

Finance and Resources Committee

3.00pm, Tuesday, 4 December 2018

Edinburgh Shared Repairs Service (ESRS) – Progress Report

Item number	7.13
Report number	
Executive/routine	Executive
Wards	All
Council Commitments	

Executive Summary

This report provides Committee with a progress update for the Edinburgh Shared Repairs Service (ESRS).

Edinburgh Shared Repairs Service (ESRS) – Progress Report

1. Recommendations

- 1.1 It is recommended that the Committee:
 - 1.1.1 Notes the update on Edinburgh Shared Repairs Service (ESRS); and
 - 1.1.2 Scrutinises and is assured by the management information dashboard report in Appendix 1; and
 - 1.1.3 Notes the Update on the progress of the Parliamentary Working Group on Maintenance of Tenement Scheme Property in Appendix 2.

2. Background

- 2.1 The new ESRS was fully operational from 1 April 2017.
- 2.2 This report gives details of progress of the service as at 25 September 2018.

3. Main report

- 3.1 The total number of cases in ESRS has reached 154. All cases are tenement properties. Of the 154 cases, 42 cases are open and being progressed by case officers. 97 of the remaining 112 cases have been closed without enforcement. This represents an 87% success rate where owners have progressed works privately, to the value of £1.7m. At present, 15 of the 112 cases are proceeding through the enforcement stage or have been completed. This represents 13% of all cases.

Panel Decisions

- 3.2 The project panel has taken a total of 36 decisions. The panel is required to make decisions at several stages in the process as below:
 - to consider approval of a case in intervention to enforcement;
 - to consider an application for a missing share; and/or
 - to consider additional works in enforced projects.
- 3.3 A summary of decisions made is included in the management information dashboard in Appendix 1.

Advice and Information and Service Development

- 3.4 The Service offers advice on how customers can progress repairs through the process outlined in the Tenement (Scotland) Act 2004 using the Tenement Management Scheme (TMS). Case officers accept requests for assistance from private property owners on the process of arranging common repairs. A 'Tenement Toolkit' has been designed by ESRS to assist owners. Since June 2016, 722 toolkits have been sent following owners' requests. The toolkit is also available to download from the website along with the Missing Shares leaflet.
- 3.5 The communications plan for the Service is ongoing. The new awareness campaign commenced in May with a focus on the Missing Share Scheme. Targeted distribution of 44,000 tenement toolkit leaflets and the new Missing Shares postcard is in progress to areas of the city where unenforced statutory notices were cancelled in June 2016. A radio advert burst of one week for awareness of the Missing Share scheme was run in August. Digital advertising on Facebook and Twitter have increased the website traffic by 44% with click-throughs totalling 6,094 between June and August. Overall these items have had a positive effect on the website views which have increased by 34% since the last report to the Finance and Resources Committee in June.
- 3.6 The most positive result of this campaign is the number of downloads from the website of the Missing Shares information at 4,599 occasions between April and August. In addition to this the Tenement Toolkit has been downloaded 4,090 times in the same period. This could indicate that owners in Edinburgh want to make positive moves towards carrying out repairs and maintenance privately without Council involvement. It may also suggest that owners have difficulty in achieving 100% payment into the maintenance accounts in their stair and that the Missing Share Scheme provides a potential solution.
- 3.7 The ESRS manager has been attending meetings of the parliamentary working group on Maintenance of Tenement Scheme Property. The working group is considering any legislative changes, new initiatives, enhanced use of existing rules and/or further action by local authorities that could facilitate improved upkeep of Tenement Communal Property. The purpose of the working group is to consider and establish solutions to urge, assist and compel owners of tenement properties to maintain their property. The working group intend to issue draft recommendations before the end of 2018, with formal recommendations to be submitted to the Scottish Government in May 2019. A full update on the progress of the group is included in Appendix 2.
- 3.8 Work is ongoing, with the support of the Council's statutory Data Protection Officer, to review the possibility of the Council being able to share owner's details whilst still complying with the legal requirements of relevant legislation. Owners trying to organise shared repairs often have difficulty finding the current contact details of their fellow owners. In most cases, the Council has access to this information, but have historically been unable to share this.

- 3.9 The initial Data Protection Impact Assessment (DPIA) assessment report has been received by ESRS and has assessed the overall risk as Medium. Eleven recommendations have been received, nine of which are considered a RAG status of Red. ESRS will work with the Information Governance Unit (IGU) to progress these and arrangements are being made to consult with the Information Compliance Officer (ICO). The successful delivery of this project would be a beneficial improvement for all Scottish Local Authorities and a welcome interim measure prior to the Parliamentary working group potentially resolving this issue formally through legislation. Further details are also included in Appendix 2.

Facilitation

- 3.10 This is when a customer has approached the service for assistance with defects on a property but, for reasons of financial or reputational risk, the service cannot assist at an enforcement level. The service can however assist the property owner in other ways; for example, corresponding with other owners at the property or contacting other Council service areas to help progress matters. The service is facilitating in three cases at present.
- 3.11 One area of facilitation is the on-going consultation between ESRS, locality offices and colleagues within Housing Property Services in relation to the delivery of Mixed Tenure Improvements and the commencement of new TMS projects within the Housing Service. Housing colleagues wish to adopt parts of the ESRS intervention process, including Missing Shares, to enable TMS projects to be taken forward.

Pre-intervention

- 3.12 There are currently 29 cases in the pre-intervention stage. Two types of case are included, the first being where the service offers to act on behalf of the lead owner. The case officer will check liability, correspond with owners in relation to the reported defects, hold stair meetings and where required record votes for or against the repair. The second type is where there has been attendance to a dangerous building defect by the emergency service. The Case officers will follow up with owners after making safe actions have been carried out. There has been a notable rise in the number of pre-intervention cases in September, particularly during Storm Ali on 19 September where the service received eight reports of masonry falls or roof issues within a three-hour period.

Intervention

- 3.13 Intervention is actively undertaken following the identification of an essential repair, prior to taking a decision to enforce the repair. The objective is to support owners in taking responsibility for progressing the repair privately. Included in this area of work is verification of the defect reported, a site visit and tailored communication to owners including a mandate requesting confirmation from the owners in relation to their preference for the Councils involvement going forward. Two cases are on-going with mandates issued to owners at present.
- 3.14 In one mixed tenure case ESRS have undertaken a chargeable survey for owners, taken a vote on the proposed permanent repair at an owners' meeting and gained a

majority decision for the Council's Housing Property Service to undertake a TMS project. ESRS will work with Housing to assist with the ongoing engagement with the owners throughout the project.

Survey Request

- 3.15 Under ESRS procedures, building surveys are carried out by the Council's Chartered Building Surveyors. The costs of the surveys are recovered from owners if they progress the works privately. Since the last report, one Survey and report has been requested by tenement owners. The value of roof and stone repairs required to this tenement is estimated at £160k and the owners are now trying to progress the repairs privately.

Missing Share Cases

- 3.16 On 5 September 2017, the Finance and Resources Committee approved the Council's use of the legislative powers under Section 50 of the Housing (Scotland) Act 2006 to pay funds into owners' maintenance accounts. This approval followed completion of the pilot scheme run by ESRS in which three cases tested the Missing Shares procedure.
- 3.17 There have been 19 missing share cases considered by ESRS. Tenement repairs in these cases have benefitted 181 owners in total. Tenement projects undertaken by owners range from £150k to £3k in value. In eight missing share cases, the share was paid by the missing share owner prior to the Council paying the funds. This is a positive consequence of the scheme being in place. This scheme has proved to be invaluable to owners who wish to undertake works privately without enforcement by the Council.
- 3.18 A table is included in the management information dashboards to demonstrate the value of work enabled privately, which amounts to £807,596.

Private work enabled by ESRS

- 3.19 Case officers have gathered information from owners who have taken works on privately after requesting service from ESRS. The value of works confirmed by owners as having been completed privately, or in progress, amounts to £893,104. This is in addition to the value of works where the Council have considered an application to pay missing shares. The total value of works enabled by ESRS amounts to approximately £1.7m. The total financial commitment by the Council to date on these cases is approximately £56,900, which is recoverable from liable owners.

The Enforcement Service

- 3.20 The enforcement service is activated when all intervention options have failed to provide a platform for owners to procure the works privately.
- 3.21 Upon project panel approval, the project will be allocated to the surveying team for progression in accordance with standard operating procedures. The procedures include carrying out a full survey, preparation of cost estimates, preparation of risk registers, meeting owners, serving the Statutory Notices, tender preparation

including design and specification, tender approvals, award and contract administration of the project, agreement of the final account and billing of owners.

- 3.22 Eighteen projects have been approved by the ESRS Panel to progress to the enforcement stage. These projects are being progressed at various stages. Three cases have been taken back by owners, with six projects complete and billed. Of the 9 open projects, two are complete on site, four are on site and three are in the S24 or S26 Statutory Notice waiting period.

The Emergency Service

- 3.23 The service will attend and instruct contractors to carry out works to immediately make safe dangerous and emergency situations. The service is the first port of call for the emergency services (Police Scotland and Scottish Fire and Rescue Service) when they are dealing with situations such as fire damaged buildings, which require specialist surveying or structural engineering intervention.
- 3.24 The majority of service requests are for drainage related works in private property where Scottish Water has no responsibility.
- 3.25 The number of monthly service requests (SR's) in September is 95. Of these, 59 are in relation to emergency drainage repairs.
- 3.26 In September, 36 SR's were in relation to dangerous masonry or roofs or fire. The number of masonry or roof incidents have steadily risen over the past 4 months, representing an increase of 37% from the same period in 2017.
- 3.27 In cases where the emergency service has made safe a dangerous situation due to building defects, these are handed over to Case officers to follow up and ensure actions required by building owners are progressed. The advice given sets out:
- 3.27.1 The building owner's legal obligations to repair and maintain his building under the Tenement (Scotland) Act 2004.
- 3.27.2 The building owner's responsibilities for injury to persons or damage to property caused by defects on a building.
- 3.27.3 The enforcement powers available to the Council under the City of Edinburgh District Council Order Confirmation Act 1991 to undertake works on behalf of building owners.
- 3.27.4 The powers conferred on the Council to recover costs incurred by the Council including project management fees and interest.
- 3.27.5 Due to the serious nature of the identified defect and make safe actions undertaken by the Council, ESRS will contact the owners again after four weeks for a progress update.
- 3.28 If the building owners have taken no action the case may progress through to intervention and a lead owner would be sought, ultimately ending in possible enforcement action by the Council.

Finance Update

- 3.29 The Finance part of the service processes payments to contractors, issues statutory notices, invoices owners and processes statutory notice enquires in relation to conveyancing.
- 3.30 The Management Information Dashboard includes charts to demonstrate overall billing and debt outstanding, and also speed of payment of invoices issued for enforced projects. This shows that 85% of all invoices issued for enforced works have been paid. Of the paid amounts, 85% was paid within 3 months of billing the owners.
- 3.31 There have been a number of registered inhibitions progressed to ensure debt recovery. ESRS are working with legal services to progress these as quickly as possible. The value of inhibitions secured have been deducted from the forecast provision for bad debt included in the ESRS budget.

4. Measures of success

- 4.1 To increase the numbers of owners carrying out common repair projects on their own property.
- 4.2 To continue to reduce the number of Council enforced projects to minimise both the financial and reputational risk to the Council.

5. Financial impact

- 5.1 The budget for the ESRS has been reduced to £0.99m for 2018/2019. The business plan approved by the ESRS and legacy Programme Board in December 2017 forecast a budget of £0.87m for 2019/20 and £0.85m for 2020/21.
- 5.2 The Management Information Dashboards include information on the Work in Progress (WIP), the level of debt recovery and bad debt provision for the service.
- 5.3 The bad debt provision for ESRS has been re-assessed at year end and amounts to £59,955. This assessment includes all debt for both the emergency and enforcement services from 2014-18.

6. Risk, policy, compliance, and governance impact

- 6.1 This area of work represents a financial and reputational risk for the Council.

7. Equalities impact

- 7.1 There is no equalities impact arising from this report.

8. Sustainability impact

- 8.1 There is no adverse environmental impact arising from this report

9. Consultation and engagement

- 9.1 Not applicable.

10. Background reading/external references

- 10.1 [Report to City of Edinburgh Council, 12 February 2015, Shared Repairs Services -Development of a New Service.](#)
- 10.2 [Report to City of Edinburgh Council 11 December 2014, Shared Repairs Services -Development of a New Service](#)
- 10.3 [Edinburgh Shared Repairs Service – Missing Share](#) – report to Finance and Resources Committee, 5 September 2017

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11. Appendices

- 11.1 Appendix 1 – Management information dashboard.
- 11.2 Appendix 2 – Update on the progress of the Parliamentary Working Group on Maintenance of Tenement Scheme Property.

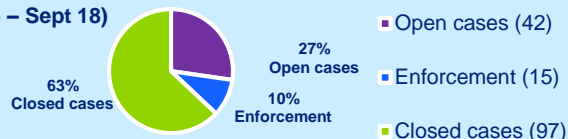
Appendix 1 - Edinburgh Shared Repairs Service Dashboard - September 2018

Monthly progress update (for reporting purposes month end is 25 September)

ESSENTIAL WORKS SERVICE

Total number of cases has reached **154**. The workload currently consists of 51 open cases with 97 closed with successful intervention or completed projects. **722** Tenement Toolkit packs have been issued to owners since June 2016. **11** tenements have requested toolkits in September. Projects where an S26 Statutory Notice has been issued = 12

Case Status (Sep 15 – Sept 18)



CASE WORKLOAD PROGRESS

		NO.
Facilitation:	• Consultation only	3
Missing Share:	• Case open	8
	• Case closed	11
Surveys:	• Case open	0
	• Case closed	5
Intervention:	• Pre-Intervention	29
	• Intervention	2
	• Successful Intervention / Closed cases	81
Enforcement:	• Open	9
	• Projects complete	6
Total Number of Cases		154

ESRS PANEL DECISIONS RECORD	APPROVED	REJECTED	TOTAL
Missing Share	12		12
Enforcement	18	5	23
Enforcement – Additional Works During Project	1		1
TOTAL	31	5	36

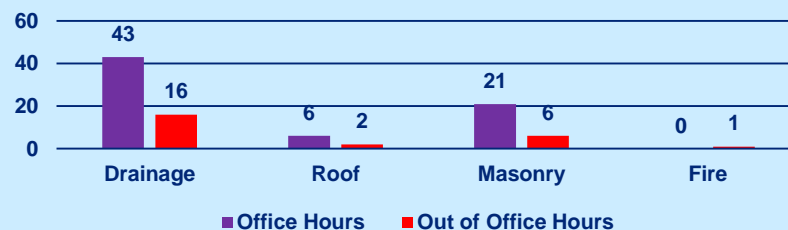
EMERGENCY SERVICE

The emergency repairs service request levels remain high and show an increase from the same period last year. **95** requests for service recorded this month. **59** site visits were drainage related, **35** calls were reports of masonry or roof defects and **1** call was in relation to a fire. Advice and information was provided to customers who called to report defects which did not result in a contractor instruction.

EMERGENCY SERVICE WORKLOAD

	Jul 18	Aug 18	Sep 18
No. of service requests (Site Visits)	98	84	95
No. of emergency repair inspections resulting in statutory notices issued 31(4)	56	56	51
No of drainage repairs resulting in statutory notices issued 31 (1) & (3) - (Complex)	2	0	0

Number of Service Requests
26 August to 25 September 2018



KEY PLANNED ACTIVITIES

The 2018 Summer Campaign has focussed on Missing Shares and will include digital ads, a radio campaign on Forth One and include a leaflet drop to 17,000 tenements in the City.



ESRS Essential Works Dashboard

Programme dashboard as at 25 September 2018

OVERVIEW OF PROGRESS

On 5 September 2017, the Finance and Resource committee approved the Council's use of legislative powers under Section 50 of the Housing (Scotland) Act 2006 to pay funds into owners' maintenance accounts. This approval follows completion of the pilot scheme run by ESRS in which three cases tested the Missing Shares procedure. The table below summarises those cases approved by the ESRS Project Panel. Three further cases have been submitted by owners in August.

MISSING SHARES OVERVIEW

PROJECTS	TOTAL OWNERS	VALUE OF PROJECT	AMOUNT OF MISSING SHARED APPROVED / IN PROGRESS	TOTAL MISSING SHARE OWNERS	PAID / DUE BY CEC
Previously Reported Projects					
17 Projects	169	£720,004	£85,439	22	£46,499
New Projects This Month					
Project 18	8	£83,512	£10,440	1	£10,440
Project 19	4	£4,080	£1,020	1	£0
TOTAL					
19	181	£807,596	£96,899	24	£56,939

PRIVATE WORKS ENABLED BY THE ESRS

PROJECTS WORKLOAD	VALUE OF WORKS (Inc VAT)	CEC FINANCIAL COMMITMENT
Successful Intervention	£893,104	£0
Missing Shares	£807,596	£56,939
TOTAL	£1,700,700	£56,939



Customer Service Dashboard

Programme dashboard as at 25 September 2018

CUSTOMER CONTACT PROGRESS

Customer Contact:	NO.
• Sent Tenement Toolkit packs to owners	722

ALL CUSTOMER CONTACTS	Jul 18	Aug 18	Sep 18
Solicitors Enquiries	241	310	388
Phone Calls	412	525	566
E-Mails	266	310	331
Total Customer Contacts	919	1145	1285

FORMAL CUSTOMER CONTACTS	Jul 18	Aug 18	Sep 18	ESRS WEBSITE VISITS	
FOI's	2	1	5	Sept 2018	4780
SPSO Enquiries	0	1	0		
Stage 1 complaints	2	1	5		
Stage 2 complaints	3	1	1		

ESRS Risk Register

TOP 5 RISKS	MITIGATION	RAG
1. ICT - Uniform Upgrade Downtime	Risk - Projected downtime during the upgrade of the Uniform system in November 2018 is currently estimated to be 6 days. Mitigation - Input of information in-house by service staff working extra hours.	Yellow
2. CGI Finance System	Risk - Delay in changeover, lack of consultation with Finance & ESRS results in systems not meeting requirements. Mitigation - Consult with CGI to ensure that they are aware of requirements.	Yellow
3. Alignment with Property and Housing strategies	Risk - The SOP are drafted without due consideration for the policy and procedures in other areas of P& FM and Housing, leading to conflict with the Council's overall housing strategy. Mitigation - Procedural documents have been shared with relevant directorate staff. ESRS Board includes Housing colleague.	Yellow
4. Contractor Management of Framework Contractors KPI's etc	Risk - Lack of Contract Management of Framework Contractors leading to poor performance of contractors and reputational risk to CEC. Mitigation - to be carried out by a staff member now recruited into ESRS structure.	Green
5. Information Risks - Gap Analysis Action Plan (GDPR)	Risk - Failure to address information risks identified on the Gap Analysis Action Plan for ESRS may result in reputational or financial risk to the Council. Mitigation - Staff Training complete. Maintain Action Plan and address risks within scheduled timescales.	Green



ESRS Finance Dashboard

Programme dashboard as at 25 September 2018

Debt Recovery

OVERVIEW OF PROGRESS

The overall collection rate for Enforcement works is at 85%. Of the outstanding balance, £12,631 is currently being collected through instalment plans.

BILLING AND PAYMENT INFORMATION

	NO OF PROJECTS	BILLED	PAID	INSTALMENT PLANS	INHIBITIONS	BALANCE
Enforcement	5	£377,727	£317,910	£8,843	£15,133	£35,841
Missing Share	4	£27,258	£14,448	£3,788	£0.00	£9,022
Survey Charge	4	£6,014	£4,476	£0.00	£0.00	£1,538
TOTAL	13	£410,999	£336,834	£12,631	£15,133	£46,401
OVERALL BAD DEBT PROVISION FOR ESRS (2014-18)						£59,955

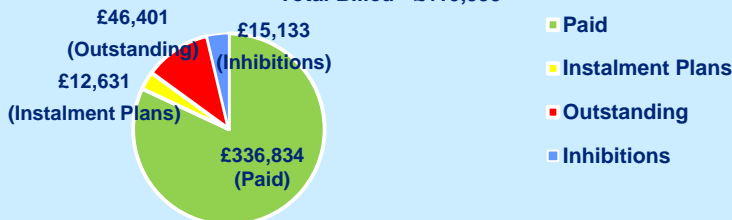
EMERGENCY WORKS

Total value of invoices issued for emergency repairs in 2017/18	£311,272 (Current collection Rate is 90%)
Total value of invoices issued for emergency repairs and call out fees in 2018/19 (Apr 18 to Aug 18)	£255,447

ENFORCEMENT PROJECTS (not yet billed)	MAJOR	MINOR	ESTIMATED VALUE
1. Under £10,000		1	£10k
2. Under £50,000		3	£80k
3. Under £250,000	5		£530k
4. Over £250,000			
TOTAL (9 projects)	5	4	£620k

ESRS - All Projects Overview

Total Billed - £410,999



Work In Progress (WIP)

OVERVIEW OF PROGRESS

The WIP this month includes costs for Essential works Projects and includes Consultant costs not yet billed. Invoices are issued within four months of Project completion.

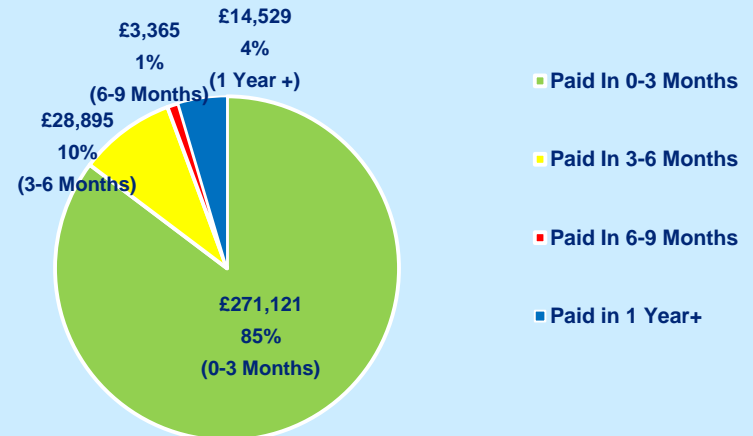
ESSENTIAL WORKS WIP

Overall position	Jul 18	Aug 18	Sep 18
Value of Payments to Contractors	£0k	£40k	£1k
Value of Invoices issued to Owners (excluding project management fee)	£0k	£0k	£0k
WIP	£38k	£78k	£79k
* Contractors retention cost still to be incurred	£2k	£3k	£3k

Debt Recovery (Speed of Payments)

Speed of Payments for Enforced Projects

Total Paid as at 25th September 2018 is £317,910



Update on the progress of the Parliamentary Working Group on Maintenance of Tenement Scheme Property

1. Introduction

This report provides Committee with an update on the progress of the Parliamentary Working Group on Maintenance of Tenement Scheme Property. The Council's Shared Repairs Service Manager represents the Council on this group.

This report also provides an update on the action being progressed by the Edinburgh Shared Repairs Service for reporting to the working group in November 2018.

2. Background

The Scottish Housing Condition Survey 2015, published in December 2016, paints a very poor picture of the current condition of Scotland's housing stock, particularly the 'old' stock which was built pre-1919. The total number of tenement properties in Scotland amount to 579,000, this being the most common type of dwelling in Scotland. Figures show that 68% of pre-1919 dwellings are with Critical disrepair. Similarly 8% of pre-1919 dwellings are with Critical, Urgent & Extensive disrepair.

Edinburgh has a particular interest in this issue as sections of Central, South & North East Edinburgh have a high population density with the majority of residents in some areas living in tenement flats. The age of accommodation ranges from 200+ years old (Old Town) to early Edwardian period. These buildings are now between 100 & 150 years old and as a result of weathering require increased levels of maintenance. A significant proportion of more recently developed housing, including former social housing purchased under 'right to buy' legislation, is also reaching a similar stage of requiring major repairs. Building maintenance is key to sustaining and future proofing the fabric of our current housing stock, ensuring it provides adequate standards of quality now and for future generations.

The Royal Institution of Chartered Surveyors in Scotland (RICS) make the argument that with current Government policy aimed very much at new supply, if the condition of older stock is not given due consideration, these dwellings will deteriorate and become uninhabitable. This will essentially result in viable housing supply in Scotland remaining static. The RICS also state that at times of restricted national and local budgets, there has to be a shift in onus and responsibility for property maintenance. The only party left outwith national and local Government, is the property owner.

A Scottish Parliament members debate on 9 January 2018 highlighted the cross party support for a review of maintenance of tenement scheme property in Scotland.

In March 2018 Ben Macpherson MSP formally created the Parliamentary working group. The focus of this Working Group has been to consider and establish solutions to urge assist and compel owners of Tenement properties to maintain their Scheme Property. The Group will seek to formalise proposals in the following areas:

- Further action by local authorities under existing powers;
- Potential legislative change to encourage owners to better maintain properties; and

Appendix 2

- Potential legislative change to compel owners to better maintain properties.

The group consists of 10 MSPs and 16 stakeholders. The City of Edinburgh Council is the only local authority represented.

The initial issues discussed included:

- Resourcing for local authorities to utilise powers;
- A standard entity for owners to organise works, e.g. a residents' association
- RICS 'Tenement Health Check' policy paper;
- Sinking funds;
- Compulsory factoring;
- VAT relief on repairs;
- Use of mediation; and
- A role for credit unions.

3. Current Position

There is consensus that current legislation is not consistently fulfilling its intentions to encourage owners to establish effective arrangements for managing communal repairs and undertaking maintenance. The group was tasked with providing the Scottish Government with recommended solutions to make a meaningful difference.

The working group Convenor was Ben Macpherson MSP and the Vice-Convenors are Graham Simpson MSP, Daniel Johnson MSP and Andy Wightman MSP. The working group also agreed secretariat is Built Environment Forum Scotland and the Royal Institute of Chartered Surveyors (RICS) in Scotland. Graham Simpson MSP later replaced Ben Macpherson MSP as Convenor.

At the first meeting discussions centred around three topics:

- Owners decision making and the requirement for property management arrangements;
- Maintenance versus major repairs and the requirement for regular building inspections possibly linked to the Home Report;
- Finance and the requirement for sinking funds.

The group agreed that in consideration of the above topics, the best fit solution would result in winners and losers and raised more issues:

- Owner's financial situations varied;
- There was an intersection between public and private interest;
- In some areas of Scotland, building condition did not fully reflect property valuation;
- The role of the Home Report;
- The compulsory nature of building inspections and the mechanism for introduction.

Sub-groups were formed to research and feedback to the group on the following topics:

Appendix 2

- Resourcing for Local Authorities (L.A's) to utilise powers;
- Standard entity for owners to organise work and Sinking Funds;
- Building inspections.

The research findings for each topic are noted below:

3a. Resourcing for local authorities to utilise powers

Research undertaken by MSP's using Freedom Of Information requests to all local authorities provided the following findings:

50% of L.A's have never served a Work Notice on private owners under Section 30 of the Housing (Scotland) Act 2006. The reasons cited were that a potential 30 year repayment period was deemed too high a financial risk to bear.

In the last five years only four Maintenance Orders under section 42 of the 2006 Act have been served by L.A's. The reasons cited are that they are deemed onerous and difficult to implement.

In the last five years only 44% of L.A's have served a Closing Order under section 114 of the 2006 Act. Reasons cited as this makes residents homeless and that boarded up homes are unpopular to residents in the surrounding area.

The City of Edinburgh Council historically issued 300 statutory repair notices per year using the City of Edinburgh District Council Order Confirmation Act 1991. The new Edinburgh Shared Repairs Service have issued 10 statutory repair notices in the last 2 years to July 2018.

Missing Shares powers under the 2006 Act are currently used by 10 L.A's. Research showed that these powers are increasingly being used by L.A's with Glasgow and Aberdeen utilising these powers the most since 2012.

It was also noted that the City of Edinburgh Council deal with on average 15 stone falls or roof related building emergencies every month. Follow up research will be undertaken on the number of emergency building actions undertaken by L.A's in Scotland over the past 5 years.

3b. Standard Entity for Owners to organise works

Research by the sub-group found that the Title Condition (Scotland) Act 2003 already provides a very suitable standard entity for Owners Associations called the Development Management Scheme (DMS). The features of this scheme are:

- It is a body corporate, managed solely for the benefits of members but without undue company management bureaucracy;
- It provides a robust structure;
- It is flexible and customisable allowing some of its provisions to be varied and extra provisions added;

Appendix 2

- It has provisions that can overcome the drag of apathy. If there is no quorum at the first meeting, a second can be called which will be empowered to make decisions without a quorum;
- It requires one vote per flat;
- 25% of members can call for an EGM;
- It has a budget with powers for a 25% increase in charges;
- The rules bind the owners.

The powers of a DMS are:

- It can set up a sinking fund;
- It provides a manager to provide leadership (could be an owner);
- It can insure the property;
- It can require owners to pay service charges (for maintenance and management);
- It can buy moveable property / property within the development boundary;
- It can open accounts, borrow and invest;
- It can employ staff and contractors;
- It can set management rules.

A DMS manager has greater powers than most Factors at present:

- The manager can exercise powers of Association as expressed at a General Meeting and can sign documents on behalf of Association;
- Their duties include inspections, arranging maintenance and keeping accounts;
- The manager can enforce obligations and regulations – (therefore individual owners would not need to act against their neighbours);
- The manager draws up a draft budget annually for owners to approve – one decision per annum rather than piece by piece approach to maintenance;
- The manager is notified of sales, so will be up to date on ownership.

The sub-group found that there was evidence from Registers of Scotland that this scheme is being increasingly used by Developers over the past 7 years.

The main concern is that, as the law stands, conveyancing is needed to apply the DMS. Lenders would need to be consulted and there would be a legal cost. The widespread introduction of DMS may be onerous on lenders. Lenders have been consulted informally on this. It appears that Law reform which could impose the DMS without conveyancing might not be a major issue for them.

The sub-group suggested a DMS be introduced for developments (or tenements) above a minimum size, suggesting above 6-8 flats.

The sub-group also suggested the DMS could be introduced by majority scheme decision under TMS rather than 100% decision. Owners who don't agree could have an appeal to sheriff process as is the case in the Tenement (Scotland) Act 2004 at present.

Appendix 2

The sub-group also suggested setting up costs may be the barrier to the DMS and therefore introducing statutory sinking funds is possibly a priority.

3c. Sinking Funds

The sub-group discussed that sinking funds and DMS go hand in hand. The establishment of these funds should be required even at a minimum compulsory level of contribution. They should be regarded in the same way as workplace pensions. UK Finance was consulted during the research. UK Finance is the trade association for the finance and banking industry operating in the UK.

The benefits include:

- The spreading of costs over a period of time and generations of owners;
- Reducing the occasions on which owners will not proceed with repairs due to lack of finance;
- Develop a culture of maintenance and financial planning for repairs.

On initial consultation with lenders, discussion suggested that sinking funds could be regarded as an asset and even if it were insufficient to cover the full cost of repairs, owners could borrow against future income due to it, using it to secure a loan which would cover the full cost of the repair. However lenders were clear that the decision from valuers on whether Sinking Funds were an asset or a liability was required and further consultation was required from the RICS to establish the position.

Dis-benefits discussed included the affordability and impacts on the individual's ability to meet mortgage repayments. Contribution levels would also be taken into account in assessing affordability of a mortgage.

It was recognised that it could take years for funds to build to a level where they will hold sufficient reserves to deal completely with major repairs so there would still need to be provision for other forms of intervention in the repair process for example through L.A powers.

The mechanism for introducing funds was discussed. The funds could be phased in perhaps by building age, the introduction of low contributions increasing over time or by L.A order.

The default in contributions could be made up as part of the conveyancing process when a flat is sold. Defaulting in payments may not be penalty free and an interest rate could be applied.

The sub-group discussed that the means of enforcement could be similar to the registration of landlord's process, managed by L.A's.

Edinburgh Council asked the sub-group to consider the implications on local authorities and registered social landlords in relation to contributing to sinking funds.

Fund management was discussed and compared to a Financial Trust operating in a similar way to a Pension Fund with the fund being run for the benefit of members, securely invested. Credit Unions provide a governance model. The Tenancy Deposit Scheme model also provides options for collection of funds. One dis-benefit may be in relation to data protection as the fund would hold data in relation to owners and data privacy implications

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would have to be thought through however this information could be valuable to building owners and policy makers.

3d. Building Inspections

In general discussions the working group considered that shifting attitudes of owners towards repair and maintenance responsibilities is likely to require compulsion and the law around seatbelts, smoking and vehicle MOT's was referenced.

The proposals around building inspections have been considered with reference to the RICS Tenement Health Check Policy, summarised below and available to view on the RICS website.

The RICS paper proposes a policy framework comprising three parts, initially a voluntary scheme which should become mandatory of time:

- A building condition survey;
- 'Gold Standard' assessment; and
- Costs and Funding Streams.

The first part would be a comprehensive building survey which provides an assessment of the shared parts, including approximate costs and a traffic light system for prioritising repairs, categorised as immediate, urgent, necessary or desirable. The 'Gold Standard' would be achieved if a property has additional measures in place such as residents committee, maintenance account and a maintenance plan. The third part of the framework proposes that the cost of a survey split between tenement owners may amount to approximately £60/owner per annum which should be affordable to homeowners.

Within the policy paper the RICS go on to say that there is a political will for a maintenance scheme, or at least awareness-raising. The Scottish Green Party, for example, pledged the removal of VAT for building repairs, Scottish Labour pledged using the planning system to ensure maintenance of domestic building, and the Scottish National Party pledged to encourage improved tenant participation in management of their homes.

The sub-group proposals suggest a five yearly inspection as an industry standard, referencing the British Standard Survey BS 7913 B.5 Inspection Reports. The proposals include:

- Which industry specialists should carry out inspections;
- How these are carried out; and
- What building elements should be included in the survey.

As well as categorising the priority level of defects to be attended, the inspection report could also include timescales for repair. The depth of the report was discussed and the option to include costings may be optional. The risks around liability for accuracy of costings was also discussed.

The use and storage of the report was discussed. Consideration was given to who should receive the report and the method of engagement with owners. Suggestions included that the storage of the report could be in a central location freely available to the general public.

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The submission to the central storage location should be the responsibility of the property manager or professional with agreement of the owners

The format of the inspection report could be in the form of a log book and be updated with additional or subsequent building checks or repair works undertaken.

The relationship with the Home Report was discussed, consideration is required around whether these two reports should be linked. The two reports are for two distinctly separate purposes. Linking the two reports may cause unnecessary conflict or misunderstanding. Although it may be argued that the content of a Building Condition Survey Report may affect the content of the Home report.

One significant issue in relation to what building elements are inspected is with the roof of tenements. Access and inspection of the roof is inhibited during home report inspections. Under these new proposals the roof must be inspected.

The approach to the introduction of the requirement for a Building Inspection report was discussed and options for phasing or immediate introduction are being considered following legislation. Registers of Scotland may see opportunities for the linking of reports within the new ScotLIS system provided by them.

Examples of other practices across the world have been touched on within this research including five-yearly surveys in states in the U.S.A. The system across America is very transparent, the name of the report, the author, content and recommendations all being publicly available in some states.

4. Common Repair Provisions Report

Professor Douglas Robertson has prepared a draft report on the current arrangements for ensuring common repairs are undertaken within flatted property in Scotland. This 35 page report explores the history of the legislation introduced to tackle the issue and the enforcement by L.A's. Edinburgh's previous history in relation to Statutory Notice repairs features within this report. The group agreed that the report was valuable to policy makers to ensure recommendations didn't repeat previous work done.

5. Timescale of Group recommendations

The Common Repairs Provisions report and the sub-group recommendations are to be published in December 2018 with final recommendations to be published in May 2019.

6. Action for City of Edinburgh Council

The working group have requested progress be reported at the next meeting on the proposal being driven by the Council's Shared Repairs Service to share owners details with other owners in a tenement where there is evidence of a common repair being progressed privately.

The proposed privacy impact assessment report submitted by ESRS has been assessed by the Information Governance Unit and the Council's Data Protection Officer. The overall risk has been determined as Medium and there are a number of recommendations to progress.

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Shared Repairs must show that the proposals are considered part of the Council's public task and this is a lawful condition of processing.

The Council are progressing this for the benefit of property owners in tenements under the Power to advance well-being under Section 20 of the Local Government in Scotland Act 2003. The Council is empowered to take measures which it considers likely to promote or improve the well-being of its area and persons within that area or either of those.

"Well-being" is not defined in the 2003 Act, however the Guidance issued by the Scottish Ministers under Section 21 of the 2003 Act states that key factors which contribute to the promotion or improvement of well-being may include environmental factors such as the quality of the built environment. Section 20(2) (f) of the 2003 Act also provides that the power to advance well-being includes the power to provide a service to any person (e.g. property owners) and includes the power to facilitate or co-ordinate the activities of any person.

The Council considers that the exercise of these functions is necessary in order to protect the built environment and to maintain the amenity of the City of Edinburgh area. This new proposal may be reasonably said to contribute to or promote the well-being of CEC's area. This may also be said to contribute to or to promote the well-being of residents in the CEC area who will benefit from a well-maintained built environment.

The Council wishes to provide a process whereby using its powers it can ensure that repairs works are progressed and co-ordinated with all owners in the stair. As far as we are aware there is no specific statutory authority for the provision of this kind of service by a local authority. However it is likely that the end product of the service is that the well-being of the CEC area or that of any of its residents is improved, then we believe that the provision of this service may be deemed to come under the umbrella of the power to advance well-being.

The recommendations also include the requirement to consult data subjects and review feedback on this proposal. The intention is to meet with and discuss proposals with the Information Commissioner's Officer. The service proposes to prepare a survey to be sent to all owners with whom the Shared Repairs Service has had engagement through the Missing Shares Scheme and owners in cases where enforcement of repairs has been necessary. The survey will ask for feedback from property owners, the main question being do owners feel this proposal is fair, for the purpose intended?

7. Current ESRS Process

The Tenement (Scotland) Act 2004 provides a structure, known as the tenement management scheme, for the maintenance and management of tenements. The Council have no powers under this legislation however the Council's new service Edinburgh Shared Repairs Service (ESRS) has the objective of supporting, encouraging and enabling owners to proactively take responsibility for planning and organising repairs. ESRS have designed the 'Tenement Toolkit', a screenshot of the leaflet is shown below:


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Getting your property's common repairs organised can be a real headache. But if you own a flat, you and your neighbours are responsible for the upkeep of the shared areas in or around your building, such as the roof or stonework, paths, entrances and stairs. Usually one owner takes the lead for organising the repairs.

This guide takes you through the main steps you need to take to organise your repairs. Use it with our handy *Tenement Toolkit* which includes checklists and templates to help you work with your neighbours.


Step 1 IDENTIFY OWNERS AND WHO'S RESPONSIBLE

Identify fellow owners and check your title deeds if you're not sure who's responsible. Your deeds should give details of your shared areas and how to work out your share of a bill. Where shared repairs aren't mentioned the Tenements (Scotland) Act 2004 will apply. It aims to make sure that shared parts of the building are kept in good repair and applies to any building that is divided into two or more flats on different floors. Find out more in the *Tenement Toolkit*.




Step 2 FIND OUT WHAT NEEDS REPAIRED

Get evidence of any repairs needing done. Take photographs of the repair area and get at least two, ideally three, comparable quotes from contractors. You can also hire someone like a surveyor or building contractor to carry out checks.




Step 3 LET OWNERS KNOW ABOUT THE REPAIR

The other owners must be made aware of the repair including owners of neighbouring tenements if it affects their building. Try to speak to neighbours in the stair or put up a poster on the back of the main door saying what you want to tackle. You can use the standard letter in the *Tenement Toolkit*.




Step 4 ORGANISE A STAIR MEETING

Make sure all fellow owners are given at least 48 hrs notice of the meeting and get any relevant information. The Notice may be posted, delivered or sent by email. Download the meeting notice form from the *Tenement Toolkit*.




Step 5 VOTE ON THE REPAIR OPTIONS

Each property (flat or commercial) has one vote and all decisions are made on a majority basis. All votes must be recorded. Download the voting form from the *Tenement Toolkit*.



Download our *Tenement Toolkit* for handy checklists, standard letters, forms and guidelines that you can use to help you organise each step of your repair.



The first step in the process for owners is to find out who is liable for the proposed repairs. If the lead owners can't find their fellow owners contact details the process can't be started, this is tremendously frustrating for owners. ESRS have recorded the number of customers who have come to the Council for ownership information and been refused this under the current process.

The table below shows the number of requests made in March, April and May:

March 2018	April 2018	May 2018	Average Requests per Month
7	4	6	5.7

8. Case Examples

ESRS have encountered numerous examples of cases where owners have become frustrated with the difficulties of finding fellow owners details. The following case examples demonstrate this:

Case 1

Owners of a tenement property in Edinburgh approached the Council in 2017 having tried to progress roof work repairs to fix a leaking roof. One of the owners of a flat in the tenement was elderly and in a care home. The other owners, although sympathetic, found it impossible to engage with this owner and collect the funds into the communal maintenance account. The lack of funds prevented the owners from being able to arrange and instruct a contractor. Meanwhile the owner of the top floor flat suffered water ingress. They came to the Council to ask for information to find out if the owner had a family member who could progress this on behalf of the elderly owner. The Council were able to track down, through the liability checking process, a family member of the elderly owner who was acting on the owner's behalf and lived in Australia. The Council contacted them and requested that they engage with the other owners. After some time they did engage and the missing share of the cost

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was paid. As a consequence the Council did not require to use public funds to provide the missing share in this case.

Had the owners known the contact details of the missing owner's representative when the initial Tenement Management Scheme (TMS) decision and voting was underway this would have resolved the issue more quickly and the roof would have been fixed sooner. This would also have allowed the missing owner's representative to engage in tenement scheme discussions regarding the nature and extent of repairs. Delays in repairs can cause further deterioration and subsequently result in a larger repair required.

Delays in repairs due to lack of maintenance being undertaken in a timely manner was illustrated by the RICS at a Parliamentary Reception, see an extract in table 2:

Area	Ownership	Defect	Impact	Total cost of remedial work	Illustrated cost of preventative maintenance
New Town, Edinburgh	Common	Defective pointing to chimney cope	Chimney reconstruction	£8,000	£400
City Centre, Perth	Common	Defective pointing to chimney cope	Demolition of structural unstable chimney	£12,000	£1,100
Marchmont, Edinburgh	Common	Roof Gutter and chimney re-pointing	Extensive stonework repairs & chimney reconstruct	£160,000	£8,000

Case 2

Owners of a traditional tenement property in Edinburgh approached the Council in 2016 for assistance with a non-engaging owner who didn't appear to live in the property he owned. This group of professional and extremely organised owners had brought together 20 of the 21 owners to take the TMS decision and collect the funds into the communal bank account. The share value per owner was significant at approximately £7k each. The owners could not progress the works due to lack of engagement with the missing owner who was not living at the property. Through the Missing Share Scheme with the Council and the Council's subsequent contact with his legal representative, the Council received full payment of his share of the costs. Had the Council been able to pass this owner's information to his co-owners initially the works may have been progressed more quickly and without the use of public funds. This may also have resulted in a materially lower share for the missing owner, as missing shares recovered by the Council are subject to an administration charge and interest.

Case 3

A lead owner of a tenement in Edinburgh has been in touch with the Council recently as they cannot find the contact details of their fellow owner. The Council have written to the agent acting on behalf of the missing owner, using details found through our liability checking process. The Council have requested that the missing owner get in touch with the lead owner to engage in the process to progress the common repairs. This case is still on-going however the current procedure, demonstrated here, highlights the lengthy process currently in use which causes frustration to owners who in most cases have an urgent common repair required to be arranged.

The Council are keen that the difficulties faced by property owners when arranging repairs are resolved. As seen from the issues highlighted in this report these are many and complex. If the ICO can assist the Council to allow this new proposal to be adopted, this would allow the Tenement Act process to be more workable in at least one of the areas currently seen as an obstacle for property owners.

The result of discussion with the ICO will be reported at the next meeting of the working group in November 2018.