

# Finance and Resources Committee

10.00am, Thursday, 7 October 2021

## Mixed Tenure Improvement Service Pilot Progress

Executive/routine Wards Council Commitments	Executive All
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### 1. Recommendations

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- 1.1 It is recommended that Finance and Resources Committee:
  - 1.1.1 Note the progress of the Mixed Tenure Improvement Service (MTIS) Pilot to help support common repairs and maintenance in blocks where there is a mix of Council and privately-owned homes;
  - 1.1.2 Note the reduction in the interest rate applied to owners' debt as a result of works undertaken in the Mixed Tenure Improvement Service Pilot; and
  - 1.1.3 Agree to extended debt repayment terms to the Council's Scheme of Assistance (SoA) to increase the support available for owner occupiers in the MTIS Pilot area, as set out at paragraph 4.14 and Appendix 1.

**Paul Lawrence**

Executive Director of Place

Contact: Jackie Timmons, Shared Repairs Senior Manager

E-mail: [jackie.timmons@edinburgh.gov.uk](mailto:jackie.timmons@edinburgh.gov.uk) | Tel: 0131 529 6778

## Mixed Tenure Improvement Service Pilot Progress

### 2. Executive Summary

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- 2.1 The Council is the largest landlord in the city with around half of its homes in mixed tenure blocks where responsibility for maintaining the buildings is shared with the other owners. Most of the housing stock is situated in former Council estates where property values and household incomes are low, making it more difficult for owners to afford the cost of repairs. The Council has a duty to maintain homes on behalf of tenants and to ensure that Council homes meet the Energy Efficiency Standard for Social Housing (EESH 2) by 2032. In order to tackle disrepair in housing and support the delivery of Council commitments, including net zero carbon, the Council established the Mixed Tenure Improvement Service (MTIS).
- 2.2 This report sets out progress of the MTIS pilot and the challenges to date. It also outlines plans to increase support available for owner occupiers living in the pilot area in Wester Hailes to help them meet their responsibilities for the cost of work.

### 3. Background

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- 3.1 The creation of mixed tenure neighbourhoods in the 1980s and 1990s, arising from right-to-buy legislation, has led to increased complexity in taking forward repairs, maintenance and improvements to common areas of blocks or tenements.
- 3.2 In mixed tenure blocks, there is a mix of ownership with owner occupiers, landlords and Council-owned flats. Many of these blocks need significant investment to common elements. A majority agreement of owners in each block is required before decisions can be made on the scope of common repair work to be taken forward. Flat owners are responsible for paying their share of any repair works undertaken in accordance with their title deeds.
- 3.3 Housing Revenue Account (HRA) investment over the past five years has been targeted at internal and external improvements to blocks in full ownership of the Council. Investment is now needed to the external fabric and communal areas of mixed tenure blocks to ensure flats in blocks are warm, damp free, safe, secure and wind and watertight. Taking the fabric first approach will assist the Council to comply with the requirements set by the Scottish Government in relation to Energy

Efficiency Standards for Social Housing (ESSH2). In addition, making progress towards the Council's objectives to meet the Net Zero Carbon target by 2030.

- 3.4 On [7 June 2018](#), Housing and Economy Committee approved a Mixed Tenure Improvement Strategy, setting out the next steps to tackle mixed tenure repairs. The report also noted a proposal to establish a Mixed Tenure Service to engage with all residents and manage the delivery of the construction work.
- 3.5 Updates on the Mixed Tenure Improvement Strategy were also considered by Housing and Economy Committee on [24 January 2019](#) and [6 June 2019](#). On [23 January 2020](#), Finance and Resources Committee noted the proposals to pilot the Service and agreed to extend the debt repayment terms to enhance the Council's existing Scheme of Assistance (SoA). The Pilot is intended to inform future decisions on mixed tenure work required across the city and the approach used to achieve improvements to the Council's existing housing stock.

## 4. Main report

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- 4.1 The scale of mixed tenure repairs required across the city is substantial. Delivery of much of the required investment to maintain and improve Council housing stock is dependent on getting the agreement of other owners within mixed tenure blocks. The ability to deliver on the Council's Net Zero Carbon target by 2030 is also heavily dependent on working with owners to achieve a fabric first approach that minimises the requirement for energy use. The legislative framework and processes to progress works must be followed to recover owners' share of costs.
- 4.2 The MTIS was established as a three year pilot to deliver mixed tenure investment as part of the Capital Programme for Housing, supported by effective use of the Tenement (Scotland) Act 2004 framework.
- 4.3 The MTIS programme of works include delivery of repairs to 1,400 flats in 181 blocks, with an estimated value of £30m over the three-year period. The Council own the majority of flats (approximately 1,000 flats in the pilot area) with the remainder (400) being privately owned. Ownership checks to date show that landlords own 45% of privately-owned flats.
- 4.4 The implementation of the MTIS commenced in 2020 with recruitment of the team and the development of standard operating procedures (SOP's). MTIS case officers are dedicated to engagement and communication with owners and tenants in the pilot area. The MTIS Chartered Surveyors undertake the technical work including on-site Building Condition surveys, preparation of owner reports and cost estimates, preparation and submission of Building warrants, procurement and management of specialist surveys and construction works.
- 4.5 The SOP's include research and verification of ownership of flats, investigation and verification of apportionment of repair costs per owner, from the title deeds and Tenement Act rules where applicable. This work is undertaken prior to communicating with owners. The first letters to owners introduce the Pilot project and describe the programme objectives, roles and responsibilities of owners, the

legal framework, the voting and appeal process, the building condition survey process and how the repair works will be delivered.

### **Progress**

- 4.6 The programme will be delivered over the next three years. Phase 1 is being taken forward in 2021/22 and includes works to 512 flats of which 141 (28%) are privately owned. Of the privately-owned flats, 63 are owned by landlords and 78 are owner occupied.
- 4.7 78 properties have progressed to a legally binding majority scheme decision in all but one minority block.
- 4.8 The estimated average cost of repairs per flat in Phase 1 was £28,000, which was notified to owners. This included repairs cost, provisional sums, contingency sum, 20% project management fee and VAT. The cost per flat was subject to the scope of repairs and apportionment of costs by rateable value, in accordance with the flat title deeds.
- 4.9 Prior to submitting estimate costs to owners, the team investigated and received specialist advice to confirm that VAT can be charge at 5% for some energy efficiency measures, this reduced the average VAT charged per block to 11%.
- 4.10 During the pre-tender period the team have undertaken a value cost engineering exercise following the results of specialist surveys and some provisional items have been removed from the cost estimates. Following evaluation of contractor tenders for Phase 1 the impact of Covid-19 and Brexit related issues have been clarified as far as possible and following procurement, owners will be sent revised estimated costs.
- 4.11 The initial cost estimates excluded non repayable Grant funding available to private owners through the Home Energy Efficiency Programme for Scotland (HEEPS), Area Based Scheme (ABS) secured by the Council from the Scottish Government. HEEPS ABS funding is provided to local authorities to develop and deliver energy efficiency programmes, mainly solid wall insulation, in areas with high levels of fuel poverty.
- 4.12 The grant funding available to all owner occupiers will be up to £7,000. Landlords may be eligible for funding subject to the number of properties they own. The details of this will be included in updated cost estimates for owners.
- 4.13 Council officers have also explored the availability of additional Grants for owners in fuel poverty with Energy Saving Trust. This will be possible subject to criteria being met, households confirming eligibility and evidence being collected by the Council.
- 4.14 Additional support is available to increase the grants by a further £5,000 for vulnerable owners, to £12,000 for energy efficiency work. There is also an opportunity to add 10% to this for structural works related to the energy efficiency work if required and up to 20% for enabling works. In some circumstances this will increase the grants to up to £15,600 for some vulnerable owner's, and will be managed under the current 2021-22 HEEPS ABS grant from the Scottish Government.

- 4.15 The result of securing grant funding and value engineering may reduce the estimated costs for Phase 1 works invoiced to vulnerable owners to approximately £2,000, subject to final accounts agreed with contractors. Estimated costs for other Phase 1 owner occupiers and landlords may range from £9,000 to £18,000 (these costs are subject to the final scope of works, apportionment of final costs and securing grant funding).
- 4.16 The construction work has now been procured and updated cost estimates will be sent to owners. Works are expected to start on site at the end of October.

### **Enhanced Scheme of Assistance**

On [23 January 2020](#), Finance and Resources Committee approved extended debt re-payment plans for the MTIS Pilot. The construction work will be financed by the Council and charged to owner occupiers upon completion. Payment plans set up with the Council do not affect an owner's credit score. Payment plans available for owner occupiers are as follows:

- 4.16.1 Owners with total MTIS debts of up to £5,000 may be offered a payment plan of a maximum of four years;
- 4.16.2 Owners with total MTIS debts between £5,000 and £10,000 may be offered a payment plan of no longer than seven years; and
- 4.16.3 Owners with total MTIS debts of more than £10,000 may be offered a payment plan of a maximum of ten years.
- 4.17 These terms are available to owner occupiers in the MTIS Pilot area only.
- 4.18 As a last resort, owner occupiers may also consider an option to sell their flat back to the Council and remain in their home with a Scottish Secure Tenancy in line with the agreed strategy for consolidation or divestment of interest in mixed tenure blocks as set in the Acquisitions and Disposal Policy ([A and D Project Update 26 Jan 2016](#)) and as a 'last resort' option.
- 4.19 The average income in Wester Hailes is 37% lower than the Edinburgh average and the value of a 2-bed flat is 50% lower than the Edinburgh average. Wester Hailes is in the most deprived 5% of Edinburgh. A case study of owners in Phase 1, assessment made through Scottish Index of Multiple Deprivation and the Scottish Government Home analytics database, found that almost half of these owner occupiers may be categorised as in extreme fuel poverty.
- 4.20 Owner occupiers may not be able to afford to pay back the costs over the maximum 10-year period offered by the Council and the repayment amounts may be a significant proportion of their income. In the case of vulnerable owners including pensioners, a repayable loan may be very difficult to sustain over the current repayment period.
- 4.21 Should owners have difficulty securing finance from the market, extending debt repayment terms for their share of costs arising from Council-led mixed tenure work may help owners meet their responsibilities to repay these costs over a longer period. This would be an additional measure included with the Council's SoA

covering the Mixed Tenure Improvement Pilot. Finance and Resources Committee is asked to agree an extension to debt repayment of up to 15 years for owners with debts of more than £7,000, as set out in Appendix 1 of this report.

- 4.22 These extended repayment terms would only apply to owners who live in their homes in mixed tenure blocks within the MTIS pilot and would not apply to landlords. Experience from the Edinburgh Shared Repairs Service is that once a scheme decision is reached, landlords pay their share of common repairs. Extending the debt repayment period for the purposes of the three-year pilot will allow the Council to manage exposure to financial risk in a controlled environment and make more accurate assumptions of scale and level of risk for the future programme.
- 4.23 With potentially significant repair bills, the Council would be more likely to recoup costs sooner if existing debt repayment terms were extended instead of resorting to an inhibition order immediately following an initial debt repayment period. An inhibition order prevents the owner from re-mortgaging or selling their home without repaying the full costs of work. Whilst an inhibition order would ultimately lead to the full repayment of the debt, it would be at a later, undefined time.
- 4.24 The policy is aimed at getting the balance right for both the Council and debtors whilst not encouraging owners to agree payment plans with the Council by default, as the market is more likely to offer more financially attractive alternatives. However, longer repayment terms may be a preferable option for people who are unable to access high street finance but may end up facing an inhibition order if they cannot afford to repay costs within the Council's existing debt repayment terms. As part of its ongoing work, the MTIS will also signpost to organisations that offer independent financial advice. All owners have a responsibility to maintain and repair the common areas of their homes and to meet their share of costs of any works that are carried out.
- 4.25 Additional signposting may include an option for owners to release equity in their homes using schemes operated by organisations, such as, the Equity Release Council. Options include release of part or all the equity value of your home with no monthly repayments. These schemes are regulated by the Financial Conduct Authority and are available to owners over 55 years of age. Owners are advised to seek their own legal and financial advice in relation to this.
- 4.26 A further measure to secure outstanding debt will be the introduction of an additional process to secure debt using a Notice of Potential Liability (NoPL), which was introduced by the Tenement (Scotland) Act 2004. The debt is registered on the burdens section of the property title at the land register which has an advantage over an Inhibition Order. The NoPL is renewed every three years and would be used alongside a re-payment plan arranged with the Councils debt recovery service for debt resulting from the unpaid invoices in relation to the MTIS Pilot.
- 4.27 The Council's rate of interest applicable for MTIS debt in re-payment plans is 6%. In accordance with the Council's Scheme of Delegation, the Service Director for Finance sets and reviews the interest rate. The Council interest rate level may

reduce the risk of bad debt by encouraging owners to find an alternative lender. However, some owners may not be able to secure funding through loans from the financial marketplace due to a poor credit rating. Additionally, interest rates at 6% may be perceived as penalising those owners and investigations into interest rates charged by other local authorities for this type of debt has shown, of those respondents, the Council's interest rate was the highest. In order to support the delivery of the pilot, the Council's rate of interest for MTIS debit in repayment plan will be reduced from 6% to 4%.

- 4.28 Loans of up to £10,000 at 0% interest may also be available to owners through Home Energy Scotland (HES). The Mixed Tenure team are working with Home Energy Scotland and the Energy Saving Trust to share knowledge and understanding of the processes for owners. These loans are not secured on their property and are personal loans. HES will verify affordability prior to approval. Energy Savings Trust have been asked if the loan terms can be extended for owner occupiers. EST are to take this proposal to Scottish Government, who have the power to change this.
- 4.29 Risks of further enhancement to the SoA will need to be carefully monitored with relevant mitigating actions taken to ensure they are contained as far as possible.
- 4.30 The potential risks include financial risks, such as owners' bad debt as well as reputational, if the Council is not seen to work effectively with owners. Financial controls and robust accounting processes will also be used to manage and monitor the sums due to the Council.
- 4.31 Owners are responsible for maintenance and repairs of common areas but by adapting the SoA, the Council is offering a hierarchy of assistance to help owners carry out essential repairs to their home. The proposal to enhance the existing assistance will have a more positive impact on the cashflow for the Council than increasing the use of inhibition orders. The use of inhibitions secures the debt, but the Council may have to wait several years to get payment of the sums due.
- 4.32 Conversely there are also risks of not tackling essential repairs to common areas. Not investing in the condition of homes would lead to further deterioration of Housing Revenue Account (HRA) assets, increasing the cost of repairs, with the ultimate risk of demolition and resultant loss of housing supply.

## **5. Next Steps**

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- 5.1 Subject to approval of the additional measure the sundry debt policy wording will be amended to reflect the amendments agreed by Committee.

## **6. Financial impact**

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- 6.1 The enhancements to the current scheme of assistance of extending the period for payment plans with the Council to 15 years and a reduction in the interest rate to

4% would be applicable to owner occupiers within the mixed tenure pilot area, reducing the financial risk to the Council. The risks will be regularly monitored and mitigated as far as possible by securing the recovery of the debt by appropriate means, this may be by Inhibition Order or Notice of Potential liability registered on the title deeds at Registers of Scotland.

## **7. Stakeholder/Community Impact**

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7.1 None.

## **8. Background reading/external references**

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- 8.1 [Mixed Tenure Improvement Strategy](#), Housing and Economy Committee, 7 June 2018.
- 8.2 [Mixed Tenure Improvement Strategy](#), Housing and Economy Committee, 24 January 2019.
- 8.3 [Mixed Tenure Improvement Strategy Update](#), Housing and Economy Committee, 6 June 2019.
- 8.4 [Mixed Tenure Improvement Strategy](#), Finance and Resources Committee, 23 January 2020.

## **9. Appendices**

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- 9.1 Appendix 1 – Proposed extension to Debt repayment terms based on Section 11 of Corporate Debt Policy.



## **Appendix 1 - Proposed extended debt repayment terms based on Section 11 of Corporate Debt Policy**

The scale of essential mixed tenure repairs and investment required to common areas of mixed tenure blocks is substantial. The Council's Mixed Tenure Improvement Service (MTIS) will use the Tenement Management Scheme (TMS) to reach majority decisions so that repairs can be carried out to shared areas of mixed tenure blocks. The aim is to engage with owners to help them to meet their responsibilities to carry out and pay for repairs and investment in their homes. The potential option to spread the cost of debt over a more manageable period and will support this. This option will not be available to private landlords. To do this, the following terms will apply:

- (i) A three-month interest-free instalment plan will be offered to all property owners participating in the HRA Capital Programme essential mixed tenure repair work;
- (ii) Payment plans in respect of HRA-led Capital Programme essential mixed tenure repair work will be based on the total combined MTIS debts outstanding for individual property owners as follows:
  - owners with total MTIS debts of up to £5,000 will be offered a payment plan of a maximum of four years;
  - owners with total MTIS debts between £5,000 and £7,000 will be offered a payment plan of no longer than seven years; and
  - owners with total MTIS debts of more than £7,000 will be offered a payment plan of a maximum of fifteen years.

In accordance with the Scheme of Delegation, the Head of Finance will review all relevant factors in determining the interest rate to be applied to HRA-led Capital Programme essential mixed tenure repair-related debt. In order to provide greater certainty, this rate will remain fixed for the full period of repayment.

In exceptional circumstances the Council may consider offering an HRA-led Capital Programme essential mixed tenure repair-related debtor the option of being made subject to a voluntary inhibition. The Council will advise the debtor that financial and legal advice should be sought in this regard.