

The Moray Council
Community Services Department

Common Repairs Policy

1. Scope of the policy

- 1.1 This policy describes the activities and responsibilities involved in carrying out repairs where both owners and the Moray Council have repairing obligations relating to common property.
- 1.2 The Council will ensure that no individual is discriminated against on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or other personal attributes, including beliefs, or opinions, such as religious beliefs or political opinions. The Council will ensure the promotion of equal opportunities by publishing information and documentation in different languages and other formats such as large print, tape and Braille as required.

2. Local Housing Strategy/Corporate Development Plan/ Service Improvement Plan

- 2.1 The Common Repairs Policy will assist the Council to meet the aims and priorities detailed in the Housing Improvement Plan, the Corporate Development Plan and Service Delivery Plan. It will also help us to achieve our commitments to Best Value and sustainability.

3. Legal framework

- 3.1 Section 27 and Schedule 4 of the [Housing \(Scotland\) Act 2001](#) and the [Scottish Secure Tenants \(Right to Repair\) Regulations 2002](#) require Local Authorities to include basic repairing obligations in their Scottish Secure Tenancy Agreements.

- 3.2 The organisation of common repairs and general property maintenance matters within any multi-owned property is based upon the shared legal obligations that fall from ownership. Within any block of flats, or other multi owned property, there are communal parts such as roofs, stairs, garden area and external walls, which are normally the joint responsibility of all owners.
- 3.3 Rules detailing owners' specific responsibilities for the upkeep, management and maintenance of the common elements are in the title deeds, which have been granted by the Council to tenants who have purchased their homes. This policy seeks to make provisions for the processing of such repairs or renewals.
- 3.4 In the event of flat title deeds being silent on repair issues, owners' responsibilities for common repairs and maintenance are determined by the [Tenement \(Scotland\) Act 2004](#). The [Tenement \(Scotland\) Act 2004](#) governs the common rights of owners of flats in tenement buildings which are in separate ownership. The Act reforms the common Law of the Tenement and provides rules for managing tenements where title deeds do not provide procedures for decision making by all the owners. The Act provides a Tenement Management Scheme which will operate in any situation which is not adequately covered by the title deeds (**Appendix 1**).
- 3.5 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 will apply not just to privately owned tenements where the deeds are lacking, but to mixed tenure tenements.
- 3.6 The title deeds are generally silent on improvements. This policy seeks to make provisions for the procedure to be followed for improvement works.

4. Objectives and principles of the policy

4.1 The specific objectives underlying the Common Repairs Policy are:

- to give clear guidance when owners will be charged;
- to give clear guidance where discretion will be exercised;
- to outline the process of recharging owners for repairs;
- to inform owners of payment arrangements;
- to inform owners of the action the council will take if payment is not made;
and
- to meet with legislation and good practice guidelines.

4.2 The specific principles of the Common Repairs Policy are:

- that all tenants and stakeholders are involved and consulted in the development of the service and its operational procedures;
- that through supervision, monitoring and feedback from tenants, the service is continuously improved;
- that communication with tenants and owners is always clear, appropriate, easily understood and easily accessible;
- that the repairs service is supported by appropriate training for operational staff; and
- the policy should be supported by detailed procedures and agreed practices applied uniformly across the service.

5. House owners' responsibilities

5.1 When a house is sold, a right of common ownership is usually granted along with any adjoining house to the division or partition walls, fences, gables, chimney heads, drains, rhones, service pipes, cables and wires serving both the sold property and any others using the facility or common part.

5.2 There may be other common items stipulated within the deed, for example, common pathways or areas where the owner and adjoining neighbour might be bound to bear a share of the cost of maintenance, repair or renewal.

5.3 Unless the work required is an emergency common repair, the Housing Service will seek advice from the Commercial and Conveyancing Section of the Moray Council's Legal Section, in order that the relevant title deeds can be examined and the owner's responsibility can be identified.

6 Flat owners' responsibilities

6.1 When a flat is sold, a right of common ownership is usually granted along with any other flats sharing common parts of the tenement. These common parts can include the roof, foundations, entrance hallways, stairwells, division walls and floors, joists, drains, rhones, service pipes, cables and wires and other parts used in common by the other proprietors of the block of flats. Title deeds normally set out an owner's duty to pay a share towards the cost of common repair and maintenance.

6.2 Care will be taken to establish the owner's rights and responsibilities, as they may not be obvious. The Moray Council's Legal Services will check the title deeds prior to any notification of rechargeable repairs.

6.3 In the event of title deeds for a flat being silent, the [Tenement \(Scotland\) Act 2004](#) will prevail. The Act clearly sets out owners' responsibilities for repairs through the introduction of the Tenement Management Scheme (Appendix 1).

7. Repairs and improvements

7.1 A distinction must be made between repairs which put right damage to the property, and improvements, which may not be necessary but which keep the property in good condition and prevent it from falling into disrepair. There is no unchallenged definition of the difference between maintenance and improvement but the general legal principle is that maintenance is work that keeps the property in its original condition and does not add something substantially new. There is no legal basis in the title deeds for enforced improvement of property.

- 7.2 Maintenance or repair works are described in this policy as "emergency" or "necessary repairs" for the continued upkeep of the buildings, while the work that is desirable but not strictly necessary is described as an "improvement".
- 7.3 Title deeds usually contain provisions for repair and maintenance work but do not normally impose conditions concerning the improvement of properties. In accordance with title deed provisions, in the event of a necessary repair, the consent of the owner to carry out the work is not required by the Moray Council. Owners' consent is required however in the case of improvements. The consent of the owner's spouse is also required. If title deeds for flats are silent, then in accordance with the [Tenement \(Scotland\) Act 2004](#), the consent of the majority of owners is required for both necessary repairs and improvements.
- 7.4 Some cases of necessary work are easily defined, such as the replacement of roof tiles after storms, fixing broken guttering and repairing spalling roughcast. Similarly, improvements are easily defined such as the installation of a door entry system or removing a redundant chimney head. However, the category of some works is less easily identified as a repair or improvement, and requires the opinion of a technical and/or legal officer to advise whether the work would fall into the category of necessary repair or improvement work.

8. Emergency repairs

- 8.1 In the case of an emergency common repair, the Council has a duty to make the property safe where there is a safety risk to a tenant or member of the public or if there is a potential for further damage. The Council will deliver notification of the emergency repair to the owner and proceed to make safe the repair. The Council will then write to the owner informing him/her of the cost of the recharge for the common repair for which he/she is liable.
- 8.2 Certain emergency common repairs will also fall in to the Right to Repair category. In this case the work will still be carried out within the set timescales,

however, the tenants and owners will be informed of their rights under the Right to Repair legislation and an appropriate repairs receipt included within the letter.

8.3 Title deeds to properties sold by the Council reserve a right of access to the Council to sold houses at all reasonable times for inspecting, maintaining, repairing and renewing any adjoining Council property and the common parts, for all necessary purposes.

8.4 Where title deeds are silent, the Council must be able to prove that it has acted reasonably and that the emergency repair is justified to the owner involved.

9. Necessary repairs

9.1 Works which do not fit the criteria of emergency repairs, but which would cause a high degree of inconvenience if not attended to are classified as necessary repairs. For example, repairing a roof to prevent rainwater leaking.

9.2 Where necessary repairs are required and there is a legal obligation contained within an owner's title deeds for the owner to pay for their share and these works are under £100 in value, the Council will write to the owner informing him/her of:

- the owner's legal obligation;
- the nature of the repair;
- an estimate of what the owner's share of the cost will be estimated to be (provided by a quote obtained by the Housing Service); and
- the name of a designated officer to contact.

9.3 Owners will be advised that if they request a formal meeting, an opportunity will be provided to discuss the repair at an open meeting between the Council and the owners, particularly for larger repairs.

9.4 The Council will provide each owner with the opportunity to obtain two competitive quotes from tradesmen. Owners will be required to obtain quotes within two weeks. The Council will evaluate all quotes in accordance with Best

Value and will ensure that they comply with Council standards, for example, health and safety.

- 9.5 Where the Council accepts a quotation obtained by an owner which offers Best Value, the Council will write and authorise the owner to accept the quotation and will confirm that the Council will contribute to the cost of the work when the work is completed to the Council standard.
- 9.6 The Council will write and advise each owner of the contractor chosen prior to work commencing on the common repair. Owners will be advised that in the event that the common repair does not meet with Council standards upon completion, the Council will rectify the repair and owners will be recharged for the cost involved.
- 9.7 The title deeds granted by the Council state that not only can owners be recharged, but also that the choice of materials and contractors used will be determined by the Council. Provisions of the title deed granted also ensure that owners cannot avoid or block common repairs.
- 9.8 Where title deeds for flatted properties are silent the Council will consult with all owners entitled to vote on the matter (each property has one vote) by either:
- arranging a meeting – owners will be given at least 48 hours notice of the meeting; or
 - speaking to owners individually.
- 9.9 The Council will advise every owner that he/she can obtain two independent quotes from tradesmen. Owners will be required to obtain quotes within two weeks. The Council will evaluate all quotes in accordance with Best Value and will ensure that they comply with Council standards, for example, health and safety.

9.10 Where property is purchased through right to buy, the Council has the right to appoint a manager for 30 years. This manager will be the Council's Housing Service. This right remains for 30 years or until two-thirds of the properties in a management scheme have been sold by the Council, when the owners can dismiss the management appointed by the Council.

9.11 The Council will record the outcome of the vote and will inform owners of the decision either at the meeting or by writing to individual owners within one working day. The letter will detail:

- the outcome of the decision
- the owner's legal obligation in accordance with the [Tenement \(Scotland\) Act 2004](#);
- the nature of the repair;
- who the contractor completing the repair will be;
- what the owner's share of the cost will be; and
- the name of a designated officer to contact.

10. Improvements

10.1 Prior to any planned improvement project that will involve owners, the written consent of every owner to proceed with the project and agreement to pay their appropriate share of the costs of the improvement and any future maintenance of it, is required. The Council will consult fully with owners throughout the project providing them with an overview of the project including estimated costs, tendering arrangements and proposed timescales. In the event of an improvement project, a meeting will be arranged between owners and the Council irrespective of the anticipated cost. Where only a small number of owners are to be involved, this consultation will be completed by means of a visit. Every owner will be provided with the opportunity to discuss the proposals and design materials, etc.

10.2 Where an owner approaches the Council requesting the Council's commitment to an improvement, the decision will be at the discretion of the Housing Service

Capital Programmes Team. The Capital Programmes Team will assess the proposed work and will specify that, upon completion, the work must comply with the Council standard. Where the Council accepts a quotation obtained by an owner which offers Best Value, the Council will write and authorise the owner to accept the quotation. The Council will reimburse the owner for the agreed percentage only when, upon completion, the work is assessed as meeting the Council standard.

11. Financial assistance for owners

11.1 In certain instances, owners may be eligible for financial assistance from the Council. The Council operates a grant scheme which may help people living in owner-occupied housing with some of the costs of having their homes improved, adapted or repaired. The type of grant available will depend on the kind of work required.

11.2 Where a house requires improvements or repairs which, if neglected, would threaten the future life of the house then the Council may provide grant assistance. The provision of grant assistance is subject to a test of the applicant's financial resources and the applicant's ability to pay for the cost of the repair.

11.3 Where common repair works to a building are of shared responsibility and:

- the building comprises two or more houses, or a house or houses and other premises;
- the works will benefit two or more such houses or premises; and
- the cost will be shared amongst the owner or occupiers of those houses or premises

a 'minimum percentage grant' may apply even where the owner cannot meet the means test. For example, a common repair to a roof. Minimum percentage grants are set at 50% or the approved cost.

- 11.4 The commencement of the provisions in the [Housing \(Scotland\) Act 2001](#) will provide a single maximum grant level of £20,000 paid to any particular applicant, dependent on a means test.
- 11.5 If the Council finds that a house is in a serious state of disrepair, or is likely to fall into serious disrepair a Repairs Notice may be served. This requires the owner to rectify the faults. If served under Section 108 of the Housing (Scotland) Act 1987, a mandatory grant is available, regardless of income. The minimum percentage will be 50%. Those whose relevant income entitles them to a higher percentage will receive that higher amount.
- 11.6 If the Council finds that a house fails to meet the Tolerable Standard an Improvement Order may be served. This requires the owner to bring the house up to the Tolerable Standard and put in into a good state of repair. If served under Section 88 of the [Housing \(Scotland\) Act 1988](#), a mandatory grant is available, regardless of income. The minimum percentage will be 50%. Those whose relevant income entitles them to a higher percentage will receive that higher amount.

12. Billing arrangements

- 12.1 Following the completion of the common repair, the owner shall be invoiced for their share of the costs. In the instance of a repair, this will be in accordance with the criteria stated in their title deeds or the share agreed in accordance with the Tenement Management Scheme. In the instance of an improvement, the amount will be agreed in writing with the owner prior to the commencement of any work.
- 12.2 The Council has standard terms for settlement of invoices, but recognises that, in some circumstances, owners may experience financial hardship if the full share of the costs of the repair/improvement has to be paid immediately following completion of the works. In these circumstances the Area Housing Manager will discuss a reasonable and affordable repayment period with the owner and refer

the matter to Financial Services (Payments Section) for consideration. The Payments Section shall then contact the owner to confirm the details of the instalment arrangement.

12.3 In the event that an owner fails to settle an invoice or defaults on any agreed instalment arrangement, recovery will be sought in accordance with the Moray Council's Debt Management Policy.

12.4 In instances of small repair works, it is uneconomic to process individual payments under £25. For such minor repair works, owners will be invoiced either within 6 months from the repair being completed or when the cost of the repair amounts to £25. For larger repair works, when the value is of £25 or over, the owner will be recharged at the time the works are invoiced to the Moray Council.

13. Appeals process

13.1 The Council's title deed style does not make any provision for arbitration. The Council shall adopt the policy that, where there is disagreement between the Council and an owner about repairs or maintenance of common parts and in particular the choice or cost of materials, contractors or the timing of works the matter shall be referred in the first instance to the Chief Housing Officer. If the applicant is not satisfied with the outcome of the review, they can request that the case be referred to the Housing Sub-Committee.

13.2 When an owner is not satisfied with a decision that is taken in accordance with the Tenement Management Scheme, for example if they did not vote for a decision or it was taken before they purchased a property, they can apply to the sheriff court to have it cancelled. The sheriff will only cancel a decision made by the majority of owners if it is not in the best interests of the owners as a group or if it is unfair to one or more of them. Owners must apply to the court within 28 days of being informed of the decision. During that time, the decision cannot be implemented.

14. Performance monitoring

14.1 In order to comply with its service commitments, it is important that the Council should monitor the effects of common repair procedures. Areas to be monitored are as follows:

- number of common repairs carried out;
- number of improvements completed;
- cost of common repairs;
- income received from common repairs;
- household characteristics such as age, disability, ethnicity and gender;
- number of disputes and their outcomes, including, monitoring by age, disability, ethnicity and gender etc; and
- customer satisfaction in the processing of common repairs.

15. Policy review

15.1 The Common Repairs Policy will be reviewed in 2011.

**The Moray Council
Community Services Department**

Common Repairs Policy

The Tenement (Scotland) Act 2004 provides rules for the ownership of various parts of a tenement and a system for management of tenements to cover the situation where the title deeds do not make provision in relation to these matters.

Definition of a Tenement

The definition of what constitutes a tenement in the Tenement (Scotland) Act 2004 is a broad one. Under Section 26 a tenement is defined as a building, or part of a building, comprising two or more related flats which are owned or are designed to be owned separately and which are divided from each other horizontally (i.e. one is on top of the other). Under Section 29 a flat includes premises, whether or not they are used, or intended to be used, for residential purposes. The effect of these provisions is that a wide variety of residential property, including large houses which have been converted into flats, high rise blocks, modern blocks of flats, as well as the traditional sandstone or granite buildings of three or four storeys, will qualify as a 'tenement'. Furthermore, mixed use property, where there are shops on the ground floor with flats on the upper floors, as well as purely commercial property (eg office blocks) will qualify as a 'tenement'.

The Tenement Management Scheme

The Tenement Management Scheme provides for the management and maintenance of 'scheme property' of a tenement. The principles of 'scheme property' is that some parts of the tenement are so vital that their maintenance should be the responsibility of all of the owners who have common property and rights in those parts.

Scheme Property

This includes:

- any part of the tenement that is the common property of two or more owners, for example, the close or stair; and
- any other parts of the tenement that your title deeds say must be maintained by two or more owners, for example, the gutters and downpipes.

The following are included in Scheme Property:

- the ground on which the property is built;
- the property foundations;
- the external walls;
- the roof including any rafters or any structure supporting the roof;
- any wall or load bearing column; and
- the part of a gable wall that is part of a tenement building.

The following are NOT included in Scheme Property:

- any extensions that form part of only one flat;
- any door, window, skylight, vent or other opening that serves only one flat;
- any chimney stack or chimney flue that serves only one flat.

If a part of the tenement is the common property of two or more, but not all, of the owners in a tenement, then only those owners with common property rights in those parts are responsible for the maintenance of that part of the property.

Maintenance of scheme property includes:

- repairs and replacements;
- cleaning;
- painting and other routine works;
- gardening;
- the day-to-day running of the tenement;

- the reinstatement of part of the tenement building.

Maintenance does not include alteration, demolition or improvement, unless the improvement is part of maintenance work. For example, the main door needs replaced, adding an improved modern lock is likely to be counted as maintenance, rather than improvement, although this will depend on the extent of the work and the cost involved.

Decision Making Regarding the Scheme Property

If owners decide that something requires to be done with regard to Scheme Property, the Tenement Management Scheme provides a mechanism for holding meetings and deciding whether anything requires to be done to Scheme Property. Decisions regarding Scheme Property are known as 'Scheme Decisions'.

If an owner requests a Scheme Decision, the owner must provide other owners with at least 48 hours notice of the date, time, purpose and location of meeting. If a meeting is not held, the owner must consult with all owners and take account of the majority votes.

Owners or their agents will be consulted in writing either by mail which can be hand delivered or electronically delivered and contact will be addressed to the owner or proprietor of the property.

The requirements for voting, consultation and notification only apply if title deeds do not make provisions for taking decisions, or if these are inconsistent between the title deeds of different owners.

Scheme decisions are binding and any obligation arising from the scheme or as a result of a scheme decision can be enforced either through the courts, by any owner, or anyone authorised by an owner.

Matters On Which Scheme Decisions May Be Made

Unless title deeds state otherwise, owners can make basic scheme decisions to:

- . carry out maintenance to Scheme Property;
- . arrange an inspection of Scheme Property in order to decide whether and how much maintenance is required;
- . appoint a manager or organisation to manage the tenement;
- . dismiss the appointed manager or organisation;
- . delegate a manager to instruct works to a specified amount ;
- . arrange a tenement common policy of insurance;
- . exclude any owner not included in the scheme costs;
- . authorise works already carried out by an owner;
- . modify or revoke any scheme decision;
- . install a door-entry system controlled from each flat, even if it is not to replace an existing system; and
- . cancel or change any previous decision.

Voting

Each flat has one vote and that can be used by the owner or someone appointed by the owner. However, owners do not have a vote on decisions about maintenance if they are not liable for the costs of maintenance to that part of the tenement.

If they share ownership of a flat with one or more people, then any one of the owners can use the vote. If there is a disagreement on how to vote, no vote is accepted unless one of the owners own more than half of the flat, in which case he or she can use the vote, or the vote is agreed among those who own more than half the flat.

Unless title deeds set out procedures for making decisions, a scheme decision is decided by a majority vote.

Owners can make decisions about improvements, for example installing a communal satellite dish, but agreement must be unanimous, unless title deeds specify voting procedures for these.

Scheme Decisions Relating To Maintenance

If the owners of the scheme decide to carry out maintenance, the owners can make decisions on any of the following:

- instruct or arrange for the maintenance; and
- require each owner to deposit an estimated share of costs.

Emergency Works

Emergency work is that required in the interests of health and safety that cannot wait for a scheme decision to be taken. Few repairs are likely to be this urgent and the provisions for emergency work must not be used simply because there is a disagreement between neighbours on the need for the work. There is no legal definition of what constitutes an emergency. In the event of a dispute about emergency work, owners must be able to justify it and prove that the action taken was reasonable. In an emergency, work can be instructed without a scheme decision.

Maintenance Account

Contractors may not be willing to start work unless finances are already in place. Therefore, owners can decide that each owner who is liable for a share of the cost should deposit his or her share of the estimated cost with someone nominated for this purpose, which could be an owner, property manager or agent, not less than 28 days after the decision was made.

If the owners decide to authorise persons to operate a maintenance account on their behalf, a description of the works required and the following information will be expected:

- an estimated cost of maintenance;
- consideration of any comparison of estimates;
- the apportionment of shares;
- the names and date of works approved;
- the proposed and completion dates; and
- names & addresses of 2 persons authorised to operate financial affairs, normally via a bank or building society.

An owner is entitled to inspect any tender in connection with the proposed maintenance work.

Provision For Refund

If the maintenance is not carried out by a set date or 28 days after the proposed date, an owner who has deposited their share can request a refund with interest from the maintenance account. If the maintenance is carried out before the appointed person or agent has received the notice, then no refund will be allowed. Any actual spent costs will be deducted, if a refund is awarded.

Scheme Costs - Liability and Apportionment

The liability of costs are generally apportioned among owners equally, unless an individual flat is one and half times larger than the smallest flat, then consideration should taken of the total floor areas and apportioned accordingly.

Owners are liable for the following costs incurred as a result of a scheme decision from the date of the decision (unless title deeds say otherwise):

- maintenance or inspection for maintenance;
- payments to a manager or factor to carry out inspections and maintenance;
- the running costs of scheme property that benefit more than one flat;

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- costs that the local authority can reclaim for work carried out by it, for example, after serving a repairs notice and then carrying out the work itself;
- management fees and costs;
- common insurance premiums;
- the costs of calculating the floor area of any flat, where this is necessary to decide how costs should be shared;
- the costs of installing a door-entry system that can be controlled from each flat;
- any other costs relating to the management of scheme property.

If there is no specific provision within the title deeds then the scheme costs will be divided equally between the owners of the tenement. Any new owners will be expected to contribute to the scheme maintenance.