

Provision of Building Reserve Funds (BRF) for Tenement Dwellings

February 2023

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1. Executive Summary

This secondary and primary research built upon the detailed work of the Tenement Working Group (TWG) and extant responses to their proposals.

Conditions of tenements in Scotland, and indeed their current and future occupiers was of primary concern to all research participants. There was broad consensus to take steps towards:

- Addressing outstanding repair backlogs;
- planning for future repair needs; and
- setting the conditions for regular maintenance.

Within the second of these topics, this research was commissioned to focus upon the introduction of Building Reserve Funds (BRFs). Discussion of interrelated areas pertaining to both repairs and maintenance pointed towards a combination of legislation, guidance and intervention as follows:

- Mandatory **buildings insurance** which covers common areas of tenements.
- Mandatory **factoring** for tenements- either by professional factors or self-factoring by established Owners Associations.
- Extending the application of **Tenement Management Scheme's** definitions of scheme property, scheme decisions and shared costs to all tenements, not only those with gaps in title deeds.
- Mandatory **maintenance accounts** to utilise for maintenance, including repairs and replacements for environmental reasons.
- Clear communication and checks of the above at point of sale by **conveyancing solicitors**.
- Prioritisation of outstanding repairs determined by **regular professional surveys**.
- **Transparency on projected and actual spend** on common maintenance and repair by factors.
- Supporting sources of **guidance and new technology** to empower groups of owners and Owners Associations to make and follow through TMS scheme decisions.
- **Incentives** to encourage regular, high quality maintenance supply and demand.

2. Introduction

This research was commissioned to ‘allow the Scottish Government to make a determination of the required level(s) of monetary commitment from tenants/ landlords in relation to BRF.’ The parameters are ‘a points-based model that can be used to calculate how much people should contribute’ and to ‘propose a model to calculate a BRF for a range of building types, assuming they are starting in a reasonable condition’.

Through informing future legislation, this commission impacts tenement owners directly and tenement tenants indirectly. In addition, many professional stakeholders are interested in the implications of any new model. These include mortgage lenders, surveyors, factoring agencies, housing associations, developers, letting agencies and membership bodies for the built environment. Therefore, this research approach set out to elicit a broad range of views. In particular, views were sought on how to put a policy commitment towards a BRF model into practice, aligning with the *Fairer Scotland Action Plan*.¹

Research questions from the Invitation to Tender were addressed using various research methods (see Appendix 1). The sections within this report are organised in relation to these research questions. Cross references of research questions appear in brackets next to each corresponding section.

¹ [Fairer Scotland Action Plan \(www.gov.scot\)](http://www.gov.scot)

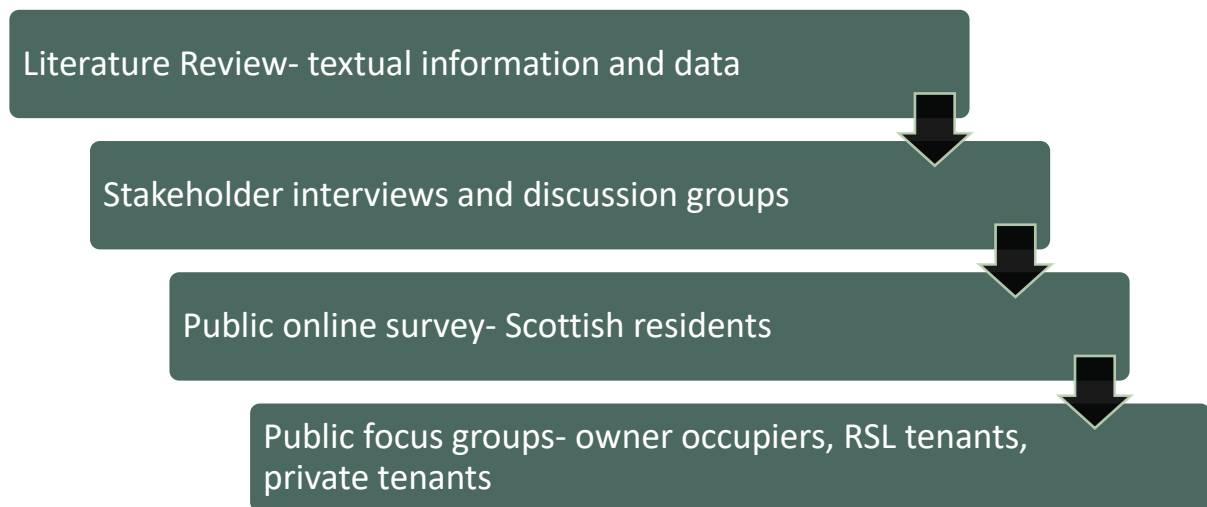
3. Methodology

Overall Approach

This study included a combination of secondary and primary research.

We took steps to include public views along with many different types of professionals. Figure 3.1 shows an overview of the research stages.

Figure 3.1: Methodology Overview



Desk Research

To avoid duplication of effort, it was crucial to have access to written materials from the work of the Tenement Working Group (TWG). In review, we also included publicly available information, evidence submitted to Scottish Government Consultations, published reports and commentary. An earlier consultation with 69 detailed textual responses was anonymised and provided by Built Environment Forum Scotland. This amounted to views from 34 orgs and 35 individuals about this topic, including reactions to TWG's proposals, including for a Building Reserve Fund (BRF).

We also obtained grey literature provided by members of TWG. As key stakeholders, they represent the interest of different parts of the professional sector, and the interests of owners and tenants of tenements. Non-parliamentary members of the TWG include staff from:

- Built Environment Forum Scotland,
- Royal Institute of Chartered Surveyors,
- Scottish Federation of Housing Associations,

- Glasgow and West of Scotland Forum of Housing Associations,
- Property Managers Association Scotland,
- Tenement Action Group,
- Royal Incorporation of Architects in Scotland,
- Scottish Association of Landlords,
- Citizens Advice Scotland,
- City of Edinburgh Council,
- Existing Homes Alliance.

Primary Research - Professionals

In total, we incorporated eight interviews with stakeholders. These lasted up to one hour and were conducted via an online video platform (Zoom, Microsoft Teams or another as preferred). Discussion guides for these interviews were drafted by our research team and finalised with input from the Scottish Government (see within Appendix 4).

We also incorporated a set of discussion groups into the forum. Four took place and included an additional 31 individuals in total.

Primary Research - Public

Given that several of Scottish Government's research questions (see Appendix 1) related to the behaviour and views of owners of tenements, we incorporated public research.

The survey was administered online through the *ScotPulse* panel of over 31,000 adults (age 16+) across Scotland. *ScotPulse* is a dedicated Scottish online research panel with members across the breadth of Scotland, including those in remote and rural areas. The *ScotPulse* panel is completely voluntary and participants are not paid to complete surveys.

The survey was in the field from 7-10 September 2021 (See Appendix 2). A total of 2150 completed responses were achieved. Data were weighted to the age and gender profile of the population in Scotland.

The key benefits of using an online approach were:

- The survey reached a wide range of people across Scotland.
- It was a safe and effective way to conduct research given the coronavirus guidelines.

As well as including survey results in the report, all descriptive statistical results can be found in Appendix 3.

We used the survey as a recruitment method for follow-up interviews with members of the public. Four focus groups were arranged, and these included 13 people in total. Discussion guides for these focus groups were be drafted by our research team, based on the research questions, and then finalised with input from the Scottish Government (see within Appendix 4). Participants were thanked for their time with Love to Shop vouchers to the value of £30 and redeemable in many high street shops.

4. Background

Definitions

Tenements are legally defined as buildings 'comprising two or more related flats that are divided from one another horizontally'. These make a large proportion of Scotland's total housing stock. Recent research estimates 40% of housing stock comes within the definition of tenements.² The Scottish House Condition sample survey 2019 found 24% of occupied dwellings are tenements and 13% are 'other flats' which consist of houses converted into flats and '4-in-a-block' flats.³

The topic of the condition of overall housing stock in Scotland, including tenements has been of concern to Scottish Government for some years. According to data published by the Scottish House Condition Survey, half of all housing is in 'critical disrepair' and almost half demands 'urgent attention'.⁴ Research by Douglas Robertson revealed a failure of property maintenance for properties of all construction periods. This is attributed to 'deep-seated socio-cultural and legal failings, in relation to how our current model of property ownership is structured'.⁵

Maintenance is legally defined within the Tenements Act 2014 as: 'repairs and replacement; cleaning; painting and other routine works; gardening; the day-to-day running of the tenement; the reinstatement of part (but not most) of the tenement building'.⁶

² [The Scottish Tenement: Past, Present and Future - Blog - School of Law - The University of Aberdeen \(www.abdn.ac.uk\)](http://www.abdn.ac.uk)

³ [Key Attributes of the Scottish Housing Stock - Scottish house condition survey: 2019 key findings \(www.gov.scot\)](http://www.gov.scot)

⁴ [Scottish House Condition Survey \(www.gov.scot\)](http://www.gov.scot)

⁵ Robertson, D. "Why Flats Fall Down", November 2019, (www.thinkhouse.org.uk)

⁶ [Maintenance or Improvement - Under One Roof \(www.underoneroof.scot\)](http://www.underoneroof.scot)

Policy Context

The Scottish Parliamentary Working Group has been meeting since March 2018 with the purpose of establishing solutions to aid, assist and compel owners of tenement properties to maintain their buildings.⁷ The Working Group comprised sector experts and MSPs from all parliamentary parties. In January 2019, the group published its interim recommendations report and then formally discussed stakeholder and public responses to the report, which were received via consultation.⁸ In May 2019 the group produced recommendations for mandatory Owners Associations, Building Reserve Funds and Building Surveys.⁹ Scottish Parliament acknowledged the work of the Working Group.¹⁰ Scottish Government responded and made a commitment to implement their recommendations.¹¹ Included in these recommendations was the introduction of mandatory Building Reserve Funds (sometimes referred to as Sinking Funds) for tenements:

“Statutory guidelines should set out the minimum payment each building needs put into a BRF every year. The guidelines should be based on the assessed repair risk for that type of building and extent of common responsibility. There should be a transparent points system.”

It has not been established in which cases owners are legally required to provide/pay into a BRF. Title deeds are the only sources of specific obligations applying to a property someone owns. In addition to the legal position of owners, Scottish Government is interested in the legal position of tenants in relation to BRF. These details will be examined in detail through collaboration between Scottish Government and the Law Commission of Scotland as indicated in the Tenement Condition Workplan for 2021.¹²

To note, for this research commission there are a raft of existing legislation relevant for tenement maintenance and repair. Examples include:

- Tenements (Scotland) Act 2004.¹³ Created a default scheme for tenement maintenance and management known as the Tenement Management Scheme (TMS). This is a common scheme of management for tenement properties and includes the following:

⁷ [Tenement Working Group - Built Environment Forum Scotland \(www.befs.org.uk\)](http://www.befs.org.uk)

⁸ [Report call for overhaul of Scottish tenement maintenance legislation - Scottish Housing News \(www.scottishhousingnews.com\)](http://www.scottishhousingnews.com)

⁹ [Working-Group-on-Maintenance-of-Tenement-Scheme-Property-Final-Recommendations-Report.pdf \(www.befs.org.uk\)](http://www.befs.org.uk)

¹⁰ [Debate: Working Group on Tenement Maintenance - Scottish Parliament TV \(www.scottishparliament.tv\)](http://www.scottishparliament.tv)

¹¹ [Tenement maintenance report: Scottish Government response \(www.gov.scot\)](http://www.gov.scot)

¹² [Tenement+Condition+Workplan+2020+final.pdf \(gov.scot\)](http://www.gov.scot)

¹³ [Tenements \(Scotland\) Act 2004 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

- The identification of certain parts of the tenement as 'scheme property' for the purposes of maintenance, repair and replacement. Specific examples of scheme property are the roof, foundations, external walls and solum (i.e. the ground upon which the tenement is built) but also includes any tenement part which is the common property of two or more owners.
- Procedures for making scheme decisions. For example, how proprietors' meetings are called and conducted; voting requirements for making binding decisions; and providing appropriate notification of decisions.
- Matters on which decisions may be made. For example, appointing a manager; arranging for an inspection of scheme property; carrying out scheme maintenance; and arranging for a common policy of insurance for the tenement.
- A mechanism for having emergency work carried out.¹⁴

For tenements not factored or regulated by a Deed of Conditions) recourse should be made to the 2004 Act regulating the rights and responsibilities of tenement property owners in the absence of title provision.

- Housing (Scotland) Act 2006¹⁵, Housing (Scotland) Act 2010¹⁶ and Housing (Scotland) Act 2014.¹⁷ Local authorities have powers to enforce improvements and repairs on privately owned property. There are different legal procedures that a local authority can use, depending on the nature of the repair required. Local authorities can issue work notices, defective building notices, dangerous building notices and abatement notices. In addition, local by-laws can be utilised to serve notices for dangerous buildings and essential repairs.
 - Local Authorities can issue works notices to private owners to carry out work for a property to meet the Tolerable Standard.¹⁸ This is a "condemnatory" standard which means that it is not reasonable to expect people to continue to live in a house that falls below it. Local Authorities are required to provide information, advice or practical help for works notices.
 - There is no statutory entitlement to financial help for any of these notices.
 - Local by-laws can include setting out the responsibilities of occupiers to keep common areas clean, enforce painting or cleaning of common stairways and passageways in tenements.
 - Owners may apply for help under the individual Local Authority's Scheme of Assistance for House Repairs and Adaptations.
 - Local Authorities have the power to pay a missing share when the majority of owners in a tenement block have agreed to carry out work to repair or maintain their property, and one or more of the owners has not

¹⁴ [Tenement Repairs - a common problem - TC Young Solicitors \(www.tcyoung.co.uk\)](http://www.tcyoung.co.uk)

¹⁵ [Housing \(Scotland\) Act 2006 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

¹⁶ [Housing \(Scotland\) Act 2010 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

¹⁷ [Housing \(Scotland\) Act 2014 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

¹⁸ [Carrying out repairs as a landlord - Tolerable Standard \(www.mygov.scot\)](http://www.mygov.scot)

- paid their share of the cost of the work (where the owner is unable or unwilling to do so, or where the owners cannot be identified or found).
- Local Authorities can also designate Housing Renewal Areas where it considers 'that a significant number of the houses in the locality are sub-standard,' or 'that the appearance or state of repair of any houses in the locality is adversely affecting the amenity of that locality.'
- The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.¹⁹ Local Planning Authorities can undertake urgent works necessary for the preservation of an unoccupied listed building (or unused parts of an occupied listed building), provided that the owner is given notice of the intention. The cost of these urgent works can be reclaimed from the owner.
 - Property Factors (Scotland) Act 2011. Includes a register of property factors and dispute resolution mechanism for homeowners.²⁰ The Code of Conduct which property factors are required to abide by was updated in July 2021.²¹ The Code sets out minimum standards of practice, encouraging transparency in the way that they conduct their business including with the management of common property as detailed in the homeowner's title deeds.
 - The Housing (Scotland) Act 2001 places a statutory requirement on local authorities to produce a Local Housing Strategy that sets out its strategy, priorities and plans for the delivery of housing and related services.²² LHS Guidance was published by Scottish Government in September 2019.²³ The development of a LHS provides an opportunity for local authorities to identify strategic housing priorities and it enables the monitoring of progress against delivery of local and national priorities and targets.
 - The Scottish Housing Quality Standard (SHQS) introduced in February 2004.²⁴ This means social landlords must make sure their tenants' homes are in a good state of repair, energy efficient, healthy, safe and secure. A target was agreed that all social landlords must ensure that all their dwellings pass the SHQS by April 2015. Private owners and private landlords are currently under no obligation to bring their properties up to this standard. SHCS collects the same data for all dwellings to allow comparison across the housing stock. Since 2012 this target has been incorporated in the Scottish Social Housing Charter and the performance of landlords has been monitored by the independent Scottish Housing Regulator (SHR).

¹⁹ [Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

²⁰ [The Scottish Property Factor Register \(www.propertyfactorregister.gov.scot\)](http://www.propertyfactorregister.gov.scot)

²¹ [Property Factors \(Scotland\) Act 2011: property factors - code of conduct \(www.gov.scot\)](http://www.gov.scot)

²² [Housing \(Scotland\) Act 2001 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

²³ [Local Housing Strategy: guidance 2019 \(www.gov.scot\)](http://www.gov.scot)

²⁴ [Improving housing standards - Social housing \(www.gov.scot\)](http://www.gov.scot)

Stakeholders fed back on recent developments:

‘as things have evolved with all the legislation that Scottish Government has brought in over the years, trying to strengthen tenant’s rights and have a firmer control on property condition... it’s a growing sector and there’s even more changes coming’ (Property Factor)’

‘there are a range of enforcement powers in the legislation, but in reality local government can’t step in, unless something is dangerous we don’t have the resources to do anything about it... a compulsory purchase is very rare and the council would never get that money back’ (Local Authority staff member)’

Tenements in Scotland

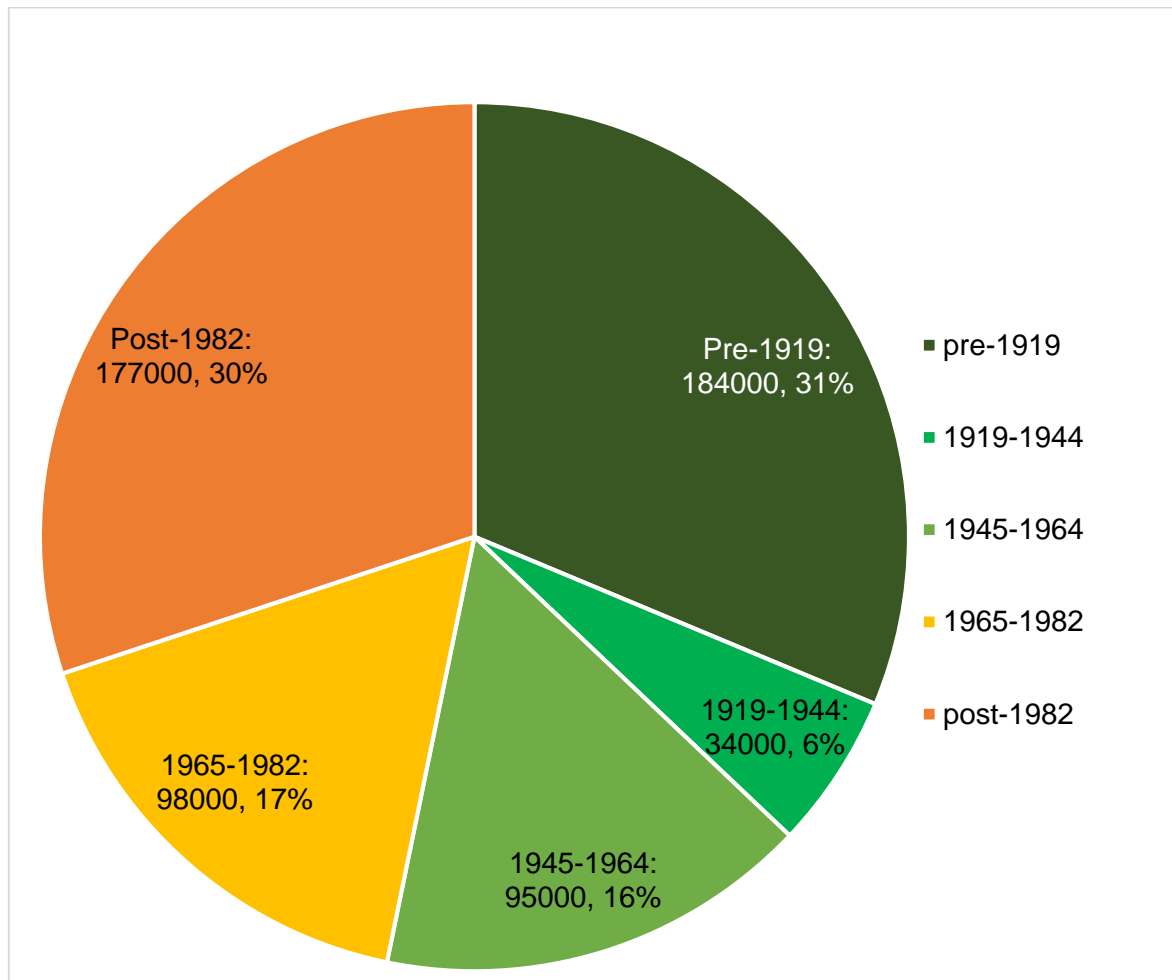
In addition to the legal definition of tenement, we suggest some main categories of tenements as segmented within National Statistics and wider literature (see table 4.1).

Table 4.1: Tenement Typologies

Aspects of Tenements	Categories
Owner	Individual
	Business
	Registered Social Landlord (RSL)- private
	Registered Social Landlord (RSL)-Housing Association
	Mixed within tenement block
Use	Residential only
	Mixed use for example retail units
Tenure	Owned
	Mortgaged
	Privately Rented
	Social Rented
Resident	Owner occupier
	Tenant
Factoring	Professional factor appointed
	Self-factored
	Not in place
Communal arrangements	Owners Association
	Development management scheme
	Neither in place
Age	Pre-1919 (classified as 'old' within SHCS)
	1919-1982
	Post-1982
History	Custom built as tenement
	Later subdivided
Repair status	Critical elements
	Non-critical elements
	Not established
Repair severity	Urgent disrepair
	Extensive disrepair
	Basic
	Not Applicable

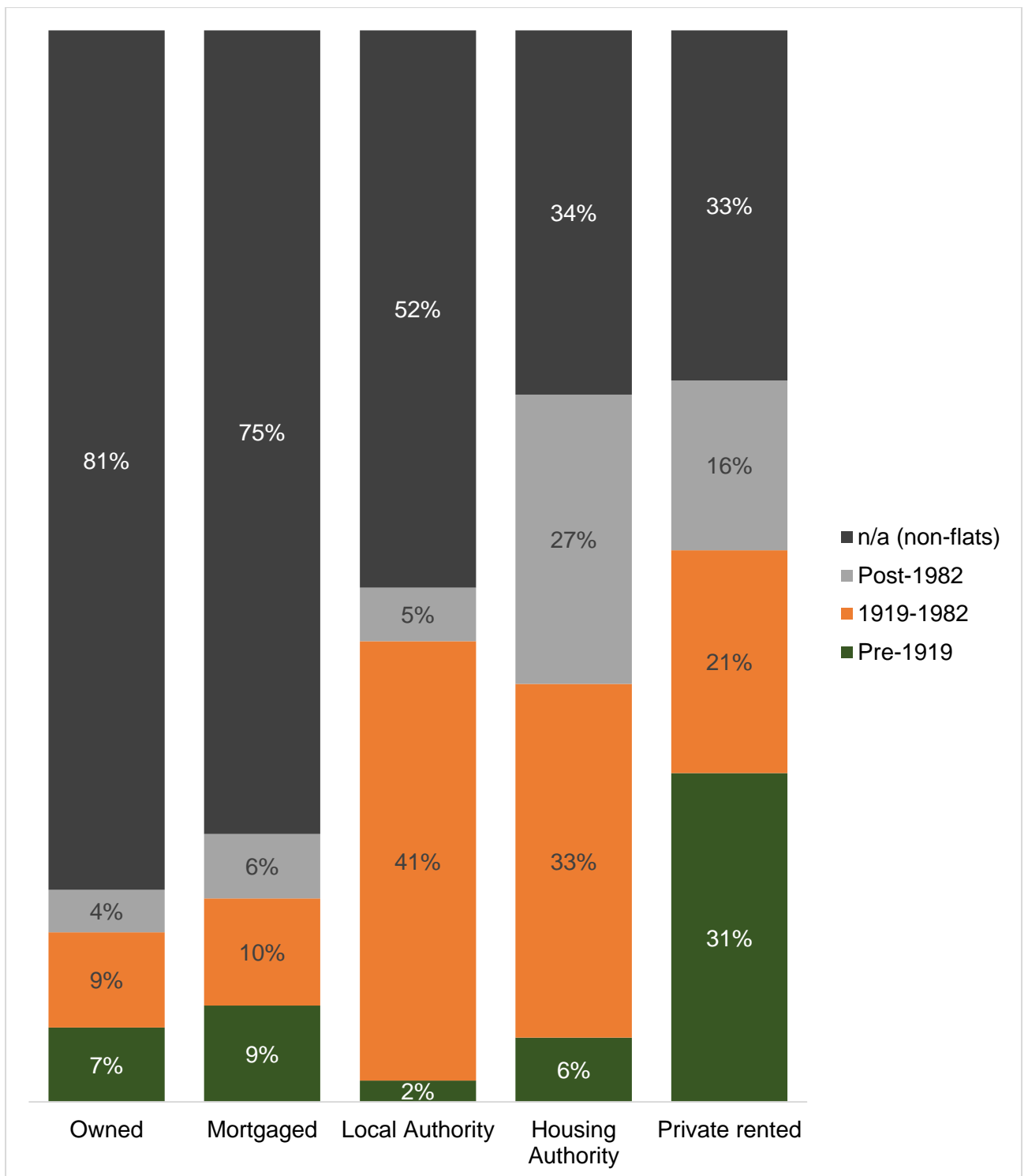
At the time of this review, the most recent published figures from the Scottish House Condition Survey were from 2019. We include figures for aspects of tenements including age of building (figure 4.1), type of tenure (figure 4.2) and location (figure 4.3).

Figure 4.1: Occupied Tenements by Age Band

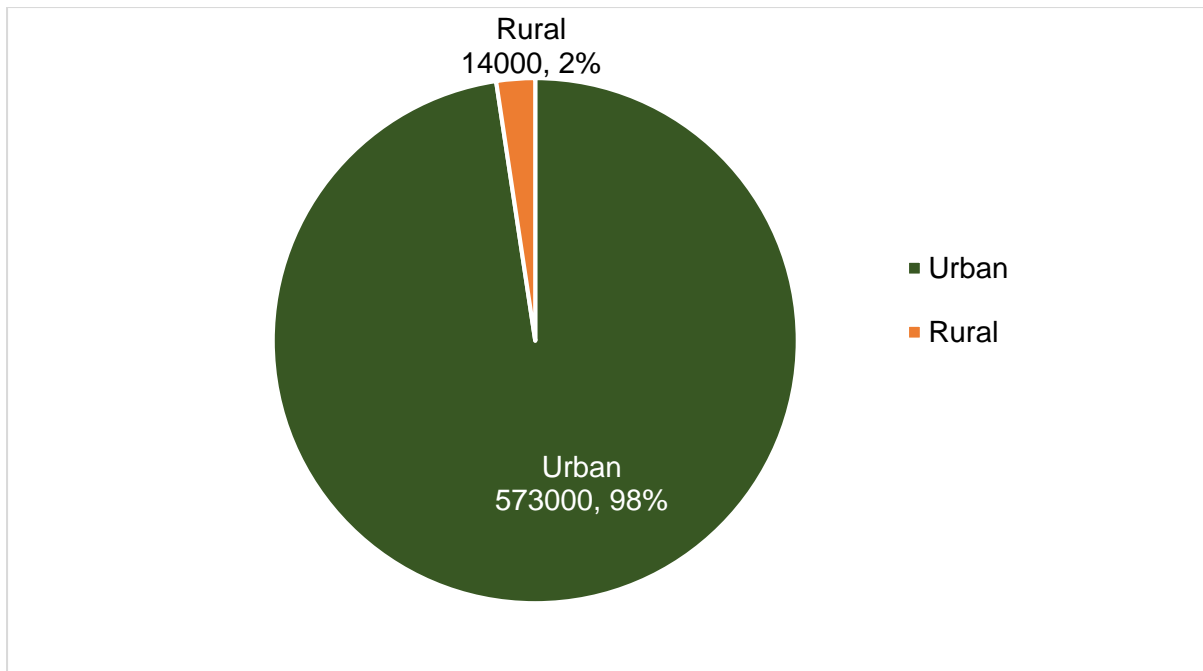


Source: [Scottish house condition survey: 2019 key findings, Table 2, p16](#)
(www.gov.scot)

Figure 4.2: Type of Tenure by Age Band



Source: [Scottish house condition survey: 2019 key findings, Figure 7, p26 \(www.gov.scot\)](http://www.gov.scot)



Source: [Scottish house condition survey: 2019 key findings, Figure 3, p19 \(www.gov.scot\)](#)

According to the Scottish Household Survey:

- About a third of occupied tenements were built prior to 1919, a third between 1919-1982, and the remaining third built after 1982.
- 19% of owned properties are flats and 25% of mortgaged properties are flats.
- Of private rentals in Scotland, two thirds are flats (67%).
- Privately rented flats are most likely to be built before 1919.
- The majority of Local Authority flats were built between 1919-1982.
- Housing Associations have higher proportions of flats post 1982 than other tenure types.
- The vast majority of tenement households are located in urban areas.

Maintenance and Repair

All stakeholders included in our secondary and primary research saw disrepair as an issue for buildings in Scotland, including tenements. Different Local Authorities have different configurations of staff teams, but the remit and statutory function for addressing 'below tolerable standards'²⁵ in private accommodation is usually included within environmental health teams. Not only do local authorities see the

²⁵ [Carrying out repairs as a landlord - Tolerable Standard \(mygov.scot\)](#)

worst cases, but they receive many enquiries from members of the public unsure about how to address disrepair.

In the past, our stakeholders highlighted that more grants were available, say through Local Authorities to cover repairs. Although one local authority stakeholder did share:

‘it was good on one hand to have those grants available. But then I understand that the people applying for the grants weren’t always the ones that needed it. The grants weren’t necessarily reaching the people with most need and least money to pay for repairs.’

Stakeholders consulted confirmed disrepair can affect:²⁶

- Public safety from falling material.
- Resilience to climate change (increased rainfall and severe weather events).
- Energy efficiency which is reduced if the external building fabric is not in good repair.
- Fuel poverty which is directly related to reduced energy efficiency.
- Wellbeing of building occupants (in damp, cold buildings).
- Our traditional built environment, physically, socially and economically less attractive.

Discussing repair with tenement owners and tenants they raised the last two of these affects in particular- wellbeing of occupants and the appearance of the surrounding built environment.

All participants expressed that as time passes properties deteriorate, albeit at different rates. One key stakeholder discussion group member summed this up: ‘you can’t just let it sit, it’s just going to get worse’.

Consequently, our stakeholder participants raised three related areas to consider:

1. Addressing Current Repair Needs

- Condition of building stock could be improved.
- Common for buildings to have elements in need of repair, 88% of traditional building inspected in Stirling had repairs requiring work within 12 months.²⁷
- Outstanding repairs not being organised.
- disrepair is not solely the result of natural deterioration of the original building fabric, or a lack of timely repair and maintenance. It also found significant

²⁶ [Traditional Buildings Health Check - Stirling City Heritage Trust \(www.stirlingcityheritagetrust.org\)](http://www.stirlingcityheritagetrust.org)

²⁷ [Traditional Buildings Health Check - Stirling City Heritage Trust, p10 \(www.stirlingcityheritagetrust.org\)](http://www.stirlingcityheritagetrust.org)

levels of accelerated and hidden disrepair from poor quality or inappropriate interventions.²⁸

- Local Authorities stepping in when cases extreme.
- Grant initiatives over the years to encourage repairs of historic buildings, for example through Conservation Area Regeneration Schemes (CARS),²⁹ and Heritage Trusts.³⁰

2. Planning for Future Repair Needs

- Newer properties, to high build standard may not currently need any repairs,
- Costs can be significant for repairs such as roof repairs.
- Surveyors best place to predict future repair needs but can never be completely accurate.

3. Enabling Ongoing maintenance

- Ongoing maintenance seen as the best tactic to mitigate repairs.
- Maintenance should, but does not often focus on less visible aspects such as cleaning gutters.
- Improvements such as painting the close could be regarded outwith maintenance, but are acknowledged as beneficial for aesthetic reasons and to create a feeling of safety in common areas.
- Small regular maintenance costs should be preferable to larger, irregular repair costs for owners.
- Calls for proactive maintenance schemes are widespread.

All research participants, including tenement owners and occupiers, touched upon the need for maintenance to prevent bigger, more costly repairs.

One Local Authority stakeholder explained: ‘maintenance is about prevention, and you need to spend regular, small amounts on maintenance to prevent repairs.’

One owner occupier commented:

‘If you have a rule that you check something once a year, and that it will likely save you money in the long run, you can get people used to that. It's better to do regular maintenance than wait until you need a repair.’

²⁸ [Traditional Buildings Health Check -Stirling City Heritage Trust, p10 \(www.stirlingcityheritagetrust.org\)](http://www.stirlingcityheritagetrust.org)

²⁹ [Conservation Area Regeneration Scheme - Historic Environment Scotland \(www.historicenvironment.scot\)](http://www.historicenvironment.scot)

³⁰ [Scotland - Heritage Trust Network \(www.heritagetrustnetwork.org.uk\)](http://www.heritagetrustnetwork.org.uk)

A factoring representative explained:

‘The more sensible first step is solving the problem of maintenance of buildings. The working group was not about reserve funds it was about how to ensure tenements are maintained and brought up to a standard. Talking about building reserve funds seems very premature.’

Within the next sections we detail research findings in relation to the original research questions. These sections are grouped into- findings to understand better the context of common repair and maintenance; experiences of existing arrangements; and findings relating to how a BRF could be applied in Scotland.

5. Understanding of Tenement Repair and Maintenance

Reasons some tenements have no provision or security in place to ensure the safety of buildings and regular maintenance (2)

Survey results evidenced how the Scottish public feel about maintenance and repair:

- 53% of respondents wish more was done to maintain the building.
- 30% of respondents experience problems due to the state of the building including damp, rot, leaking roofs or around windows.

Professional and public research participants gave many reasons why owners of tenements do not make provisions of this nature. These can be categorised within individual, community and society.

a) Individuals- ignorance and lack of knowledge-

'With the growing *'buy to let'* a lot of people didn't really realise what it meant to be a homeowner' (owner occupier, Edinburgh)

'In my experience there are a lot of accidental landlords, and just fallen into this, maybe inherited a property and just don't know what's required of them, what they need to do'. (Local Authority)

'we do spend a lot of time talking to people who blindly buy properties and don't think of the consequences of common repairs...we quite often have people who just buy at option and they haven't even viewed it, and then they come to us and say 'I've got that issue, and this issue'.' (Local Authority)

'You get lost in excitement of buying a house. You've got the flat you want but the last thing you want to think about is repair. You likely won't think about it again until something happens. There is no culture of regular maintenance.' (Surveyor)

b) Individuals- lack of care-

'The closer you are to the property the more engagement you will have within that building. Owner occupiers are more engaged than private landlords. As soon as you have one or two people who are less engaged in a building you will have a battle on your hands to get stuff done.' (Factor)

c) Individuals- change in ownership-

'We also have to bear in mind that the modern homeowner is far more mobile than its predecessor of say +20 years ago and this transient demography has had a detrimental impact on the long term prospects for our buildings.' (Representative of landlords)

d) Individual- affordability-

'so many people have bought properties and they have completely cleaned themselves out and any repair is a crisis. And that can happen to all of us in our lives' (Local Authority)

'people are more concerned about building conditions over the winter, when they visibly experience leaks and drafts. However, this can come at a time when they have less spare cash to address repairs' (Surveyor)

e) Individual- cost benefit analysis-

'Fear that they're not going to see the benefit for it – this feeds into the misunderstanding of paying into the pot and not being able to get the money back if you sell your property. There's a fear that you won't be there when repairs are carried out.' (Surveyor)

f) Community- communication-

'a lot of people don't get on. They don't speak to their neighbours. And they come to us because things have broken down and they can't communicate, let alone make a collective decision. Bad history can prevent you from making sensible decisions on behalf of their property.' (Local Authority)

g) Community- coordination-

'Getting three competing quotes and circulating them around nine proprietors is an enormous task, especially when they are not cooperating and not talking to you. In theory the bills should be less with a bigger block but harder to get agreement between everyone and can cause problems.' (owner occupier, Edinburgh)

'Someone snapped their key in the front door and left it, didn't accept responsibility. Only 5 out of the 8 flats actually agreed to do something about it and it was only a £15 repair.' (owner occupier, Aberdeen)

h) Society- attitudes-

'Culture would sum up quite a lot of that actually. It's the 'make do' mindset, we can 'make do' with a leaky gutter' (Public Body)

Extant research showed there are plenty of tenement owners who do understand the importance of repair and maintenance and are indeed concerned. One owner responding to the Tenement Working Group's consultation stated:

'Reports of the chronic disrepair of tenements can too often seem condescending to owners, as though we are all too uninformed, short-sighted, or, possibly, stupid to understand and act on our responsibility for maintaining our property. Sometimes we are just defeated by the practical difficulties.'

In fact, a professional network responding earlier to the Tenement Working Group's consultation summed up these barriers and placed them in historical context:

'There is an observation, noted in Roman Law: '*Communio est mater rixarum*', meaning "co-ownership is the mother of disputes". This reflects not only the age of the problem that we seek to address, but also the critical importance of a long-standing tension within the Scottish property law in respect of co-ownership, between the rights of the individual and any entity formed by these owners collectively'.

Another consideration for repair was the role of building insurance.³¹ This topic was raised by tenement owners and professionals:

'Within 2 years we had to report subsidence. To cut a long story short, we were caught in a quagmire of 2 of the 9 owners not being insured, various insurance companies disagreeing ... Most frustrating in my experience was the fact that 2 owners had no building insurance cover' (landlord)

'It was always a disappointment to many in the property Factoring industry that the original TSA did not go far enough in terms of common insurance, by making common buildings insurance mandatory for tenements and common blocks. Allowing homeowners to arrange their own insurance policies for part of a tenement, where there was no express provision for a common policy, was a flawed concept which was always going to be a recipe for future problems'. (factor)

Through our primary research, suggestions to help individual, collective and overall society barriers to maintenance and repair included:

- More efforts to ensure knowledge and transparency at point of purchase.
- Mandated insurance arrangements, including for common areas.
- Acknowledgement that this issue is partially caused by dynamics between people, or the lack of them.
- Recognition that ownership fluctuates within the one building and changes over time- level of awareness or pro-activeness of owners is not static.
- Ways to support groups of people to join together for mutual interest.
- Not generalising, as there are many interconnecting, and fluctuating reasons for this situation at a local and property level.
- Engendering a culture change in how we consider communal property.

³¹ [Buildings Insurance - Citizens Advice \(www.citizensadvice.org.uk\)](http://www.citizensadvice.org.uk)

Whether those who own properties in tenements understand what their legal responsibilities are in terms of building fabric (4)

From the survey:

- 68% say they understand their rights and responsibilities as an owner.
- 56% respondents agree with “I am familiar with the detail of my title deeds”.
- 41% of respondents are familiar with Duty to Maintain.

The overall response to this research question elicited through interviews and discussion groups was that owners did not fully understand their legal responsibilities. However, this was not necessarily seen as the fault of owners.

Glasgow Factoring Commission has already explained the lack of:

‘a single comprehensive guide, written in plain English, which explains the relationship between the different acts relating to property maintenance...The legal framework associated with factoring and common property maintenance is complex and difficult for the lay person to comprehend.’³²

Extant research found, ‘home owners’ capacity to engage with, or avoid regular property maintenance and common repair works are legally determined by the title deeds which pertain to their property. These legal documents, which define the rights and responsibilities which fall from the ownership of a particular property, are of markedly variable quality.’³³

It was further emphasised in stakeholder interviews that:

- Deeds can be archaic and variable.
- Legal terminology is not in Plain English.
- Legal responsibilities are at an individual level- but legal cases are rare.

Indeed, the Tenement Working Group explained: ‘changes to the titles could cost each owner around £500, perhaps more if lenders’ consent is required. A new legislative scheme which requires no changes to titles will save owners paying such costs.’

³² [Glasgow Factoring Commission \(2014\) Final Report of the Glasgow Factoring Commission \(www.glasgow.gov.uk\)](http://www.glasgow.gov.uk)

³³ [Robertson, D. \(2002\) Arrangements for common repairs in Scotland: A literature review, Scottish Executive, Communities Scotland \(www.dspace.stir.ac.uk\)](http://www.dspace.stir.ac.uk)

One Local Authority explained:

‘In our experience, most owners who get in touch are looking for clarity on liability and who is responsible for what and how to work out who pays what. Some owners are already very aware of the burdens within their title deeds and understand these however the title deeds are often not clear or workable, so this leads to confusion.’

They continued to explain that even when there is an understanding of legal responsibilities, this does not mean that the legal routes will be pursued:

‘if people are getting nowhere with getting a majority decision they could go to a solicitor and lodge a notice of potential liability. But it’s an expense and it’s not really an attractive option’.

In summary, any changes to legislation should:

- Aim to rationalise the arrangements in title deeds,
- Be explained in plain English to current owners and to potential new owners at the point of sale,
- Expect that legal enforcement through cases brought by individuals to individuals would be rare.

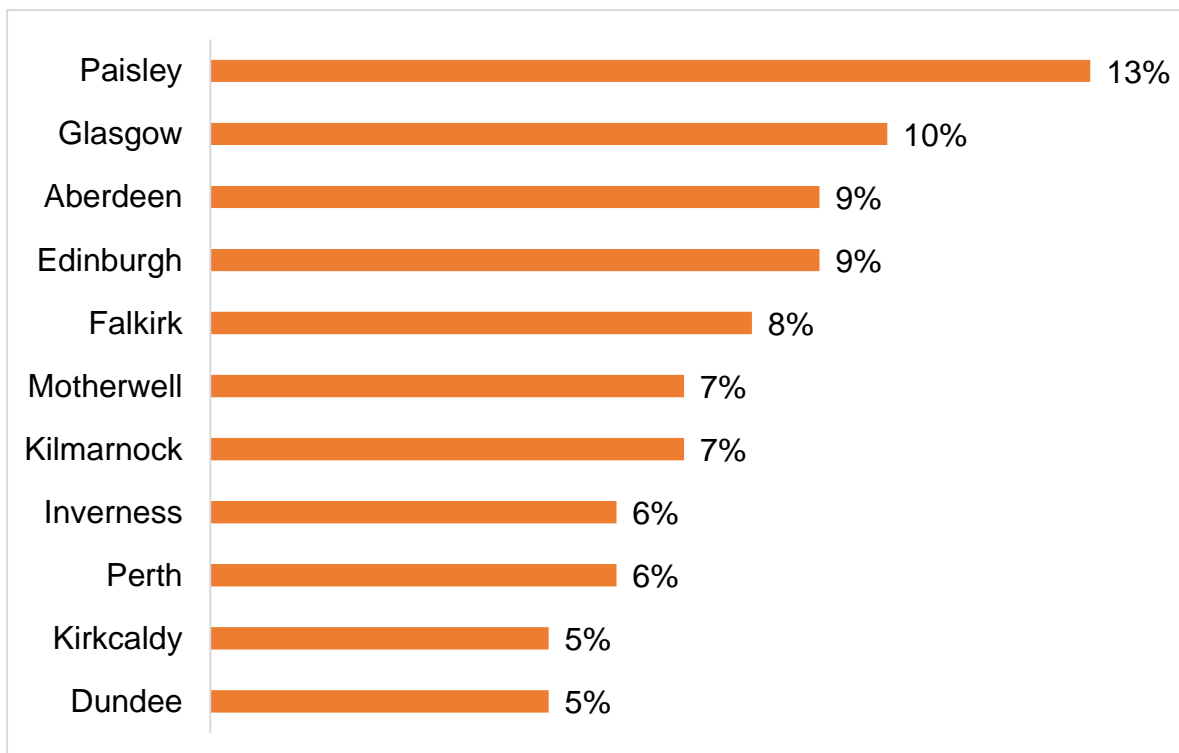
6. Existing Arrangements for Repair and Maintenance

Number of tenements that currently have and do not have BRF arrangements (1)

At all stages of research, we attempted to elicit the proportion of tenements with or without BRFs, or with any other arrangements in place akin to BRF. We found that Owner's Associations were incredibly rare:

- Only 8% of the public have an owners' association or owners' group. This varies widely across Scotland (see figure 6.1)
- Only 2% of those who do not have an owners' association or group have considered creating one.

Figure 6.1: Prevalence of owners' associations/groups across Scotland



Base: All (2,134)

The literature and anecdotal evidence suggests that BRFs are very rare and confined to areas such as Glasgow's West End where flat values are comparatively high.³⁴ We would caution against transferring learning from the exception of cases to be applicable to all tenements.

³⁴ [Robertson, D. \(2002\) Arrangements for common repairs in Scotland: A literature review, Scottish Executive, Communities Scotland \(www.dspace.stir.ac.uk\)](#)

Tenements with functioning sinking fund arrangements are less likely to get in touch with local authorities for support, however one local authority staff member explained:

‘We have around 1200 contacts every month from customers, many are looking for advice and guidance about how to progress common repairs in their tenement. We rarely come across flat owners that have a Building Reserve Fund for long term repairs. Many Customers do have joint maintenance accounts for reactive repairs (as required by the Tenement (Scotland) Act 2004) and occasionally they tell us that they build up funds for future repairs...In our experience owners indicate small repairs & maintenance are carried out, example - the upkeep of gardens or common areas or redecoration in the common stair. But we rarely hear of owners carrying out annual roof checks or regular gutter cleaning etc.’

Our research including factors, emphasised how professional factoring can incorporate client accounts and pooled funds for repairs and maintenance. A factoring professional responding to TWG’s earlier consultation wrote:

‘the way most factoring firms are set up it is more reactive than proactive for example most will have a tiny percentage of developments with sinking funds in place at around 5-10% To make things more proactive takes money and more responsibility on behalf of the factor.’

Overall, it is important to consider:

- Learning from existing BRFs would be limited from rare cases, with relatively affluent owners.
- There are existing arrangements in place to pool money for repair and maintenance that are not officially BRFs.

Where there is a BRF, how are the monthly/ yearly amounts calculated? (6)

For this research question we looked to examine how contributions to maintenance and repairs were organised.

In our public focus groups, we found:

- Mixed experience from those contributing to pots through factors,
- Owner occupiers and landlords feeling it is not always clear in factoring charges what is going towards repair/ maintenance/ something else,
- Positive experiences of Housing Associations acting as factors being clear on how rents went towards scheduled works.

‘I used to rent privately and it doesn’t compare- space, cost and maintenance levels are all much better through the housing.’ (RSL tenant)

Speaking to stakeholder, professional surveys were seen as the only way to understand what outstanding repairs were needed, and to give a basis for costs. Housing Associations in particular, explained they needed the surveys to then work out what prioritisations were to be for different buildings and estates. In their case they had to balance the needs of maintenance and repair with the available funds coming in through tenant rents. Housing Associations explained that it was always much harder to coordinate and plan repair and maintenance for tenements where they did not have full or majority ownership.

An earlier Local Authority response to TWG’s consultation explained:

‘Making 5 yearly inspection results publicly available is, on balance, desirable. However, there exists a risk of certain buildings becoming ‘untouchable’ due to backlog maintenance. Alternatively, there is a risk of the unscrupulous buying into the building with the intention of demolition and redevelopment, irrespective of the wishes of existing owners. It may also trap some owners in negative equity, particularly in the early years of any scheme, where inspections will identify the need for maintenance or repairs of which they were not aware when purchasing the property a relatively short time before.’

Therefore, our primary research on contributions to maintenance and repair found these:

- are calculated differently by different property managers;
- are communicated differently- in different levels of detail and jargon; and
- are not always fully understood by tenants based upon the above.

Investigate whether factoring fees include contributions to BRF (9) and whether owners who currently pay into a BRF had it been explained to them how their contribution has been calculated (7)

Speaking with factors, they emphasised that factors provide repair and maintenance as a core service already. There were a lot of compliments from the broader professional sector towards professional factors for their services and a perception that factoring arrangements prevented even higher levels of building disrepair in Scotland. A local authority staff member shared their opinion:

‘Ultimately, we would love for more factoring in our area. For people to know what they are contributing every month and what it is going towards. And you know that work is carried out and your fees will cover it. I think good factoring can really help address repair and maintenance in a way that

people can afford. So as long as people know when they buy somewhere it has a factor, and then what the factor does and plans is shared with them, it can make a huge difference.'

One factor explained:

"There has been a deterioration of property condition and one of the main issues is the lack of factoring. If you don't have a factor there is no one there to organise the repairs, unless you have really proactive owners. The role of factoring has to in some way be made mandatory unless you can demonstrate you are able to self-factor."

Factors shared that they used a combination of floats and maintenance accounts as set out under the Tenement Management Scheme.³⁵ Although requested, we were not provided with any breakdowns of how fees contribute to maintenance and repair. We did gain some examples through public focus groups:

"My factor fee is roughly £1,000 per year and that includes a sinking fund, building insurance, cleaning, maintenance of the garden and a parking space. Each bill has a breakdown of how much money goes to each item, however I don't know how this is calculated and it varies each quarter."
(owner occupier)

"£70 in each quarter and there are 180 flats in this estate which are factored." (owner occupier who pays sinking fund through a factor)

Similarly, to requests for contribution amounts, we were unable to obtain the logic for any exact amounts from factors. However, it should be noted that these will vary.

Within our focus groups with tenement owners, concerns were raised by those already paying factoring fees that a BRF could be another regular outlay on top of this, potentially covering the same type of work:

'I think we already put aside money per quarter for a rolling scheme of works- does that cover it?' (owner occupier)

Participants did connect the need to raise, hold and spend funds to extra resource. One landlord suggested: "If you're going to make the fund mandatory you might as well go the whole hog and have factors."

Reasons which prevent owners paying into a BRF, including cost, coverage, attitudes, absent landlords (5)

Earlier, the report (see Section 5) listed reasons given at an individual, community and societal level why tenement owners do not put provisions in place. In addition to

³⁵ [Keeping Accounts - Under One Roof \(www.underoneroof.scot\)](http://www.underoneroof.scot)

these we uncovered more barriers relating to arranging maintenance and repairs of various cost.

A major blockage for repairs and improvements was identified as gaining approval from a majority of owners. Our research included speaking directly to two Local Authority employees involved in missing shares schemes. One explained:

‘quite often people can’t get a majority, so we can’t help them, it’s really difficult for them...Missing shares can work really well, but only when there is a majority. And say if you have six different owners, you might not get it. And within missing shares you need a lead owner, and that might put people off, because they have to do more’.

One owner responded to the TWG’s consultation with their take on disagreements concerning their tenement block:

‘Most of the problem in our tenement was that there were 13 flats. Only three owners were occupiers, and it proved impossible to get everyone to listen to me and one of the other owners who knew that these works were unnecessary. This bully boy pushed through all the works to the building, telling everyone how much more valuable the properties would become once the works were finished, and issuing warnings about not doing the work. We all ended up with bills for tens of thousands of pounds for shoddy, bad workmanship. To this day, slates fall off the roof - this never happened before.’

Especially when large amounts of money are involved, this can create tensions between owners. Indeed, a lack of one contribution can have consequences for the rest of the owners. Glasgow Factoring Commission’s report previously explained,

‘the problem of individuals who refuse to pay their fair share of reasonable common repairs, charges and insurance premiums is significant. This is perhaps the biggest single threat to the stability of the factoring and property maintenance systems across all of the factored stock categories. and property management.’³⁶

Earlier, a consultation response to the Tenement Working Group by a landlord pointed out the changing nature of collective discussion and decision making:

‘The days of majority owner-occupier are long gone, yet the Tenement Act and Missing Share provision is based around “stair meetings”, notices and minutes. In my experience, the majority of communication is via group e-mail, co-ordinated by one of the owners.’

³⁶ [Glasgow Factoring Commission \(2014\) Final Report of the Glasgow Factoring Commission \(www.glasgow.gov.uk\)](http://www.glasgow.gov.uk)

In our discussion groups, an employee of a Local Authority administering a Missing Shares scheme reflected:

‘the difficulty with any joint accounts comes when some owners refuse to make a regular contribution or miss a payment – this then becomes a contentious issue as there is no way of forcing payments.’

Therefore, learnings can be taken from the current situation which are relevant for implementation of BRFs:

- Heightened tension when money involved, people are striving for ‘fairness’.
- There are instances of owners withholding contributions on the basis of costs being too high, or perceived to be for non-quality work.
- Owners not contributing to repairs and maintenance regarded as a large issue.
- Missing shares schemes already a large undertaking for Local Authorities.

Where BRFs in place, investigate occasions where maintenance or major construction work has been required, how the work was undertaken and whether through legal enforcement (8)

In the course of our research, we did not uncover any instances of tenements with BRFs in place but requiring legal enforcement. No Local Authority we spoke to could think of any examples where this has been the case. However, we reiterate that BRF arrangements are very rare, they are non-mandatory so only adopted by particularly pro-active owners.

Speaking to the public, owners reflected any smooth arrangements for maintenance and repair were down to:

- Pro-active owners.
- Tenement blocks with long established tenure, where neighbours knew each other well.
- Owners with relatively high savings/ the ability to pay towards new repairs,
- A lot of time to ensure agreement and organise contractors.
- In some cases, a factor in place, utilising floats for maintenance and repair works.

One owner explained: ‘There are no long-term works that are going a miss. The factor undertakes regular maintenance within the estate which prevents large repairs being necessary.’

Capture the concerns of those already contributing to a BRF about potential scenarios (10)

As we did not speak to owners with BRFs in place we were unable to capture any of their concerns. However, speaking with owners with less formal repair and maintenance arrangements, or charges through factors or Registered Social Landlords we did gain helpful insight on their concerns:

- Financial management- where are the funds held and who is responsible.
- Unequal burden- feeling that people who are most active may be more open to risk.
- Level of costs- uncertainty on level or regular contribution through a BRF, with recognition that this might be preferable to larger, surprise costs should a major repair be unforeseen.
- Complication- desire that any extra mandatory commitment should make things easier for owners and not introduce more bureaucracy, time and effort.
- Assistance- desire for help from Local Authorities, but understanding that post-pandemic they would not have resources in place to provide hands-on-help or grants.
- Quality of work- owners pointed out that building up a fund would not ensure automatically that the money was spent well.

Indeed, the Traditional Building Health Check in Stirling found that there were 'significant levels of accelerated and hidden disrepair from poor quality or inappropriate interventions.' There was an appetite for a list of reputable contractors for traditional buildings.³⁷ Therefore, there is also the need for any work to be funded through a BRF to be of a high standard, and not to intensify disrepair.

In addition, stakeholders explained many potential scenarios surrounding a BRF. Importantly, there was overall support for the mandatory introduction of BRFs. However, there were many practical concerns and highlighting of the proposal's pitfalls. In the next section of this report, we move to how BRFs could be implemented. This draws heavily on potential practical issues raised in qualitative research, and suggestions for overcoming these.

Reception of the public was seen as a large barrier to mandatory introduction. Professionals perceived that the general public would see BRFs as a form of fee, or even tax on property ownership. This coming at a time when disposable incomes, and savings may be depleted because of the pandemic.

³⁷ [Traditional Buildings Health Check - Stirling City Heritage Trust \(www.stirlingcityheritagetrust.org\)](http://www.stirlingcityheritagetrust.org)

In addition, the need not to penalise owners who had existing arrangements in place was previously raised by a property management firm responding to TWG's consultation:

'Where the equivalent of a sinking fund is already provided for through, for example, service charges in property management contracts, we trust that appropriate protections will be put in place to prevent owners being overcharged.'

Indeed, one owner explained to us:

'we've recently paid £20,000 to re-roof the building for the first time in over 100 years. If I was required to pay in the same amount as those owners in neighbouring buildings who have not been so proactive about ongoing maintenance in recent years then I would feel that I'm being penalised financially for being proactive about the maintenance of our building. I'd therefore like to see the amount owners are required to pay into a sinking fund being assessed based on the state of repair of the building.'

A landlord responding to TWG's recommendations pointed out earlier:

'I do support the efforts being made to move the onus for the property maintenance back to owners. but it must be done in a way that does not push all the costs onto the few owners who already pay for more than their share to cover the owners who don't pay at all.'

Stakeholders, even those very invested in the built environment, were mainly concerned with the effects on people, over and above the implications for buildings. People were very sensitive to the needs and perceptions of tenement owners to any new regulations. One interviewee explained: 'The purpose has got to be explained and the reasoning behind it is crucial. There has to be a concerted effort to highlight the benefits of this.'

7. How BRF can be applied to Tenements (11)

Look at systems being used in other countries (12) and in other countries, understand levels of cooperation between owners and bodies responsible for building maintenance (13)

A literature review by Douglas Robertson from 2002 explained 'the notion of the collective which is a core principle in dealing with such matters in other countries is markedly underdeveloped in Scotland.'³⁸

Owners responding to the BRF proposal have also made comparisons to other countries:

'I find the situation utterly incredible in that a co-owner of a tenement building can refuse to contribute to repairs required for safety reasons and to prevent loss of value to the property. I lived and worked in The Netherlands for many years and have experience of shared ownership of a building. In that country there is a legal obligation to have an owner's association, the "Vereniging van Eigenaren" (VvE) and which you must join. VvE: This entity is responsible for the common parts of the building like the halls, roof, walls, lift etc. The Owners Association also look after the maintenance, insurance, enforcement of the house rules, etc. ensures the property is well maintained and insured and deals with communal expenses. In meetings with other owners of apartments decisions are taken about the building.'

Another response to TWG's consultation shared:

'I also own a co-ownership flat in Toronto. It is in a small block of 23 flats with a common laundry area and storage lockers. There is a very clear model for the management of such blocks and the maintenance of the common areas. This is regulated by Ontario Provincial legislation. It might be worth looking at this for comparative purposes. You should note that this is co-ownership specific form of tenure and is quite different from a condominium. It seems to me that this is very similar to what is needed for tenement stairs in Edinburgh. In my experience of having owned the Toronto flat for 20 years, it works very well.'

In the English language published literature, there has been examination of developments in Australia. This has thrown light on how responsibilities in law do not always match with people's knowledge and acceptance of collective

³⁸ [Robertson, D. \(2002\) Arrangements for common repairs in Scotland: A literature review, Scottish Executive, Communities Scotland \(www.dspace.stir.ac.uk\)](http://www.dspace.stir.ac.uk)

responsibilities.³⁹ In New South Wales the tensions between communal management and property rights have been explored.⁴⁰ There the strata title has been criticised for encouraging multiunit housing, with individual units to be sold off, rather than the whole block since the 1960s. Even though this opened up the ownership of housing to those who could not have afforded before, this also led to unintended consequences around ownership rights and lack of action to repair and maintain communal areas. This literature is useful at mapping how policy decisions in housing can have impacts across decades, and indeed generations.

Guiding et al. (2013) made some useful recommendations for facilitating community title complex decision making and funding works in relation to climate change adaptations in Australia.⁴¹ These related to promoting advice and guidance for owners, creating champions and require certain processes of management bodies to document needs, costs and timetables for work. Recommendations chime with the advice of stakeholders within our primary research, to provide as much clarity as possible at all stages of new processes.

Examinations of Russia reveal how a large proportion of housing stock transferred to private hands has since been taken back on by local government.⁴² The stock was low quality already, with outstanding repairs required and maintenance costs were not achievable for their owners. Shomina and Heywood (2013) contend that the situation in Russia is intensified by the lack of 'any tradition either of ownership or collective responsibility.' In our conversations with stakeholders many reference were made to culture in Scotland understanding ownership, but not understanding collective responsibility. Local Authorities emphasised that stepping in and using powers was a last resort, partly because they recognised a culture of ownership, but mainly because they were conscious of the resource needed to intervene.

Research into major repair work in multi-owned property in Hong Kong points to the difficulties that 'responsible' owners experience there.⁴³ Firstly, problems common to any collective decision making. Secondly, the nature of major repairs means they are technically complex and ensuring affordability and quality work brings difficulty for owners. This research recommended a combination of support through the public sector, charities and the market working together. This work is relevant as it chimes with the difficulties raised by owners themselves on collective decision making. In terms of finding solutions, our stakeholders acknowledged the need for private-public

³⁹ [Easthope H., Randolph B. \(2018\) Collective Responsibility in Strata Apartments. In: Altmann E., Gabriel M. \(eds\) Multi-Owned Property in the Asia-Pacific Region. Palgrave Macmillan, London.](#)

⁴⁰ [Easthope, H., Hudson, S. and Randolph, B. \(2013\) 'Urban renewal and strata scheme termination: Balancing communal management and individual property rights', Environment and Planning A, 45, pp.1421-1435.](#)

⁴¹ [Guiding, C, Warnken, J, Andreone, F, Lamminmaki, D 2013 Adapting strata and community title buildings for climate change, National Climate Change Adaptation Research Facility, Gold Coast,](#)

⁴² [Elena Shomina & Frances Heywood \(2013\) Transformation in Russian housing: the new key roles of local authorities, International Journal of Housing Policy, 13:3, 312-324](#)

⁴³ [Yip N.M., Poon S.Y.F. \(2018\) Major Repair Work: Whose Responsibility?. In: Altmann E., Gabriel M. \(eds\) Multi-Owned Property in the Asia-Pacific Region. Palgrave Macmillan, London.](#)

solutions. Novoville, Traditional Building Health Check and Under One Roof were all raised as good examples to build upon (see Section 8).

One surveyor responding to TWG's Consultation was keen to avoid issues they observed in other countries:

'My initial reaction to your proposals is that the changes to legislation will give rise to the creation of companies similar to the French property system in which companies called syndicates control the income and expenditure on communal areas of properties.... My market research into this approach in Paris has identified a great feeling of dissatisfaction from the end users of these services by syndicates. The main reason for the dissatisfaction is due to the lack of planning that is done by the syndicates. The result is owners are often presented with unexpected repair bills of which they feel they have little control.'

One response to TWG included a different approach to altering existing legislation:

'Perhaps, however, we do not need to look so far afield for a potential solution. There is already in this country a legal framework in which the co-proprietors and tenants are obliged to cooperate, their shared property has legal personality, and is subject to oversight by the authorities and indeed the Land Court. I refer of course to the crofting legislation.

If each flat were to be considered equivalent to a croft, and the fabric of the building, the roof and the surrounding land is considered to be equivalent to the common grazing, we already have a legal framework which has been tried and tested over more than a century. Clearly the rules around usufruct are inherently different for a suburban flat compared to an agricultural holding, but in legal terms they may be said to be quite similar, in that the crofting legislation obliges each crofter to cooperate with their neighbours in the township. It is this cooperation between owners that we are seeking to oblige; and if it could be done in a way that produces more than forced cooperation, so much the better. It occurs to me that the tenement could be considered to be a community body; a community of space; and as such the community body may be able to apply for government funding to improve their community. From time to time the government may introduce favourable terms to these urban crofts to make improvements to the commonly held areas like boundary fences, entrances, or even the streetscape. Funding would be available to these charitable community bodies, in the same way as for any community of place in other areas of the country.

One of the major advantages of using the crofting legislation is that it sits adjacent to but not part of the title deed, and the inherent difficulty with schemes obliging individual owners is inserting the obligation or burden into their title deed. If the burden is not inserted in the title deed it would require to be the subject of a completely new statute. Using the crofting legislation as a vehicle would allow gradual implementation, either building by building or perhaps area by area; other types of statutory implementation require national implementation.'

Looking to Ireland, a requirement for multi-unit developments to establish a Sinking Fund was established through the 2011 MUD Act.⁴⁴ There is a minimum amount required per unit per year, currently 200 Euros. Before any unit in a multi-unit development can be sold by a developer, the act required the setting up of owners' management companies and the transfer of common areas to the company. The company must set-up an annual service charge scheme to pay for, 'maintenance, insurance and repair of common areas within its control, and the provision of common services to unit owners'.⁴⁵ Potentially buyers can request the company's accounts for the three most recent years, and see the balance of separate sinking fund accounts.⁴⁶ Multi units are a relatively new development in Ireland, which explains the tying of requirements to point of sale by developers.

A report by McDonnell (2018) for the Society of Chartered Surveyors Ireland was prompted by their concern that multi-unit developments were not budgeting adequately for future building costs.⁴⁷ The main reason for this provided was that property agents were reluctant to effectively administer, even where repair needs had been established through survey as 'many property owners do not wish to pay increased service charges today in order to build a Sinking Fund for the future.' The report also pointed out that owners refusing to pay their Sinking Fund contributions had aggravated the existing issue of missing shares for charges and contributions.

Overall, findings from other countries also point to:

- Historical legislation's knock-on implications for maintenance and repair.
- The importance of culture of joint responsibility.
- Issues of local governments filling the gap when private owners can't maintain and repair.
- Complexity of legal arrangements between individuals and collective entities.
- New legislation not providing a quick fix, but potentially mitigating problems of new building in the future.

⁴⁴ [Multi-Unit Developments Act 2011 - Irish Statute Book \(www.irishstatutebook.ie\)](http://www.irishstatutebook.ie)

⁴⁵ [Management companies for apartment blocks - Citizens Information Board Ireland \(www.citizensinformation.ie\)](http://www.citizensinformation.ie)

⁴⁶ [Tips on Buying your First Home - The Housing Agency \(www.housingagency.ie\)](http://www.housingagency.ie)

⁴⁷ [Sinking Funds in Apartments - Society of Chartered Surveyors Ireland \(www.scsi.ie\)](http://www.scsi.ie)

Assess the impacts of factors on maintenance and repair costs to age of building, number of units, presence of communal facilities and building type (14) and assess the impact of any other factors on maintenance and repair (15) and calculate the relative weight of factors on maintenance and repair costs (16)

In all our conversations with professionals we attempted to unpick the basis for repair and maintenance costs. Some general observations were shared:

Buildings

- Older buildings (1919) tend to require more specialist maintenance and repair, however their build quality has helped mitigate repairs.
- New builds, can require significant repair due to build quality.
- “The sums have to be worked out depending on the type of building and the work carried out on it previously. An amount of money around £200 a year for a pre-1919 tenement just doesn't seem like it would go anywhere near it. There needs to be rules about how it can be spent and when it can be spent.” (Housing Association Representative).

Climate

- Climate change was recognised as an extra factor intensifying repair and maintenance needs, raised that buildings need adaptation now due to its impacts.
- Some tenements, for example situated on the coast or in areas subject to flood are subject to more extreme conditions which may increase deterioration to materials.

Communal facilities

- As a general rule, the more the square footage of communal areas, the greater the cost for maintaining these areas.

Market factors

- Even if data could be analysed to ascertain the general maintenance and repair needs of tenements, the costs still vary based upon the national and local market. Costs will never be 'like for like',
- A professional dealing in semi-remote urban areas explained: 'it's really difficult, because cost of work varies throughout Scotland. We have islands within our Local Authority and the costs of jobs is higher there because there are ferries to factor in, and there's less competition of contractors. So I don't envy anyone who has to come up with what levels to aim for and what contributions people should make. It's really hard to take a call on that when costs will vary so much across the country. And it has to encourage quality work, not just people opting for the cheapest option.'
- One retired surveyor responding to TWG's consultation pointed out- 'When roofing and services need work done, frequently the amount of work cannot be determined until partial opening up or uncovering / exposure of the area in question... If an examination takes place and surveyors or project managers are called in to instruct such (hidden) repairs this could lead to expensive management and supervision costs. Also, if there are limited numbers of contractors and supervisors this could lead to over familiarity and cronyism.'

We found that determining patterns of costs is not helped by data on maintenance and repair, corresponding to all these factors is not readily available to the public or professionals. A professional body explained to us:

‘Although there is a current push for this, Registers of Scotland does not have accessible data to ascertain factors such as age of the building, number of individual units, presence of communal facilities (lifts, large areas of landscaping, roads etc); and building type.’

One Local Authority employee dealing with the private housing sector explained in their interview:

‘I have broad figures for our area. I know how many properties they are, their proportions of tenure. What we don’t know is for all 50,000, how many fall within the definition of ‘tenement’ and within that all the information which would be helpful about the age of the building, feature of the building, set up of the tenement’.

Investigate how BRFs should be managed using a proposed points system (17) and identify what the initial minimum contribution should be and how this should be rated across the points system (18)

There are two aspects to this research question- a proposed points system and financial management. Our research included findings relevant for both aspects from stakeholders.

Suggestions were given regarding a points system (see table 7.1), the only consensus was the general principle that payment levels should be regarded as ‘fair’.

Table 7.1: Points System Options

Points System Suggestions	Further Commentary
Flat rate The consultation pointed out, ‘careful consideration will have to be given to owners’ contributions to the sinking fund. If this differs from the title deed apportionment for mutual/common repairs this could complicate management of the Sinking Fund.’ (response from Local Authority)	Matching the share of contributions to the share of repairs in the deeds is not straightforward either as the deeds might include inconsistencies within the one building.
‘A minimum contribution to a sinking fund should be specified in legislation and updated regularly to reflect the building cost indices.’	At a UK level-the quarterly construction price and cost indices (PCIs) are produced for use in estimating, cost checking and fee negotiation on public sector construction works. ⁴⁸

⁴⁸ [Construction price and cost indices \(www.gov.uk\)](http://www.gov.uk)

Rate based upon repair needs and costs	Many permutations- see last section
Rate based on the scale of the building and the complexity of the structure, possibly linked to the number of floors (as this affects access & scaffolding etc.) or the square meterage of the flat.	Many permutations- see last section
Rate based upon circumstances of owner- 'some sort of support and affordability test is required, I know several of my neighbours cannot afford it, I know some who say they can't but can really.'(Owner, Consultation response) One Local Authority asked in response to the Working Group's recommendations: What's the criteria for being unable to pay into a sinking fund? How do people 'prove' they can't pay? And what level of support is expected to be available for vulnerable owners with high levels of repairs required? Are vulnerable owners who are on low-incomes being penalised for non-payment into sinking funds if additional penalties are to be applied? Or can financially vulnerable owners access a means-tested pot to reclaim investment through government funding?'	<p>Different observations on affordability and whether it should be:</p> <ul style="list-style-type: none"> • Assessed especially to establish if an owner could afford BRF; • established through whether the owner received benefits currently for example Universal Credit; and • Scottish Index of Multiple Deprivation used as an indicator of affordability.⁴⁹ <p>Establishing genuine lack of affordability could be administratively time consuming.</p>

A further complication raised in several interviews was mixed developments with residential and commercial owners. One commercial landlord explained in their TWG consultation response:

- 'Where a tenement has (or had as at April 1992) retail premises on the ground floor with flats above, this can result in unfair distribution of both costs and power given that:-
- The retail unit can end up bearing as much as 90% of the common costs such as insurance, with flat owners contributing little
 - If voting rights are allocated on the same basis, then the owner of the retail unit can effectively hold the flat-owners to ransom

⁴⁹ [Scottish Index of Multiple Deprivation 2020 \(www.gov.scot\)](http://www.gov.scot)

- If there has been a change of use since 1992 and ground floor units have been converted to residential use, then the ground floor flat owner will owe a vastly different proportion of common costs to the other flat owners.’

In terms of financial management, this was seen as crucial, and issues of trust were highlighted. Many suggestions were made around how the money could be collected, held and managed. For each of these we include the rationale and any related considerations (see table 7.2).

Table 7.2: BRF Management Options

Management Suggestions	Further Commentary
'it is accepted that some residents' associations will already have, or will want to establish and control, their own building maintenance accounts.' (Tenement Working Group)	Could lead to different models for different tenement blocks.
Tying to Council Tax was suggested as a way to bill for common maintenance/ repairs "It should be based on council tax level. Someone in band A will be in a smaller property than the highest band.' (owner occupier, Edinburgh) "Could make it part of the council tax bill and it would make sense to put it there. The council have overall responsibility for housing stock." (owner occupier, Dundee)	Responsibility for Council Tax can rest with a tenant, not only an owner. Bands do not account for other aspects of a tenement such as age, location.
Deposits Scotland Model	Three providers in Scotland 60% of deposits are held by SafeDeposits Scotland a not-for-profit organisation. Connected Tribunal service
Managed through part of central government, such as Revenue Scotland	Collects and manages devolved taxes, including Land and Building Transactions Tax (LBTT) ⁵⁰
Consultation response from tenement owners: 'The use of local credit unions should be encouraged, where possible, particularly if they can assist with loans when sinking funds are at an early stage.'	The model could be useful for a community-based and non-profit arrangement. Small loans through a credit union could be preferable to other forms of loans. Credit unions may pay dividends, rather than a confirmed interest rate.

⁵⁰ [About Revenue Scotland - Revenue Scotland \(www.revenue.scot\)](http://www.revenue.scot)

	The current model may not work for the scenario of saving for repairs as many limit savings to up to £15,000.
'consider whether all VAT paid on expenditure by e.g. OAs or via the Social Investment Fund could either be repaid to owners or be mandated to a specific fund to support tenement repairs – e.g. more marginal loans, supporting “mortgage to rent” schemes within RSLs etc.’ (Tenement Working Group)	VAT as a lever has been suggested by stakeholders. Scottish Government active in requesting changes by UK Government.
Un-incorporated Owners Association responding to consultation 'We would be very much against any part of the sinking fund being used for any costs of arbitration or mediation or a dispute. The result would be that the fund would be eaten up by professional fees. This is totally unacceptable. The fund must only be used for the actual cost of repairs to the building properly authorised by law or under the titles.'	Organised owners desiring BRF to be at a property level and for no central pooling of money to fund related costs.
Consultation response from landlord: 'There is no mention of association bank accounts, which is surely a more accessible form of saving than a sinking fund? The sinking fund proposals are quite heavyweight and while I don't have an argument with a 'pension scheme' for buildings, they do sound quite aggressive, and costly. If the owners' associations are mandatory, an association bank is surely a good interim measure while legislation works its way through.'	A professional network of surveyors explained: 'The establishment of a bank account these days is very difficult and we have been made aware of banks taking months and months to set up accounts or agree to a change of personnel on the account. If the accounts are to be amended every time a property is sold, this will lead to increased administration and likely costs to be increased by the lenders. The AML issues are vast for such accounts given absentee landlords and foreign owners as well as properties owned by companies or other commercial enterprises.'
Enforcement of payment of shares into the BRF should be tied into the house sales process. In the same way that a charge against a property is paid off when a property is sold, any underpayment in the BRF share attributable to an individual flat/unit would be paid when a property is sold. (TWG consultation response)	A professional network of surveyors explained: 'In practice, a purchaser will want to start with a clean slate – the simplest approach for the purchaser would be for the purchase contract to provide that any SF arrears must be disclosed before settlement and will be deducted from the purchase price. As highlighted in the report, access to the SF details (which must

	<p>be accurate) before settlement is key. This is going to lead to a lot of additional paperwork on a sale/purchase transaction and that service is not going to be carried out for free leading to additional costs and expense.'</p> <p>A public body responding to the TWG consultation added: 'If enforcement is linked to the sale of a unit, then the operation of this proposal in the context of negative equity or a sale under a standard security should be considered further. For example, if an underpayment to the sinking fund would be a debt of the next purchaser, then this may effectively further lock owners into a negative equity position.'</p>
<p>Zero percentage loans should be made available where costs and ability to repay are considered. (network of housing associations)</p>	<p>Loans exist such as Home Energy Scotland Loan⁵¹</p>
<p>TWG's suggestion for investing funds</p>	<p>Public body responding to TWG recommendations: 'In the event that sinking funds are to be invested, for example so that growth in value helps fund future repairs or the increase in costs of future repairs, then this would increase the cost of managing the fund. These costs may be disproportionate for sinking funds that have not built up a significant value. Given the nature of investments and the associated risks, there is a risk of the value of investment falling and insufficient funds being available for maintenance.'</p>
<p>TWG consultation response from retired Chartered surveyor: 'Bridging Finance facility will likely need to be provided and funding options considered to ensure that contractors are properly paid. They should</p>	<p>Relates to the issue of tenement owners contracting work, but then experiencing missing shares.</p>

⁵¹ [Home Energy Scotland loan - Home Energy Scotland \(www.homeenergyscotland.org\)](http://www.homeenergyscotland.org)

not be responsible for collecting debts, their expertise should focus on getting the work done expeditiously and competently.'	
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In considering BRF's implementation attention needs to be placed upon:

- Distrust of fiscal management needs alleviated, or at least recognised and steps taken to provide assurances.
- Points would have an infinite number of permutations.
- Existing issues with determining relative levels of responsibility such as situations with mixed commercial and residential ownership within tenements.
- Concern for cases where owners are affected by genuine lack of affordability.

Additional Findings on Application of BRF

Roles and Responsibilities

Public sector and private sector stakeholders raised concerns for implications of any new legislation and who the responsibility to organise and enforce would fall to in practice.

One practicing property lawyer responding the recommendations asked about the BRF asked:

'Who has the right, or the duty, to set up the fund? Will any sanction apply if the fund is not set up?

If the owners' association is not run by a professional manager/factor, what support will be available to help owners establish their fund? I was not sure what was meant by "underpayment in a Sinking Fund share is carried forward to a subsequent sale" – that the other owners will be able to recoup missing funds from the proceeds of a sale by a non-paying owner? This is legally complex.'

Notably no professionals, with the exception of surveyors, regarded the introduction of BRF as a boost to their own business and income. Instead, they raised extra requirement, extra bureaucracy and extra costs.

Indeed, a public body responding to the Tenement Working Group explained:

'arrangements for setting up, monitoring and protecting sinking funds require careful consideration as the costs involved may be significant and could be disproportionate to the benefits.'

One Housing Association raised their experience of coordinating repairs within tenements of mixed ownership:

‘If we can't get basic repairs done because people won't contribute it's really hard to see how they will contribute to a reserve fund - for something they don't know what's going to happen.’

Communication

There was consensus amongst all research participants that the reasons for any change in legislation, and the ultimate aims and beneficiaries would have to be communicated well in advance.

There was a feeling amongst professionals that different types of owners were not going to see short-term benefits from any form of sinking fund:

‘Someone selling up might not see any return for their money and that's going to be a huge challenge to get across the benefit of paying into the fund.’ (Housing Association Representative).

The sense of ‘a stitch in time’ was suggested by one professional specialist in historic buildings. And professionals suggested the best advocates for encouraging owners to make long-term provisions for repairs, and to organise regular maintenance were owners themselves. Testaments such as:

‘We get roof repairs done regularly and have an annual inspection because it's much better to have annual inspections with minor repairs than to need a new roof.’ (owner occupier)

Beyond communicating the purpose of any BRF introduction, stakeholders emphasised that all the details would have to be communicated. Firstly, what common areas consist of.

A professional body of finance responded to TWG's consultation:

‘There should be clarity about the type of works that could be undertaken with sinking funds. In our view, such works should relate to the fabric and main elements of the external envelope, specifically external walls, foundations, roof, common parts including stair windows and rooflights.’

Secondly, communication by professionals on what repair priorities would be, and what they could cost.

The previous consultation by TWG included a response by an umbrella body as follows:

‘We recommend that ballpark costings be a mandatory element of the report. Experience in working on church buildings with quinquennial inspection reports suggests that lay people – those not engaged in the built

environment in a professional capacity – find the language of such reports intimidating and difficult to engage with, to the point of taking no action. The terminology of such reports can conjure images of significant works programmes, which, if not costed, can cause considerable anxiety. An inspection report should empower tenement owners to take action through the provision of detailed, accessible and accurate information, and ballpark costs are an essential part of this. Without costs, the report has the potential to become an overly negative harbinger of decay that does not allow tenement owners to plan their repairs appropriately in accordance with their finances.’

Thirdly, communication about any BRF itself. One tenement owner asked during a focus group:

‘on an individual stair basis should there be a cap on how much is required in a sinking fund? Obviously, money will always be required for day-to-day expenses such as cleaning, garden maintenance, small repairs, but how much should there be sitting in a sinking fund and for how long? For example, in our stair we would hope not to have any big expenses for another 5+ years so how much should we accrue?’

Phasing

There was no consensus on whether a BRF should be introduced as a blanket measure or phased. Our interview questions tried to probe further into this consideration.

It was pointed out that for modern development:

- Warranties are usually in place for new builds, of up to ten years to cover structural problems.⁵²
- Depending on build quality, these will likely need repairs over long-term.
- These usually have factors in place and requirements such as common buildings insurance.
- Floats and maintenance funds in place.

Indeed, grey literature from the Tenement Working Group found for 'modern title deeds' just over 10% of title deeds for the developments sampled, made provision for contributions into a non-repayable sinking fund although almost 60% included a

⁵² [New build homes - Shelter Scotland \(www.scotland.shelter.org.uk\)](http://www.scotland.shelter.org.uk).

provision that when a house was bought, a one-off contribution was made into a float.

A consultation response to TWG contained:

‘if the planning laws were amended to force developers to have a compulsory sinking fund written into the title deeds and if they contributed, e.g. Half a percentage point of the sales price to each property to prime the maintenance account the proposal might have a chance of working as the monthly owners’ contribution would be lower. There should be no, or few, withdrawals from the fund for many years, giving time for the fund to accumulate enough for major works such as roof replacement. People buying these homes would be made aware of this condition of ownership from day one and it would be their choice as to buying or not.’

A professional group of housing associations responded to TWG that:

‘On the assumption that there is a general consensus that the three interim recommendations do indeed represent best practice they should be made mandatory for all new flatted developments with common repairing obligations. This would serve to demonstrate the effectiveness of the approach and ensure that newer buildings in common and shared ownership are properly maintained in the longer term. The legislation should include a mechanism for existing properties to migrate to the revised arrangements with the collective agreement of owners; Owners should be encouraged to move to the new arrangements by demonstrating the advantages of the approach both in terms of improved maintenance of their home and the impact this will have on its value and saleability.’

One local authority employee who has been paying attention to the work of the Tenement Working group and discussing it within their networks explained during our interview:

‘I had it in my mind that BRF would be at the purchase phase. But I hadn’t thought about what we do about everyone that’s already in a tenement. That’s a huge undertaking. But it is necessary I think given the amount of tenements in Scotland and their current levels of repair’.

Timing of Introduction

A formal response from another local authority to the Tenement Working Group consultation reflected:

‘Experience from the Republic of Ireland suggests that this can be done successfully in new build developments, however enforcement in a complex existing title in an older property is another proposition altogether.’

In our discussions, the point of sale was seen as the main opportunity for:

- Explaining responsibilities,
- Sharing repair and maintenance needs of building,
- Introducing fee,
- Requiring start of payments into an BRF,
- Raising taxes.

A public body responding to the TWG consultation explained: 'The transition into such a scheme will need careful consideration. Homeowners may have budgeted for outgoings in relation to their property which is unlikely to have included payment towards a sinking fund.'

Incentives

During our primary research nobody advanced specific incentives that could encourage owners to pay into a BRF. However, a few general ideas were suggested on ways to encourage maintenance and repairs. These included 'tax breaks', 'grants', 'no interest loans'. No specifics were shared on how this could be achieved, especially in the context of recovery from the Covid-19 pandemic.

A body of Housing Officers explained:

'What is needed is a longer term approach to embedding a more engaged and active maintenance culture amongst flat owners, one that puts a cash value and a marketing advantage on effective maintenance arrangements within a block and provides a clear incentive to owners to agree to participate fully in such arrangements.'

8. Vignettes

These vignettes provide relevant context and inspiration relating to repair and maintenance of tenements.

Under One Roof

Under One Roof was launched with Royal Incorporation of Architects in Scotland (RIAS) assistance as part of Scottish Government's Year of Innovation, Architecture and Design 2016.

Registered as a charity in Scotland, its sponsors from across private and public sources.

Its website is for owners all types of common property and their advisers.⁵³ This offers general guidance on topics including:

- Knowing your neighbours.
- Get your building surveys every 5 years.
- Save for repairs.
- Get professional help.
- Know your responsibilities.
- Repairs and maintenance of different types of buildings.
- A repair checker.

Recommends groups of owners seeking professional help for their particular case.

'Under One Roof are a fantastic source of information and assistance. It's a fantastic resource for the public and really helps lay out the reality for the public' (quote from stakeholder discussion group).

⁵³ [Under One Roof \(www.underoneroof.scot\)](http://www.underoneroof.scot)

Novoville- Shared Repairs

Novoville was selected by the City of Edinburgh Council (CEC) to help solve the big challenge of managing the shared areas in privately owned tenements across the city. The initiative was part of the Scottish Government's CivTech Accelerator programme.⁵⁴

A mobile app was designed to encourage, support and enable private tenement flat owners to proactively take responsibility for planning and organising repairs and maintenance⁵⁵

Novoville launched this Shared Repairs app in Edinburgh in April 2021. Features allow owners to:

- Invite other owners to join.
- Report issues for repair or maintenance.
- Set up maintenance plans.
- Access quotes from Trusted Traders.
- Vote in-app.
- Open FCA- regulated maintenance accounts.

During this research Novoville shared some early insights with us:

- 56% of people joining do so as current in need of a repair
- 75% of those joining do not have a maintenance account already in place
- A majority of repairs so far have gone through on equal share
- 20 repairs have been organised, sourced and paid for so far through the app
- No buildings have all owners, but many have over half of owners on the app
- The app is being developed and improved so it can correspond to best practice, and any new complimentary programming or regulations.

⁵⁴ [Accelerator Workshop Programme - CivTech \(www.civtech.scot\)](http://www.civtech.scot)

⁵⁵ [Novoville - shared repairs \(www.sharedrepairs.novoville.com\)](http://www.sharedrepairs.novoville.com)

Traditional Buildings Health Check

The Traditional Buildings Health Check Scheme was originally a pilot project which ran from 2013 – 2018. It was initiated by Historic Scotland (now Historic Environment Scotland) in partnership with Construction Industry Training Board (CITB) Scotland. Stirling City Heritage Trust (SCHT) was responsible for the design, delivery and management of the membership service in partnership with the funding bodies.

This scheme focussed on a proactive maintenance scheme for traditional buildings built before or around 1919, including older tenements. Offering:

- Inspection Service
- Schedule of Repairs
- Members-only services including events and advice
- Repair grants.

The pilot evaluation found:⁵⁶

- 137 buildings were inspected
- Repair works commissioned for an estimated 120 member properties
- £1.3million estimated spend by owners on properties
- £705,000 to deliver the pilot.

Stirling City Heritage Trust is continuing this unique service in Stirling as part of the core activities of the Trust

‘Care is better than Repair’ (TBHC slogan)

⁵⁶ [Traditional Buildings Health Check - Stirling City Heritage Trust \(www.stirlingcityheritagetrust.org\)](http://www.stirlingcityheritagetrust.org)

9. Conclusion

Our research found general agreement that maintenance and repair of tenements in Scotland needs addressing by a combination of central and local government, professionals, third sector and the general public. This is an important policy area given:

- Prevalence of tenements in urban Scotland;
- variability of effective maintenance and repair of communal assets;
- impacts of disrepair on occupant health and wellbeing, wider safety concerns and communities;
- substantial efforts by pro-active owners and professionals; and
- importance of the housing market within our broader economy.

Responsibility was acknowledged by owners, stakeholders and local government for repair and maintenance. We consulted individuals across these groups who were already proactive in this area for personal and professional reasons.

Although differences depending upon typology of tenements were discussed, the need for policy interventions to address tenement repair and maintenance extended towards:

- All types of tenements, including different configurations and mixed use,
- All ages of tenement, not restricted to pre-1919 properties,
- All tenures of property, with the acknowledgement that factors and/or housing associations are already active in enabling repairs and maintenance of common areas.

The proposal of the Building Reserve Fund is welcomed, but only as part of a wider suite of measures to encourage coordinating and paying for repairs and incentivising regular maintenance of tenements. This is largely because the availability of funds for repair was not the sole reason for disrepair. Other barriers include:

- Property deeds- often unclear, contradictory,
- Multi-units within buildings a difficult legislative area throughout the world, balancing common and individual property,
- Ownership, tenure and circumstances subject to change,
- Some owners will not see opportunity cost of short-term or long-term investment,
- Collective decision making, especially involving money, is challenging,
- Affordability can be a real issue, for example for owner occupiers in lower value properties.

In fact, a sinking fund was seen as a small piece of the jigsaw to encourage long-term behaviour change.

Devising a points system for a BRF which would be regarded as both clear and fair was not seen as practical since:

- Tenements incorporate a mix of number of units, configurations, and ages,
- Buildings are in different existing conditions,
- The construction market and costs of material and labour fluctuates over geography and time,
- People and organisations owning tenements have a host of different circumstances.

Research participants raised the mandate of BRF in itself, would not ensure:

- Understanding of repairs and their priorities,
- Sufficient accumulation of funds to cover all possible repairs,
- Fair coordination of funds amongst tenement owners,
- Agreement from owners on the scenarios to draw down on funds,
- Organising repair work with appropriately skilled contractors.

One local authority member of staff taking part in a discussion group explained:

‘It’s really complicated. Because you are dealing with people. And groups of people, in different circumstances and with different views on what is necessary, and different financial positions. Some people will really value where they live and others don’t. So how do you expect them to agree on when to draw down on any pot, even if they are mandated to pay in. There’s still decision making to do, there’s still work to coordinate. Even with funds available, it’s not easy. And you can’t legislate for that part easily.’

Therefore, the establishment of BRF to help address repairs to tenements would have to be complimented by:

- Regular surveys/ detailed inspection reports (as recommended by the TWG),
- Advice for tenement owners (often provided individual Local Authorities and valuably supported by Under One Roof⁵⁷),
- Transparency on responsibilities and arrangements at the time of purchase,
- Transparency on coverage and spend through charges by Factors, including Housing Associations,

⁵⁷ [Under One Roof \(www.underoneroof.scot\)](http://www.underoneroof.scot)

- A collective arrangement between tenement owners such as an Owner's Association,
- Tools for tenement owners to coordinate all of the above in a transparent way (such as a digital solution).

Research participants were concerned that any pooling of money should involve two principles which may be contradictory:

- Minimal bureaucracy for members of the public and public bodies to navigate and/or administer,
- Sound financial management procedures and safeguards.

Ultimately for change to be encouraged, there needs to be some incentives that can unite owners to negotiate any barriers in coordination. One tenement owner suggested in their response to TWG's consultation:

'The working group has made a good start on the sticks with which to beat tenement owners into maintaining their buildings, but I'd like to see some carrots in the way of grants or, ideally, the removal of VAT from mutual repairs. I am aware this is a Westminster power, but there is surely lobbying which can be done'

In our discussion groups, held in 2021, participants were very conscious of the financial impact of the pandemic for individuals, businesses, local authorities and the Scottish Government.

One of the key learnings from the research is building up a pot of money for repair jobs could be enabled by a BRF, but policy interventions and public funding should be directed towards encouraging regular, high-quality maintenance as a means to:

- Mitigate need for repairs
- Reduce overall costs for owners
- Help spend on tenements to be as regular and predictable as possible for owners.

Indeed, this research flagged the need for collective action to address three related areas for tenements:

1. Outstanding Repairs
2. Future repairs
3. Regular maintenance

Stakeholders' understanding of the BRF proposal consisted of- a sinking fund being built up over time, through a mandatory contribution by owners, to be utilised by owners for major repairs by collective agreement. It was highlighted by stakeholders

that a BRF could potentially help address the third area- future repairs. However, there was concern for the first two areas. Outstanding repairs could be urgent, in which case waiting for pot to build up would be too late. If the fund is to be used for major repairs then there still needs to be arrangements for payment of funds for regular maintenance, on the basis that this would mitigate future repairs.

A Housing Association Representative explained:

“The condition of so many tenement properties are now beyond a sinking fund level. You can't start putting monies into a sinking fund before you start addressing the problems with the building just now so you would need to have major repairs carried out before you bring the building to a level before you can start looking at putting monies into a sinking fund.”

Affordability is a key concern, one Local Authority commented in their TWG Consultation response: ‘Those owning in the properties in need of most repair may be least able to afford to contribute the necessary larger contribution to the sinking fund.’

One tenement owner reflected: ‘isn’t requiring owners to pay into a sinking fund at the same time as payments for a backlog of repairs are needed like trying to fill a bath with the plug out?’

In summary, this research points to Scottish Government considering a combination of legislation, guidance and intervention as follows:

1. Mandatory buildings insurance which covers common areas of tenements,
 - addressing gaps in current arrangements.
2. Mandatory factoring for tenements,
 - either by professional factors or self-factoring by established Owners Associations.
3. Extending the application of Tenement Management Scheme’s definitions of scheme property, scheme decisions and shared costs to all tenements, not only those with gaps in title deeds,⁵⁸
 - acknowledging a largely archaic system and mitigating costs for changes to title deeds.
4. Mandatory maintenance accounts to utilise for maintenance, including repairs and environmental upgrades,⁵⁹
 - ‘repairs and replacement’ already fall within definition of ‘maintenance’ in the 2014 Tenements Act,

⁵⁸ [Common Repair, Common Sense - Consumer Focus Scotland \(www.gov.scot\)](http://www.gov.scot)

⁵⁹ [Keeping accounts - Under One Roof \(www.underoneroof.scot\)](http://www.underoneroof.scot)

- utilising the management accounts procedures already part of Tenement Management Scheme.
5. Clear communication and checks of the above at point of sale by conveyancing solicitors,
 - acknowledging importance of point of sale in explaining legal rights and responsibilities.
 6. Prioritisation of outstanding repairs determined by regular professional surveys,
 - as a way to clearly establish repair priorities and likely costs.
 7. Transparency on projected and actual spend on common maintenance and repair by factors,
 - building upon existing best practice.
 8. Supporting sources of guidance and new technology to empower groups of owners and Owners Associations to make and follow through TMS scheme decisions,⁶⁰
 - in light of a move away from a culture conducive to in-person stair meetings.
 9. Incentives to encourage regular, high quality maintenance supply and demand,⁶¹
 - even small incentives to encourage behaviour change.

⁶⁰ [Using the tenement management scheme - Shelter Scotland \(www.scotland.shelter.org.uk\)](http://www.scotland.shelter.org.uk)

⁶¹ [VAT reduction on refurbishment and renovation: letter from Housing Minister \(gov.scot\)](http://gov.scot)

Appendix 1: Research Question Viability and Methods

Reference	Research Question within ITT	Viable within scope of contract	Target Group	Method
1	Number of tenements that currently have and do not have BRF arrangements	Anecdotal evidence from professionals indicates BRF rare in Scotland Unlikely to establish exact proportions	Tenement owners	Literature review Public survey
2	Reasons some tenements have no provision or security in place to ensure the safety of buildings and regular maintenance	Yes	Tenement owners	Literature review Stakeholder Interviews Focus Groups
3	If there is a legal requirement to pay into a BRF	No- we recommend this is directly advised by Scottish Law Commission to Scottish Government Otherwise this may require a separate commission with extensive examination of legal documentation from legal levels down to title deeds	n/a	n/a
4	Whether those who own properties in tenements understand what their legal responsibilities are	To an extent- through qualitative techniques.	Tenement owners	Literature review Focus

	in terms of building fabric			Groups
5	Reasons which prevent owners paying into a BRF, including cost, coverage, attitudes, absent landlords	Yes- in general terms	Tenement owners	Literature review Focus Groups
6	Where there is a BRF, how are the monthly/ yearly amounts are calculated	Might be able to gather a few examples once specific BRFs are identified	Tenement owners	Stakeholder interviews Focus Groups
7	Whether owners who currently pay into a BRF had it been explained to them how their contribution has been calculated, i.e. a % of the property value.	Might be able to gather a few examples once specific BRFs are identified	Tenement owners	Stakeholder interviews Focus Groups
8	Where BRFs in place, investigate occasions where maintenance or major construction work has been required, how the work was undertaken and whether through legal enforcement	Might be able to gather a few examples once specific BRFs are identified	Tenement owners	Stakeholder interviews Focus Groups
9	Investigate whether factoring fees include contributions to BRF	Might be able to gather a few examples once specific BRFs are identified	Factors	Stakeholder interviews
10	Capture the concerns of those	Might be able to gather a few	Tenement	Focus

	already contributing to a BRF about potential scenarios	examples once specific BRFs are identified	owners	Groups
11	Research how BRF can be applied to Tenements	Yes- general research question	n/a	Literature review
12	Look at systems being used in other countries	Yes	n/a	Literature review Stakeholder interviews
13	In other countries, understand levels of cooperation between owners and bodies responsible for building maintenance	Yes	Stakeholders	Interviews with key figures in other countries
14	Assess the impacts of factors on maintenance and repair costs to age of building, number of units, presence of communal facilities and building type (as per Ministerial Working Group report).	Yes	Stakeholders	Literature review Stakeholder interviews
15	Assess the impact of any other factors on maintenance and repair	Yes	Stakeholders	Literature review Stakeholder interviews
16	Calculate the relative weight of factors on maintenance and repair costs	Yes	Stakeholders	Stakeholder interviews

17	Investigate how BRFs should be managed using a proposed points system	Can include recommendations	Stakeholders	Literature review Stakeholder interviews
18	Identify what the initial minimum contribution should be and how this should be rated across the points system	Can include recommendations	Stakeholders	Literature review Stakeholder interviews

Appendix 2: Public Survey

Building Reserve Funds

The following questions are about housing maintenance and repair.

Ask all

Question 1. What kind of building do you live in?

- A traditional tenement flat
- A modern flat
- Another type of flat
- A divided Victorian or Edwardian town house [continue q2-6 and then end survey]
- A detached house [continue q2-6 and then end survey]
- A terraced house [continue q2-6 and then end survey]
- A semi-detached house [continue q2-6 and then end survey]
- Other

Ask to all

Question 2. Does the building have an owners' association or owners' group?

- No
- Yes
- Don't know

Ask if No/DK at Q2

Question 3. Have you ever considered or discussed creating an owners' association or owners' group?

- Yes,
- No,
- Don't know

Ask to all

Question 4. Is the property you live in Factored?

- No
- Yes, by a professional property factor or manager
- Yes, self-factored
- Don't know

Ask to all

Question 5. Is the building surveyed regularly to see what repairs are needed? This would be done by a qualified surveyor, architect or engineer.

- No
- Yes
- Don't know

Ask to all

Question 6. Has the building been subject to emergency repair procedures whilst you have stayed there?

- No
- Yes
- Don't know

Ask to those who live in a flat only (Options 1, 2, 3 @ Q1)

Question 7. Do you own the property you live in?

- Yes
- No- I rent from a private landlord
- No- I rent from a Registered Social Landlord (including a Housing Association)
- No- other arrangement e.g. staying in the property of a family member

Ask to Q7 YES ONLY

Question 8. To what extent do you agree with these statements about the building?

RANDOMISE ORDER

- I don't know most of the owners of the other units
- Owners come together to make joint decisions about the building
- I understand my rights and responsibilities as an owner
- I am familiar with the detail of my title deeds
- I am familiar with Duty to Maintain
- I don't know the difference between 'maintenance' and 'improvements'
- I know everything wrong with the building and its repair priorities
- I don't find it easy to organise builders to do repairs
- I am confident in finding someone to do repair work well and for a good price
- I struggle to pay for repairs to the building
- I put money aside in case I have to pay for building repairs
- In the building owners save together for repairs
- We find it difficult to coordinate maintenance and repair
- I know what help I could access through my Council/ Local Authority

SCALE: Strongly agree, tend to agree, neither agree nor disagree, tend to disagree, strongly disagree, DK

Ask to No options 2,3,4 @ Q7

Question 9. To what extent do you agree with these statement about the building you live in?- agreement scale

- I experience problems due to the state of the building including damp, rot, leaking roofs or around windows
- I am happy that the building is wind and water-tight
- I wish more was done to maintain the building
- I worry about the cost of my rent going up should the building need repairs

SCALE: Strongly agree, tend to agree, neither agree nor disagree, tend to disagree, strongly disagree, DK

Ask to those who live in flats only (Option 1, 2, 3 @ Q1)

Question 10. After this survey we are organising some focus groups. These groups would take place online and you would receive a payment for taking part. Would you be interested in taking part in one of these focus groups?

- Yes
- No

If yes, confirm email address and phone number

Appendix 3: Topline Results

The following questions are about housing maintenance and repair.

Question 1

What kind of building do you live in?

	All (2150)
	%
A traditional tenement flat	8
A modern flat	8
Another type of flat	8
A divided Victorian or Edwardian town house	1
A detached house	29
A terraced house	16
A semi-detached house	26
Other	3
Any tenement (sum of first 3 options)	24

Question 2

Does the building have an owners' association or owners' group?

	All (2145)
	%
Yes	8
No	78
Don't know	14

Question 3

Have you ever considered or discussed creating an owners' association or owners' group?

	All
	%
Base: Without an owners association or group (1,956)	
Yes	2
No	92
Don't know	6

Question 4

Is the property you live in factored?

	All (2,145)
	%
Yes, by a professional property factor or manager	15
Yes, self-factored	3
No	64
Don't know	19

Question 5

Is the building surveyed regularly to see what repairs are needed? This would be done by a qualified surveyor, architect or engineer.

	All (2,149)
	%
Yes	12
No	77
Don't know	11

Question 6

Has the building been subject to emergency repair procedures whilst you have stayed there?

	All (2144)
	%
Yes	16
No	78
Don't know	6

Question 7

Do you own the property you live in?

	All (459)
	%
Yes	47
No – I rent from a private landlord	20
No – I rent from a Registered Social Landlord (including a Housing Association)	31
No – other arrangements e.g. staying in the property of a family member	2

Question 8

To what extent do you agree with these statements about the building?

Base: Owners (216)	Strongly agree	Tend to agree	Any	Neither / nor	Tend to disagree	Strongly disagree	Any disagree	DK
	%	%	%	%	%	%	%	%
I don't know most of the owners of the other units	13	30	43	10	21	24	45	2
Owners come together to make joint decisions about the building	5	23	28	15	23	24	47	9
I understand my rights and responsibilities as an owner	22	46	68	11	16	4	20	1
I am familiar with the detail of my title deeds	20	36	56	16	18	7	25	3
I am familiar with Duty to Maintain	13	28	41	16	16	15	31	12
I don't know the difference between 'maintenance' and 'improvements'	8	10	18	12	28	41	69	1
I know what help I could access through my Council/Local Authority	7	12	19	17	26	29	55	10
I know everything wrong with the building and its repair priorities	7	27	34	21	22	14	36	8
I don't find it easy to organize builders to do repairs	15	23	38	22	17	15	32	9
I am confident in finding someone to do repair work well and for a good price	11	32	43	24	20	7	27	5
I struggle to pay for repairs to the building	7	17	24	27	23	21	44	5

I put money aside in case I have to pay for building repairs	13	25	38	17	19	24	43	2
In the building owners save together for repairs	7	17	24	14	11	36	47	14
We find it difficult to coordinate maintenance and repair	16	16	32	26	19	18	37	6

Question 9

To what extent do you agree with these statements about the building you live in?

	Strongly agree	Tend to agree	Any	Neither / nor	Tend to disagree	Strongly disagree	Any disagree	DK
Base: Non – owners (320)	%	%	%	%	%	%	%	%
I experience problems due to the state of the building including damp, rot, leaking roofs or around windows	13	17	30	13	17	37	54	3
I am happy that the building is wind and water-tight	34	36	70	6	15	4	19	4
I wish more was done to maintain the building	25	28	53	18	12	13	25	4
I worry about the cost of my rent going up should the building need repairs	21	28	49	18	12	15	27	7

Technical details:

- The survey was designed by the Diffley Partnership and invitations were issued online using the *ScotPulse* panel.
- Results are based on a survey of 2150 respondents.
- Fieldwork was conducted w/c 6th September 2021.
- Results are weighted to the Scottish population by age and gender.

Appendix 4: Discussion Guides

Public Research: Owner Occupiers

Set up (5 mins)

Introduce Diffley Partnership Team

Welcome to the Discussion Group–

- Explain the discussion will last an hour
- There will be plenty of time to get your views across and discuss issues between yourselves, something we encourage; my role is to keep the conversation flowing, ensuring we cover the broad areas we need to and ask any follow-up questions,
- Fully anonymous and confidential; The Diffley Partnership abide by the Market Research Society Code of Practice and the SRA Ethical Guidelines.
- Request permission to record discussion – with your permission I will record the discussion; this is just so we can go back and listen again after the discussion

Do you have any questions before we start?

Introductions and opening discussion

To begin, I want to give everyone the opportunity to briefly introduce yourselves- whereabouts you live in Scotland, which kind of flat/ tenement you live in and how long you have lived in that residence.

There is concern for the condition of overall housing stock in Scotland, including flats. According to data published by the Scottish House Condition Survey, half of all housing is in 'critical disrepair' and almost half demands 'urgent attention'.

- Does that surprise you? What are your reactions?

Repairs and Maintenance of Tenements (10 mins)

Would anyone like to have a go explaining the differences between maintenance and repair?

- So maintenance consists of... (PRESERVING)
- So repair consists of... (RESTORING)
- Check their definitions and the levels of consensus in the group

Do you feel about the condition of the building you live in at the moment?

- Maintained to a good standard?
- How come/ how not?
- Roof/ gutters/ windows etc?
- Any concerns about damp or rot?
- Safety given the above?

Do you feel owners are equipped to know the costs of addressing outstanding repairs and regular maintenance in the flat?

- How come/ how not
- What could help? (Home reports)

Are there any repairs needed as far as you know to the building?

- Major or minor?
- Affecting you directly/ indirectly?
- Are these being dealt with by owners?

If the property needs repair, are there any barrier to getting the repairs done?

- Coordination between owners
- Absent owners
- Costs
- Availability of contractors

What would you put the need for repairs down to?

- Lack of maintenance over time?
- Features of the building- age, location, weather, original build quality, materials?
- Anything else (listing status, planning/ building control)

Do you have any examples of lack of maintenance over time leading to a big and costly repair?

Current situation- collective action and factoring arrangements

I'm going to ask you about Owners Associations or Groups. Does anyone have any experience of this in their current residence?

- Reasons to have/ not to have in place?
- What is it responsible for if there is one?
- How does it work/ not work?- joint decisions, coordinating work to the building
- Do people know each other well within the building?
- Are you involved in any way?

What is your experience of factoring in your residence?

- Experiences of professional factor or manager
- Experience of self-factoring
- Levels of payments- any knowledge?
- How is that money spent? What on and how often?

Current situation- surveys and emergency repairs

Living in the building, are you aware of any regular survey being carried out?

- Thoughts on why a regular survey would be important/ not important?
- Thoughts on what would count as regular

- Can a survey help understand what is wrong with the building and what needs attention?

Emergency repair procedures, are you aware of any of these being served whilst you have been resident?

- What has this meant for you?
- Did this lead to any collective action by the owners of the flats?

Does anyone have experience of Local Authorities intervening in repair and maintenance?

- Serving a notice?
- Giving a grant?
- Helping with missing shares?

Any ideas around what Local Authorities can/ can't do concerning repairs and maintenance?

Suggestions on Future Implementation- applying BRF to Tenements (20 mins)

Has anyone heard of a Building Reserve Fund or Sinking funds?

State definition- Building Reserve funds or 'sinking' funds are a type of fund set up to pay for repairs.

Does anyone know if these are in place for the building you live in?

- If so, how much do you pay in?
- how is this level determined?
- How do contributors determine what to spend on?
- Is this organised through a factor?

What is your reaction to having a Building Reserve Fund in place for the property you live in?

- Helpful/ not helpful for you?
- Helpful/ not helpful for future residents?

What is your reaction to the Scottish Government making this sort of fund- to be used for repairs- mandatory?

- Concerns- affordability?
- Concerns- practicality?
- Benefits- missing shares, lack of maintenance at present?

How would they decide a minimum amount everyone should set aside for building repairs each year?

- Same flat amount for everyone?

- Different based upon the building and the flat- age, number of units, communal facilities, mixed use, height
- Different based upon the existing repairs
- Different based upon affordability
- Any other ideas? (length of tenure, value of property)

Have you any views on how the money should be held and treated? (Prompts- held, invested, central/local/ individual tenements?)

Are there any other considerations you think have been missed on a BRF?

Conclusions and wrap-up

Thank you very much for the discussion, is there anything not already covered that you would like to mention?

Thank and close

Public Research: Tenants

Set up (5 mins)

Introduce Diffley Partnership Team

Welcome to the Discussion Group–

- Explain the discussion will last an hour
- There will be plenty of time to get your views across and discuss issues between yourselves, something we encourage; my role is to keep the conversation flowing, ensuring we cover the broad areas we need to and ask any follow-up questions,
- Fully anonymous and confidential; The Diffley Partnership abide by the Market Research Society Code of Practice and the SRA Ethical Guidelines.
- Request permission to record discussion – with your permission I will record the discussion; this is just so we can go back and listen again after the discussion

Do you have any questions before we start?

Introductions and opening discussion

To begin, I want to give everyone the opportunity to briefly introduce yourselves- whereabouts you live in Scotland, which kind of flat/ tenement you live in and who you rent from- (private landlord/ RSL)

Repairs and Maintenance of Tenements (10 mins)

There is concern for the condition of overall housing stock in Scotland, including tenements. According to data published by the Scottish House Condition Survey, half of all housing is in 'critical disrepair' and almost half demands 'urgent attention'.

Do you feel about the condition of the building you live in at the moment?

- Maintained to a good standard?
- How come/ how not?
- Roof/ gutters/ windows etc?
- Any concerns about damp or rot?
- Safety given the above?

Do you feel owners know the costs of addressing outstanding repairs and regular maintenance in the flat?

- How come/ how not
- What could help? (Home reports)

Are there any repairs needed as far as you know to the building?

- Major or minor?

- Affecting you directly/ indirectly?
- Are these being dealt with by owners?

If the property needs repair, are there any barriers to getting the repairs done you are aware of?

- Coordination between owners
- Absent owners
- Costs
- Availability of contractors

What would you put the need for repairs down to?

- Lack of maintenance over time?
- Features of the building- age, location, weather, original build quality, materials?
- Anything else (listing status, planning/ building control)

Do you have any experience of poor condition of a flat you have rented affecting your quality of life?

Do you have any experience of wanting your landlord to carry out maintenance and repairs to the building and it not happening?

- Please tell us more
- Do you have any ideas on what would help?

Current situation- knowledge as a tenant

Living in the building, are you aware of any regular survey being carried out?

Are you aware of the building having an owners association or group?

-what is your impression of this?

Are you aware of the building having a factor?

- What is your impression of this?

Emergency repair procedures, are you aware of any of these being served whilst you have been resident?

- What has this meant for you?
- Did this lead to any collective action by the owners of the flats?

Do you feel the rent you pay goes towards common maintenance and repair by the owner?

- How come/ how not?

Suggestions on Future Implementation- applying BRF to Tenements (20 mins)

Has anyone heard of a Building Reserve Fund or Sinking funds?

State definition-

Does anyone know if these are in place for the building you live in?

What is your reaction to having a Building Reserve Fund in place for the property you live in?

- Helpful/ not helpful for you?
- Helpful/ not helpful for the owner?
- Helpful/ not helpful for future residents?

What is your reaction to the Scottish Government making this sort of fund- to be used for repairs- mandatory?

- Concerns- affordability? (passing on cost)
- Concerns- practicality?
- Benefits- missing shares, lack of maintenance at present?

How would they decide a minimum amount everyone should set aside for building repairs each year?

- Same flat amount for everyone?
- Different based upon the building and the flat- age, number of units, communal facilities, mixed use, height
- Different based upon the existing repairs
- Different based upon affordability
- Any other ideas? (length of tenure, value of property)

Are there any other considerations you think have been missed on a BRF?

Conclusions and wrap-up

Thank you very much for the discussion, is there anything not already covered that you would like to mention?

Thank and close

Stakeholder Research: Interviews

Introductions

Introduce self and The Diffley Partnership

Introduce the research: Scottish Government commissioned The Diffley Partnership to conduct policy-relevant research on the Provision of Building Reserve Funds (BRF) for Tenement Dwellings. BRFs are sometimes known as 'sinking funds'.

As part of this you have been identified as a stakeholder with valuable knowledge on this topic and future-focussed thinking

- Explain the discussion will last up to 55 mins.
- Explain sequence of the discussions: general to specific
- Provide reassurances that findings will be reported as overall messages and themes.
- Fully anonymous and confidential; The Diffley Partnership abide by the Market Research Society Code of Practice and the SRA Ethical Guidelines.
- Request permission to record discussion – “with your permission I will record the discussion; this is just so we can go back and listen again after the interview, the recording will not be shared with Scottish Government and will be destroyed at the end of the research commission”

Do you have any questions you would like to ask before we start?

Knowledge and Engagement

Could introduce yourself and tell me more about your role/area of work?

Were you involved in the Scottish Parliamentary Working Group on Tenement Maintenance

- In what capacity?

I am going to ask you a few context questions next about outstanding repairs and then regular maintenance for tenements.

What are the main factors in determining outstanding repair needs for tenements? (Prompts- age, location, number of units, building height, mixed use, communal areas, materials, listing status, planning/ building control)

What are the main factors in determining regular maintenance needs for tenements? (Prompts- age, location, number of units, building height, mixed use, communal areas, materials, listing status, planning/ building control)

What are the main factors in determining outstanding repair costs for tenements? (Prompts- age, location, materials, ad-hoc/ planned, listing status, planning/ building control)

What are the main factors in determining regular maintenance costs for tenements? (Prompts- age, location, materials, ad-hoc/ planned, listing status, planning/ building control)

Opinions on BRF Recommendation

State Recommendation:

Statutory guidelines should set out the minimum payment each building needs put into a BRF every year. The guidelines should be based on the assessed repair risk for that type of building and extent of common responsibility. There should be a transparent points system based on, for example, the:

- age of the building;
- number of individual units;
- presence of communal facilities (lifts, large areas of landscaping, roads etc); and
- building type.

Most of these factors can be ascertained from Registers of Scotland (RoS) and cross-checked at the first sale by the chartered surveyor carrying out a Home Report.

In general terms, do you welcome this Recommendation and its adoption by SG? – How so?

What are your hopes for this? (Prompts- for people living in Tenements, for condition of our built environment, for profession, for society)

What are your concerns from a specialist standpoint (putting aside any experience you have as a tenement owner)?

Current Situation

What do you think are some of the reasons why some tenements have no provision or security in place to ensure outstanding repairs addressed and their regular maintenance? (Prompts- affordability, coordination, hassle, non-compulsory nature, Deeds)

In your experience, what are reasons which prevent owners forming Owners Associations and/or paying into a shared pot? (Prompts- relevant reflections on Maintenance funds (cleaning, garden etc.), Factoring charges, Enforcement orders)

Do you think that those who own tenements understand what their legal responsibilities are in terms of building fabric? – how so?

Do you feel owners are equipped to know the costs of addressing outstanding repairs in tenements? -how come?

Do you feel owners are equipped to know the costs of addressing regular maintenance for tenements? -how come?

How common do you think BRFs are in Scotland at the moment?

Do you have any examples/ contacts?- if so what have you learnt from them?

What can we learn from BRF that are in place in other countries?

Suggestions on Future Implementation- applying BRF to Tenements

What do you think would help owners understand their responsibility and the costs for maintaining tenements? (Prompts- Documentation such as Home Reports, awareness raising)

- Existing owners/ New owners?
- Owner occupiers/ Landlords?

How do you think BRF could be applied to Tenements across Scotland? (Prompts- exceptions, phasing, incentives, local level considerations)

According to Tenement WG recommendation, ideally a BRF should be calculated on basis that property is in good condition. What should be done for buildings that have existing disrepair? (Prompts- fix first, add to later costs, set up BRF only once certain things in place)

How would you recommend determining level of payments owners should make into a BRF?

What are your views on how a points system could determine minimum payment level per owner?

In terms of the building itself, do you think these aspects are important in determining payment levels?:

- age of the building;
- number of individual units;
- presence of communal facilities (lifts, large areas of landscaping, roads etc);

- building type
- mixed use
- height

In terms of the owners, do you think any of these aspects are important in determining payment levels?

- Affordability
- Location of property- SIMD
- Type of owner- owner occupier/ landlord/ Housing Association
- Value of property
- Length of ownership
- Existing arrangements- factoring, owners associations

Are there any other considerations you think have been missed?

What do you think is most important in determining payment levels?

Have you any views on how the money should be treated? (Prompts- held, invested, central/local/ individual tenements, any models such as Safe Deposit Scotland)

Have you any views on how to ensure the amount in BRF can cover any substantial repairs?

Have you any ideas on how missing shares should be covered?

Have you any ideas on monitoring or enforcement? (Prompts- level, systems, pitfalls to avoid)

What role do you see for these different parties when this recommendation is adopted?

- Owners
- Lenders
- Factors
- Housing Associations
- Local authorities
- Surveyors
- Solicitors
- Owners Associations
- Support bodies

Are you aware of any other provisions, regulations and processes that would be affected by this recommendation being enacted? (Prompts- dual regulation, extra processes, resource for stakeholders like you/ that you represent)

Conclusions and wrap-up

Thank you very much for the rich discussion thus far.

What other considerations or recommendations would you like us to feed into this research on BRF if any?

Is there anyone else you think we should be speaking to?

Do you have any data or information to pass onto us?

Thank and close

Stakeholder Research: Housing Associations

Set up (5 mins)

Introduce Diffley Partnership Team- Fiona Hutchison, Mhairi McFarlane

Welcome to the Discussion Group–

- Explain the discussion will last an hour
- There will be plenty of time to get your views across and discuss issues between yourselves, something we encourage; my role is to keep the conversation flowing, ensuring we cover the broad areas we need to and ask any follow-up questions,
- Fully anonymous and confidential; The Diffley Partnership abide by the Market Research Society Code of Practice and the SRA Ethical Guidelines.
- Request permission to record discussion – with your permission I will record the discussion; this is just so we can go back and listen again after the discussion

Do you have any questions before we start?

Introductions and opening discussion

To begin, I understand you may know each other already but I want to give everyone the opportunity to briefly introduce themselves for my own benefit- roughly the geographic area your cover, the number of tenements

Thank you for those introductions. Were any of you directly or indirectly involved in the Tenement Working Group?

Initial reactions (10 mins)

Let me state the recommendation which Scottish Government are adopting to you, and ask for your reactions.

‘Statutory guidelines should set out the minimum payment each building needs put into a BRF every year. The guidelines should be based on the assessed repair risk for that type of building and extent of common responsibility. There should be a transparent points system.’

In general terms, do you welcome this Recommendation and its adoption by SG?
– How so?

What are your hopes for this? (Prompts- for people living in Tenements, for condition of our built environment, for profession, for society, ‘supplying quality affordable homes to those in need’)

What are your concerns from a specialist standpoint?

Are you aware of any other provisions, regulations and processes that would be affected by this recommendation being enacted? (Prompts- dual regulation, extra processes, resource for Housing Associations, Registered Social Landlord requirements)

Repairs and Maintenance of Tenements (10 mins)

I am going to ask you a few context questions next about outstanding repairs and then regular maintenance for tenements. Please answer based on your experience of this type of property.

What are the main factors in determining outstanding repair needs for tenements? (Prompts- age, location, number of units, building height, mixed use, communal areas, materials, listing status, planning/ building control)

What are the main factors in determining regular maintenance needs for tenements? (Prompts- age, location, number of units, building height, mixed use, communal areas, materials, listing status, planning/ building control)

What are the main factors in determining outstanding repair costs for tenements? (Prompts- age, location, materials, ad-hoc/ planned, listing status, planning/ building control)

What are the main factors in determining regular maintenance costs for tenements? (Prompts- age, location, materials, ad-hoc/ planned, listing status, planning/ building control)

You could always provide us more detail in confidence separately to discussion group, but in general terms- do you/ how do you work out costs per unit to common maintenance and repair? (Prompts- historic, % of property value, % of building size, their own arrangements for apprenticeships and jobs in construction and maintenance)

Current Situation (10 mins)

Do you think that those who own tenements understand what their legal responsibilities are in terms of building fabric? – how so? (Prompts- Housing Associations like them, private owners- any differences)

Do you feel private owners are equipped to know the costs of addressing outstanding repairs and regular maintenance in tenements? -how come?

In your experience, what are reasons which prevent private owners paying into a shared pot? (Prompts: relevant reflections on Maintenance funds (cleaning,

garden etc.), Factoring charges, Enforcement orders, factoring arrangements not in place, affordability)

if tenants refused to undertake maintenance, then what would they do if they had no choice to fix something if it had went past the point of no return?

Suggestions on Future Implementation- applying BRF to Tenements (20 mins)

What do you think would help owners understand their responsibility and the costs for maintaining tenements? (Prompts- Documentation such as Home Reports, awareness raising)

- Housing associations
- Private RSL landlords

How do you think BRF could be applied to Tenements across Scotland? Prompts- exceptions, phasing, incentives, local level considerations

*It has been suggested in the desk research that Registered Social Landlords should be exempt- will delve into their feelings and logic for exceptions if this is raised. How would that work given that the fund is an amount that ought to be spent on a building *

According to Tenement WG recommendation, ideally a BRF should be calculated on basis that property is in good condition. What should be done for buildings that have existing disrepair? (Prompts- fix first, add to later costs, set up BRF only once certain things in place)

How could exiting arrangements for repair you put in place match with any new legal requirement to contribute to a BRF? (Prompts- existing alignment, dovetail or create duplication or displacement?)

Are there additional aspects to consider for the services you provide in particular for:

- Supported accommodation
- Factoring services- on behalf of private owners
- Shared equity housing

Payments (20 mins)

How would you recommend determining level of payments owners should make into a BRF?

What would your reaction be to a flat fee/ minimum contribution mandated by in legislation?

What are your views on how a points system could determine minimum payment level per owner?

In terms of the building itself, do you think these aspects are important in determining payment levels?:

- age of the building;
- number of individual units;
- presence of communal facilities (lifts, large areas of landscaping, roads etc);
- building type
- mixed use
- height

In terms of the owners, do you think any of these aspects are important in determining payment levels?

- Affordability
- Location of property- SIMD
- Type of owner- owner occupier/ landlord/ Housing Association
- Value of property
- Length of ownership
- Existing arrangements- factoring, owners associations

Housing association rents are typically low at around £70 per week, but a majority of tenants rely on Housing Benefit or, increasingly, Universal Credit housing support to pay these rents.

Are there any other considerations you think have been missed?

It has been suggested in the desk research that Registered Social Landlords should be exempt- will delve into their feelings and logic for exceptions if this is raised. How would that work given that the fund is an amount that ought to be spent on a building?

What do you think is most important in determining payment levels?

Have you any ideas on how missing shares should be covered?

Have you any views on how the money should be treated? (Prompts- held, invested, central/local/ individual tenements?)

The WG recommend mandatory Owners Associations with legal status, do you think such a thing would help deal with money?

Have you any ideas on monitoring or enforcement? (Prompts- level, systems, pitfalls to avoid)

Conclusions and wrap-up

Thank you very much for the discussion, is there anything not already covered that you would like to mention?

As part of this research Diffley Partnership are also reviewing public and grey documentation. Following this session, please send us on anything (retracted of personal data) you see as relevant to this work.

Thank and close

Stakeholder Research: Factors

Set up (5 mins)

Introduce Diffley Partnership Team

Welcome to the Discussion Group–

- Explain the discussion will last an hour
- There will be plenty of time to get your views across and discuss issues between yourselves, something we encourage; my role is to keep the conversation flowing, ensuring we cover the broad areas we need to and ask any follow-up questions,
- Fully anonymous and confidential; The Diffley Partnership abide by the Market Research Society Code of Practice and the SRA Ethical Guidelines.
- Request permission to record discussion – with your permission I will record the discussion; this is just so we can go back and listen again after the discussion

Do you have any questions before we start?

Introductions and opening discussion (5 mins)

To begin, I understand you may know each other already but I want to give everyone the opportunity to briefly introduce themselves for my own benefit- roughly the geographic area your services cover, your size of tenement client portfolio please.

Thank you for those introductions. Were any of you directly or indirectly involved in the Tenement Working Group?

Initial reactions (15 mins)

Let me state the recommendation which Scottish Government are adopting to you, and ask for your reactions.

‘Statutory guidelines should set out the minimum payment each building needs put into a BRF every year. The guidelines should be based on the assessed repair risk for that type of building and extent of common responsibility. There should be a transparent points system.’

In general terms, do you welcome this Recommendation and its adoption by SG?
– How so?

What are your hopes for this? (Prompts- for people living in Tenements, for condition of our built environment, for profession, for society)

What are your concerns from a specialist standpoint (putting aside any experience you have as a tenement owner)?

Are you aware of any other provisions, regulations and processes that would be affected by this recommendation being enacted? (Prompts- dual regulation, extra processes, resource for factors)

Repairs and Maintenance of Tenements (10 mins)

I am going to ask you a few context questions next about outstanding repairs and then regular maintenance for tenements.

What are the main factors in determining outstanding repair needs for tenements? (Prompts- age, location, number of units, building height, mixed use, communal areas, materials, listing status, planning/ building control)

What are the main factors in determining regular maintenance needs for tenements? (Prompts- age, location, number of units, building height, mixed use, communal areas, materials, listing status, planning/ building control)

What are the main factors in determining outstanding repair costs for tenements? (Prompts- age, location, materials, ad-hoc/ planned, listing status, planning/ building control)

What are the main factors in determining regular maintenance costs for tenements? (Prompts- age, location, materials, ad-hoc/ planned, listing status, planning/ building control)

You could always provide us more detail in confidence separately to discussion group, but in general terms- How are owners' contributions to common maintenance and repair arrangements set up by factors calculated? (Prompts- historic, % of property value, % of building size)

Current Situation (10 mins)

Do you think that those who own tenements understand what their legal responsibilities are in terms of building fabric? – how so?

Do you feel owners are equipped to know the costs of addressing outstanding repairs in tenements? -how come?

Do you feel owners are equipped to know the costs of addressing regular maintenance for tenements? -how come?

What stops owners carrying out planned maintenance (rather than waiting until a repair needs to be done)?

In your experience, what are reasons which prevent owners paying into a shared pot? (Prompts- relevant reflections on Maintenance funds (cleaning, garden etc.), Factoring charges, Enforcement orders, factoring arrangements not in place)

Suggestions on Future Implementation- applying BRF to Tenements (20 mins)

What do you think would help owners understand their responsibility and the costs for maintaining tenements? (Prompts: Documentation such as Home Reports, awareness raising)

- Existing owners/ New owners?
- Owner occupiers/ Landlords?

How do you think BRF could be applied to Tenements across Scotland? (Prompts- exceptions, phasing, incentives, local level considerations)

According to Tenement WG recommendation, ideally a BRF should be calculated on basis that property is in good condition. What should be done for buildings that have existing disrepair? (Prompts- fix first, add to later costs, set up BRF only once certain things in place)

How could exiting contributions to factoring fees match with any new legal requirement to contribute to a BRF? (Prompts- existing alignment, dovetail or create duplication or displacement?)

Payments (20 mins)

How would you recommend determining level of payments owners should make into a BRF?

What would your reaction be to a flat fee/ minimum contribution mandated in legislation?

What are your views on how a points system could determine minimum payment level per owner?

In terms of the building itself, do you think these aspects are important in determining payment levels?:

- age of the building;
- number of individual units;
- presence of communal facilities (lifts, large areas of landscaping, roads etc);
- building type
- mixed use

- height

In terms of the owners, do you think any of these aspects are important in determining payment levels?

- Affordability
- Location of property- SIMD
- Type of owner- owner occupier/ landlord/ Housing Association
- Value of property
- Length of ownership
- Existing arrangements- factoring, owners associations

Are there any other considerations you think have been missed?

What do you think is most important in determining payment levels?

Have you any ideas on how missing shares should be covered?

Have you any views on how the money should be treated? (Prompts- held, invested, central/local/ individual tenements, any ways that correspond to arrangements through factoring?)

The WG recommend mandatory Owners Associations with legal status, do you think such a thing would help deal with money?

Have you any ideas on monitoring or enforcement? (Prompts- level, systems, pitfalls to avoid)

Conclusions and wrap-up (5 mins)

Thank you very much for the discussion, is there anything not already covered that you would like to mention?

As part of this research Diffley Partnership are also reviewing public and grey documentation. Following this session, please send us on anything (retracted of personal data) you see as relevant to this work.

Thank and close



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