



Midlothian

Building Maintenance Service

Common Repairs Policy

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1. Introduction

This policy relates to flats in mixed-tenure blocks where the Midlothian Council have a vested interest because it owns one or more of the flats. The Council have approximately 2880 properties which are within mixed-tenure blocks. The blocks may have a mixture of Council owned and privately owned properties. The Council may be a majority owner within the block or own one property within the block.

All properties are considered to have an equal share of the responsibility for the repairs and maintenance of common parts i.e roof and roof space, gables/downpipes, external walls, door entry, stairwell etc.

The policy is intended to assist and progress repairs as 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.

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.

All properties at some point require repair and maintenance in their life. In tenement buildings, it is important that all owners are aware of potential maintenance/defects liabilities.

In order to maintain good quality homes for our communities we are committed to working with owner occupiers to make the process of undertaking necessary repairs as easy as possible for all involved.

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 in which it owns one or more properties in the block.

It is essential that owners in mixed 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 all parties.

This policy sets out the actions the Council will take in order to secure the agreement of owners for common repairs and maintenance.

2. Context

This policy only applies to flats and not terraced properties as these are not covered by the Tenement (Scotland) Act 2004 (the 2004 Act).

In the past, problems occurred where owners are unsure or refuse to participate in a repairs scheme and as a result do not pay their share of the costs of repairs to the common parts and areas. To resolve this problem, we spend a great deal of time working with owners trying to secure their agreement. This can, and does, cause delays to the timeframe before we are able to carry out work.

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

3. Objectives and Principles

The following outlines the specific objectives and principles of this policy.

The principal course of action to assist with the progression of repairs and maintenance of mixed tenure tenement properties will be to examine the relevant title conditions to define liabilities, and where these are silent or not clear on a particular point, we will default to use the Tenement Management Scheme (TMS) in the 2004 Act. This sets out the steps that flat owners need to follow when making decisions on maintaining and repairing common parts. It is important to note that the TMS is a back up scheme which is used where the title deeds don't specify how decisions should be made, or if different owners' title deeds are in conflict.

Our Objectives

To meet current and future requirements of the law and good practice and explain how common repairs can be carried out in accordance with the title deeds failing which the TMS.

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 tenement 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.

Our Principles

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

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 make provision for the carrying out of common repairs, and the Council currently do undertake these and recharge the cost in accordance with the terms of the deeds, the TMS can be used where the title deeds are silent or not clear.

As a back up to provisions in the title deeds, the TMS sets out the steps that owners need to take when making decisions which affect all owners about maintaining and repairing common parts.

For more information on how the TMS works in Midlothian see section 7.

5. Common Repairs

Owners are responsible for the repairs and maintenance 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;
- 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 (e.g roof replacements, chimney repairs) or
- 2 quotes for minor repairs (e.g 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 a defined best value for homeowners and the Council ;
- 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 and maintenance, which we are proposing in order to aim for their agreement.

Generally, the title deeds relating to mixed tenure blocks enables common repairs to be carried out if a majority of the owners in the block agree to the work. In mixed-tenure blocks, it is likely that it will be the Council, when the majority owner, 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 Scheme (TMS)

As referred to above, the TMS 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. The full detailed rules of the TMS are contained in Schedule 1 to the 2004 Act.

Any decisions made under the TMS are known as 'scheme decisions'. Unless the 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.

which are determined by a majority vote of all the property owner votes allocated.

NB. Joint owners of a property have only one vote.

The Voting Process

The TMS can be used by any owner (Midlothian Council or private owner) within a block for the making of scheme decisions which are determined by a majority vote of all the votes allocated.

One vote is allocated in respect of each flat, so if the Council owns two flats it will have 2 votes.

If a flat is owned by two or more persons the one vote allocated to that flat may be exercised in relation to any proposal by either of them, but if those persons disagree as to how the vote should be cast then the vote is not to be counted unless (a) where one of those persons owns more than a half share of the flat, the vote is exercised by that person, or (b) in any other case, the vote is the agreed vote of those who together own more than a half share of the flat.

Any decisions that are made are done through a voting process. For the work to go ahead there needs to be approval based on a majority vote of all the votes allocated.

Where the Council is proposing to carry out common repairs and maintenance to a mixed tenure property, 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 the TMS if applicable;
- if applicable, 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.

Unanimous Agreement

Where the decision to proceed with the repairs scheme is unanimous, each owner and tenant will be kept 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 vote in favour of the scheme

Where there is a majority of the votes allocated in favour of the scheme, 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. If no one has appealed within the 28 day period, then the work can go ahead.

No majority in favour of the scheme

Where there is no majority of the votes allocated in favour of the scheme 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 there being no majority in favour. We will write to owners again as circumstances may have changed.

8. What Happens in an Emergency?

Where emergency common repairs or maintenance is 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 recover a share of the cost from the other owners.

In terms of the TMS, “emergency work” means work which, before a scheme decision can be obtained, requires to be carried out to a scheme or property (a) to prevent damage to any part of the tenement, or (b) in the interests of health or safety.

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:

- Common close lights not working and leaving the stairwell in darkness.
- A roof tile which has broken and is a danger or letting in water.
- A piece of rhonepipe 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 properties previously sold by the Council under the Right to Buy provide 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.

9. Improvements

If the Council is proposing to make improvements which are reasonably incidental to the required maintenance then these can be carried out by the Council and a share of the costs sought from the other owners either in terms of the provisions in the title deeds failing which the TMS. It is suggested that Improvements other than this would not be covered by the Common Repairs Policy with Improvement Schemes considered on case by case basis depending on the funding and other statutory powers available.

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 which are not reasonably incidental to the required maintenance, 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.

10. 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 their 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. 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 the law and/or title provisions.

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, i.e. debts may be prescribed after five years.

The 2004 Act 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.

11. Appeals

Whilst the Council will make every reasonable effort to try and resolve concerns or complaints from owners it recognised that this may not be possible and it may be necessary for the Council to proceed with a scheme and cost recovery utilising its legal powers.

It is important to note that any owner who is dissatisfied with a decision taken under the TMS 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.

12 Performance Monitoring

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

- The number of occasions where provisions in title deeds are used;
- the number of occasions on which the TMS scheme is used;
- the cost of common repairs and recovery of a share of the cost from other owners;
- customer satisfaction in the processing of common repairs;
- the number of applications to the Sheriff Court to have scheme decisions set aside.

13 Equalities Statement

In accordance with the Public Sector Equality Duty (General Equality Duty), Midlothian 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.

This policy is subject to an EQIA and complies with the Council's Equality Policy. We will review the 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.

14 Policy Review

If the monitoring of performance detailed in Section 12 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.