

**TO:           AUDIT, RISK & SCRUTINY POLICY BOARD**

**ON:           29<sup>TH</sup> MAY 2019**

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**REPORT BY: LEAD OFFICER**

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**HEADING:   MAINTENANCE OF MULTI OCCUPANCY ACCOMMODATION  
(MIXED TENURE BUILDINGS)**

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## **1.       SUMMARY**

- 1.1     At its meeting on 27th August 2018, the Audit, Risk & Scrutiny Board agreed the annual programme of activity for the Board for 2019/20. This included a review entitled "Maintenance of Multi Occupancy Accommodation".
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## **2.       RECOMMENDATIONS**

It is recommended that the Audit, Risk & Scrutiny Board:

- 2.1     Approves the purpose and scope of the review as outlined in Section 5 of this report;
- 2.2     Approves the provisional timescale as set out in Appendix 1 of this report;
- 2.3     Delegates power to the Lead Officer, in consultation with the Convener, and grants the Convener of the Board permission to alter the timetable having regard to the availability of evidence and witnesses throughout the course of the review;
- 2.4     Authorises the Lead Officer to contact any organisations recommended by the Board who may have information useful to the Board and who may be potential witnesses; and
- 2.5     Authorises the Lead Officer to make the necessary arrangements to progress the review within the agreed timescale.
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### **3. BACKGROUND**

3.1 There is a variety of legislation which covers repairs in mixed tenure properties, including:

- Tenements (Scotland) Act 2004
- Housing (Scotland) Act 1987 and 2006
- Environmental Protection Act 1990
- Building (Scotland) Act 2003
- The Private Housing (Tenancies) (Scotland) Act 2016
- Title Conditions (Scotland) Act 2003
- Property Factors (Scotland) Act 2011
- Repairing Standard 2016 (amended 2006 Act)

3.2 Tenements (Scotland) Act 2004

3.2.1 The primary legislation in relation to repairs within communal properties is the Tenements (Scotland) Act 2004. Although it is called the Tenements (Scotland) Act 2004 the law affects every owner (home, business or shop) in a building which is divided into two or more flats on different floors.

3.2.2 The Act aims to ensure that the communal parts of buildings are kept in good repair. It sets up a decision-making structure that should make it easier for owners to reach decisions to enable them to carry out repairs and maintenance. In most cases, this will mean that common repairs can be carried out with the agreement of the majority of owners. However, the Act does not put in place any mechanism for mediation or resolution of disputes between owners.

3.2.3 Who is responsible for what?

- Individual responsibility - Anything serving only one flat, including the door from the stair, its windows and the inside of walls, floors and ceilings to the halfway point with the next property. Owners are solely responsible for all repairs and maintenance to their own flat.
- Mutual responsibility - Mutual property is anything used by two or more flats including the stairs, stair windows, chimneystacks, service cables, pipes etc. Repairs to mutual parts of the building should be paid for equally by all who use that part – unless their Title Deeds say otherwise.
- Common responsibility - This is an important part of the law. It outlines all the parts of the building where maintenance is paid for by all owners. These include: the roof, the foundations, external walls and any other part of the property which the Title Deeds set out as being the property of two or more owners. It is important to note that paying for roof repairs is the responsibility of every owner in the building – unless their Deeds say otherwise.

- 3.3 Further analysis of the appropriate legislations will be undertaken if required as the review progresses.

#### **4. Purpose of Review**

- 4.1 The terms of the review requested are outlined in Appendix 2.
- 4.2 The review will look at the procedures for repairs in buildings with mixed ownership ie private owners and council owned accommodation / retail units.
- 4.3 For clarity, the review will not look at the actual Housing Repairs by the Council and Outside Contractors as this was subject to review by this Board with Colin Hunter as Lead Officer. The outcome was reported to the Audit, Risk & Scrutiny Board on 13 December 2018.

#### **5. Scope of Review**

- 5.1 In undertaking this review, it is recommended that the Audit, Risk and Scrutiny Board approves that the Lead Officer:
  - 5.1.1 Carries out the Review in relation to buildings of mixed tenure where there are Council owned properties, both domestic and retail properties;
  - 5.1.2 Consults with Communities, Housing & Planning to identify the current process in mixed tenure buildings.
  - 5.1.3 Consults with an external social housing provider to identify the processes in place where they have shared ownership in buildings.
  - 5.1.4 Consults with one or more Tenants and Residents Association or other appropriate group to establish their views on the process.
  - 5.1.5 If appropriate, consults with a neighbouring authority to establish the process in place within their area.
  - 5.1.6 Consults with other organisations as appropriate such as CoSLA, private factoring company or private letting agency.

#### **6. Timetable and Witnesses**

- 6.1 Following the meeting of the Audit, Risk and Scrutiny Board the review will be progressed through the subsequent boards as outlined in Appendix 1 to this report.
  - 6.2 Subject to the outcome of the action outlined in 5 above, witnesses shall be invited to provide written evidence prior to any meetings with the Board to permit members sufficient time for preparation ahead of the meeting.
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## **Implications of the Report**

1. **Financial** – None
2. **HR & Organisational Development** – None
3. **Community Planning** – None
4. **Legal** - None
5. **Property/Assets** – None
6. **Information Technology** - None
7. **Equality & Human Rights** - The recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website
8. **Health & Safety** – All work undertaken is assessed under appropriate Health and Safety legislation.
9. **Procurement** – All procurement legislation is adhered to when items are procured for this project.
10. **Risk** – None
11. **Privacy Impact** – None
12. **Cosla Policy Position** – None

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## **List of Background Papers**

- a) Audit Risk & Scrutiny Board Programme approved 27<sup>th</sup> August 2018

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## Appendix 1

Date	Action
28 <sup>th</sup> May 2019	Review Commences
26 <sup>th</sup> August 2019	Review Continues
23 <sup>rd</sup> September 2019	Review Continues
4 <sup>th</sup> November 2019	Review Continues
20 <sup>th</sup> January 2020	Draft Report to Board
16 <sup>th</sup> March 2020	Final Report to Board
7 <sup>th</sup> May 2020	Final Report to Council



### Terms of Review

“Both Council tenants and private residents are losing out because all parties can’t agree on regular maintenance and upgrading contacts. Council tenants find their property is left to last whether or not private tenants are involved and have agreed an upgrade of the property. Minor repairs don’t get done because all parties won’t agree the work is necessary or the cost is fair. Because of this disagreement, properties don’t get maintained, become run down, lose value and don’t attract good tenants. This then brings down the whole area. Private tenants believe they are being asked to pay over the odds for maintenance work by Council employees etc.”

The expected outcome of the review is as follows: “Find a way forward by which all parties agree to any maintenance or upgrading work. There will always be the odd resident who won’t agree to the work but they should have to bow to the majority. Perhaps problem properties should be “factored” by a third party. Factors can then use their knowledge base and go to outside contractors for quotes (perhaps something private tenants don’t feel capable of doing themselves). Help should be offered to private tenants where it can be shown that they genuinely do not have the finances to pay for the work”