting well in advance of the project, usually at least 12 months in advance, to explain what work is being proposed, the estimated costs and a timetable to complete the project.

The VAT saving available for owners under Common Repairs may not be available for Improvements, particularly where the owner of the property asks the Council to provide additional works which exceed those planned by the Council, as any payment

for those improvements would be liable to VAT at the Standard Rate. However, where Improvements are minor and incidental to the Common Repair, this would still be treated as non-business and therefore VAT will not be applicable.

When we have set out what work needs to be undertaken and appointed a contractor to carry out this work, the Council will:

- *explain the work which will be carried out, how long it is likely to take and each owner's share of the cost;*
- *enclose a voting paper asking each owner to vote for or against the work proposed with a closing date for receipt of their vote;*
- *enclose another copy of the TMS guide.*



# 11 Invoicing Arrangements/ Financial Assistance for Owners



Within six weeks from the date the work has been completed and inspected by relevant staff, the Council will send an invoice to each owner for his/her share of the costs. Owners are legally responsible for paying an equal share of the total cost of repairs and maintenance to the block.

The invoice is to be paid within 30 days of receiving it. However, in most cases owners will have had a significant period of time to save funds to pay for the works being carried out.

However, it is recognised that in exceptional circumstances some owners may experience financial hardship. Where appropriate the Council 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, ie debts may be prescribed after five years.

The Tenements (Scotland) Act 2004 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 that 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 property.

# 12 Planned Maintenance



Planned maintenance is repairs and replacement we are aware of and has planned for. Examples of common areas planned maintenance that can be carried out to communal areas include:

- *painting closes;*
- *external harling repairs and maintenance;*
- *repairs and paint work to fencing and clothes poles.*

We will use the TMS process described in **Section 7**, to source the agreement from owners in 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. Work will be managed 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, the Council will monitor the application of this policy as follows:

- *number of occasions on which the TMS scheme is used;*
- *cost of common repairs;*
- *customer satisfaction in the processing of common repairs;*
- *the number of applications to the Sheriff Court to have scheme decisions set aside.*



# 15 Equalities Statement



In accordance with the Public Sector Equality Duty (General Equality Duty), Perth & Kinross Council has a duty to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity between people who share a protected characteristic. Protected characteristics, under Equalities legislation, include race, disability, religion or belief, age, sex, sexual orientation, gender reassignment, marital status or pregnancy. Under the Fairer Scotland Duty we must also actively consider how we can reduce inequalities of outcome caused by socioeconomic disadvantage, when making strategic decisions.

The Common Repairs Policy complies with the Council's Equality Policy. We will review the Common Repairs Policy and associated policies and procedures at appropriate intervals for their equal opportunities implications, taking appropriate action to address inequalities likely to result or resulting from the implementation of this policy.

# 16 Policy Review



If the monitoring of performance detailed in **Section 14** suggests that there are areas where the policy needs to be improved, the policy may be amended or a further review may be undertaken. If any changes to be made are substantive, the Council will consult with tenants, homeowners, staff and other key stakeholders before making these changes.

We will undertake a full review of this policy every two years or earlier if required by changes to legislation or guidance. In line with housing law, consultation on the policy will be ongoing.





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You can also send us a text message on 07824 498145.

All Council Services can offer a telephone translation facility.

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