

Meeting Note

**Working Group on Tenement Maintenance Meeting 8 – February 28, 2023
6pm, Scottish Parliament**

Chair – Graham Simpson MSP

Apologies:

Jeremy Balfour MSP

Miles Briggs MSP

Paul Sweeney MSP

Jo-Perry Geddes, Tenement Action Group

Scott Geekie, Senior Associate, Lindsays; Tenement Action Group

John Blackwood, Scottish Association of Landlords

Jocelyn Janssen – Aberdeen Council

Douglas Robertson

Attended:

Ailsa Macfarlane, BEFS (*Secretariat*)

Mike Heffron, Under One Roof – virtual (*Secretariat*)

Jacqueline Omoniyi, Education and Training Officer, Under One Roof

Anny Bush, Communications and Engagement Officer, Under One Roof

Hazel Johnson, BEFS

Daniel Johnson MSP

John Mason MSP

Kaukab Stewart MSP

Andrew Milne, DM Hall Chartered Surveyors

Andrew Steven, Professor of Property Law, University of Edinburgh

Annie Flint, Tenement Action Group

Cassie Dove, Scottish Federation of Housing Associations

David Bookbinder, Glasgow and West of Scotland Forum of Housing Associations

David Gibbon, Tenement Action Group, Chartered Building Surveyor

Derek Macdonald (virtual) - Newton Property Management Ltd

Duncan Thomson, Group Manager for Private Sector Housing, Glasgow City Council

Jocelyne Fleming, Policy Officer, Chartered Institute of Building

Jocelyn Cunliffe – AHSS/RIAS/Tenement Action Group

Jackie Timmons, City of Edinburgh Council

Joanne McClelland, Edinburgh Architectural Association President

John Blackwood, Chief Executive, Scottish Association of Landlords

Neale Bisset, VP, PMAS

Neil Watt, past president, Property Managers Association Scotland/Chair, Hacking and Paterson

Robert Toomey, RICS

Simon Montgomery, Historic Environment Scotland

Stephen Crilley, Scottish Law Commission (observer)

1. Welcome - Graham Simpson, MSP

Review of minutes and actions:

Papers all circulated in full.

Comment circulated that the list of activity included that the Code of Conduct for property factors has been revised and in force from August 2021. There was not intended to be any implication that this was done because of/or in relation to *this* group – it was included to enable all present and with access to the meeting note to understand what work was or had been ongoing across the landscape relating to the topic. Mentioned particularly as factors have been so involved in the work of the group previously.

Covered in AOB during the meeting but placed here in the meeting note for clarity:

Information about the group make-up – clarification had been requested prior to the meeting:

- a) Is this TMWG considered to be the same TMWG as originally convened on 22 March 2018, or a new group?
- b) How are invitations to join the TMWG dealt with? Could the current make up of the group be clarified to ensure all members are aware of this?
- c) Clarification of who new members are and how it came about that they were invited onto the TMWG.

View put to group by secretariat

- a) Same group, but refreshed.
- b) Secretariat will renumber the papers for clarity - numbering was only refreshed due to the passage of time.
- c) Membership: All previously involved asked if they want to continue. New members recommended by those involved, sometimes “new members” are merely those who are new in role within organisations. Word ‘Member’ also really only implies “those actively involved” – there is no limitation or particular outline for the organisations and individuals involved. Anyone can recommend Members by contacting the secretariat and those suggested will receive an invitation for the next meeting. Please be mindful that this is a group for those wishing to drive forward policy and legislative change, we are aware, and deeply sympathetic to the many individual cases and challenges which owners (and tenants) can face – but this is not the most useful forum for individual cases to be discussed at length. In turn, that means we tend to have a professional audience representing or informed by a wide range of practices and experience across the built environment. New Members committed to the matter at hand and able to provide their expertise across the range of topics are welcome and encouraged, this is a group which needs continued intake of energy and knowledge to be effective.

NEW ACTION: The group make-up will be published on the BEFS website (this is a little behind due the lack of a Communications Manager) – but will be updated as a matter of priority.

PREVIOUS ACTION: Secretariat to keep a master schedule of related and ongoing work.
Update below and further information to be held on BEFS website when updated.

PREVIOUS ACTION: Annie Flint and Andrew Steven to work up draft proposals to share amongst group for quick comment. *Paper 3, addressed at agenda item 3.*

PREVIOUS ACTION: Draft a letter from this group with recommendations ahead of introduction of Housing 2040 Bill.

The Bill being discussed as imminent last time is more related to tenants' rights – having spoken to various teams within the appropriate departments at Scottish Government. Mid-2023 might be more opportunitites, update to follow.

PREVIOUS ACTION: Questions about progress of written review to be asked of Minister(s).
Can tie to actions stemming from discussion of Paper 3

ACTION: Meet as required in early 2023. *Meeting held 28/02/23*

2. Scottish Government progress review - Ailsa Macfarlane, Secretariat/BEFS

SLWG on Tenements in relation to Heat in Buildings - the final report is to be submitted to the Minister shortly, along with a request from the Chair to meet Mr Harvie to discuss the recommendations. The secretariat will share with the group as soon as this report is made public.

Heat and Buildings, the Programme for Government laid down a commitment to consult prior to a Heat in Buildings Bill. We would expect the consultation in the first half of 2023, and the Bill to be introduced thereafter, before energy efficiency and heating system regulations begin to take effect from 2025. This will build on and progress the direction of travel already set out in the [Heat in Buildings Strategy](#).

Scottish Government Public Engagement Team meeting has taken place. Important issues for the group, re fabric first, maintenance, prepare and adapt and then appropriate interventions.

New agency - Heat and Energy Efficiency Scotland – launching virtually soon.

Housing Standard. Scottish Government is committed to a consultation on the overarching principles of a new housing standard, with a further consultation planned on the details of the standard itself. This is ahead of the planned introduction of a bill in year 4 of this parliamentary term for a phased introduction from 2025-2030. Likewise this will build on and progress the direction of travel set out in the Housing to 2040 strategy.
[Housing to 2040 - gov.scot \(www.gov.scot\)](#)

On 1 March 2019, **The Repairing Standard – Statutory Guidance for Private Landlords** was updated to clarify existing legislation and introduce some new elements to the standard. Where these requirements constitute a new element, landlords were given five years to bring housing up to the standard. Therefore, these requirements are due to come into force on 1 March 2024. The statutory guidance was [published on 1 March 2023](#), 1 year ahead of the coming into force date of the new measures.

Diffley report :

[Report on Provision of Building Reserve Funds \(BRF\) for Tenement Dwellings](#) as undertaken by Diffley has been published by Scottish Government.

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'.

The fieldwork for this report was done in September 2021, and the report was completed significantly prior to July 2022 when it was mentioned within a short-life group related to tenements. The public survey was administered online through the ScotPulse panel of over 31,000 adults (age 16+) across Scotland. 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.

Overview – Positives

- The positives are that it helps to further legitimise the past work of the group, consolidating past research and findings. There are also some excellent qualitative findings which really help to more fully illustrate the issues.
- The combination of desk-based research, interviews with engaged professionals, and public research helped to give a more-detailed picture than this group could have actioned.

Overview – Negatives

- Doesn't fully meet aims of the research.
- Provided conclusions raising only the existing problems of maintenance, ones that are widely acknowledged.
- Didn't enable participants to reflect on the changed environment if other aspects being discussed were put in place – such as (mandatory OA/Inspections), which are all part of context is what going on now.
- Didn't reference that compulsory associations/ inspections would provide knowledge base by populating a database of information to help potentially set levels for BRF.
- Missed the depth of discussion around who would control the building reserve fund:, is it individuals, the association, etc.
- Misconceptions in report exist around
 - Constant referral to tenants when the issue is related directly to owners
 - States Scottish Law Commission is doing research on something it is not (Building Funds)
 - Methodology issues– the survey asked people who didn't live in tenements questions about issues that only affect tenement owners (ie do you have an owners' association, a factor, etc)

It is noted that delays in publication means that the researchers are now well past the contract period, which inhibits the ability to come and discuss the findings in any more

detail, or make corrections to errors; had even a draft of the report been made available to those previously involved with the work the research could have been tailored effectively.

The Scottish Government's delay in circulating the report - undoubtedly based on funding reviews, department capacity, and prioritisation issues due to Covid - mean that the report, as it stands, does not enable the Group to drive forward with any substantive new information.

Views invited from the room:

Jocelyn Cunliffe - AHSS/RIAS/Tenement Action Group:

View to the group: "We should possibly rethink moving forward with building reserve funds, instead take things in a staged way and move forward with owners' association and maintenance reports, before looking at building reserve funds in 10 years' time.

Graham Simpson - Chair: What is the Scottish Government planning to do with Diffley Report?

AM: Will ask the question of the team in SG as to the intention for the report.

Update: Response following meeting with Scottish Government – future as yet unknown due to capacity within the team.

3. Discussion of working paper

Annie Flint, Tenement Action Group, presents report on Working Paper:

Aim of paper was to look at what changes could be added to legislation already underway. Presentation around paper issued previously and slides circulated with this meeting note. Suggestion around sub-groups (as used effectively previously): Slide covering topics and sub-groups shown below.

Proposed groups

	Group	Suggested members
1	Development Management Scheme for new buildings	<ul style="list-style-type: none"> • Homes for Scotland • CIB • <u>etc</u>
2	Duty to Maintain standards; Renewables	<ul style="list-style-type: none"> • RICS • RIAS • Property Managers • <u>etc</u>
3	Other changes to Tenement Management Scheme and Act	<ul style="list-style-type: none"> • Property Managers • Local Authorities • RSLs • etc
4	Debt recovery	<ul style="list-style-type: none"> • MSPs • Empty Homes Partnership • <u>etc</u>

Chair opens up the floor to comments – summary of comments below:

Missing owner contact details

- How to overcome this? [Edinburgh Council has an approach](#) as part of repairing programme to do so, but is the only council working this way – and takes considerable time/energy.
- Using council tax records as an approach but issues in relation to the owner might not being the person who pays the council tax.
- Landlords' register *should* be more accurate than the Council Tax records. If an owner isn't sharing the correct details they can, make sure they are accurate.
- Absentee owners are the difficulty. And an issue remain over who holds the data of all the owners
- Suggestion that powers from Local Government (Scotland) Act can help.

Questions around ownership for a sub-group to consider:

- Data protection. For six in a tenement, would this kick in GDPR? Who would be responsible for holding the data and would it infringe GDPR rules?
- Public knowledge that people own building; issue is if they have moved on then you can't find out where they have gone.

- If someone wants to appoint an agent then it needn't be compulsory to provide the information.
- An owner can appoint an agent, might need to define what an agent can and can't pass on, parameters would need to be clear, but the legislation doesn't need to be complicated.
- An owner has a legal obligation to make themselves contactable, in terms of Landlord register.
- Often, the owner is able to be tracked down from the register, but the contact details don't need to be shared.

AM: Re contacting owners - Asks question of the room: Is the question about enforcing a decision, or enforcing contact? Is this a red herring, are we asking someone to take part in the process, or asking someone to appoint a person to act for them? One answer from the group is that it is both.

Note added post meeting by Jacqueline Omoniyi: If there is a rented property (using a letting agent) in a block and one of the owners contacts the occupier (tenant) to ask for their landlord's contact info, the tenant can contact the letting agent and request this. The agent is bound by the Letting Agent Code of Practice to give this information to the tenant in 21 days free of charge. Theoretically this means the tenant could then pass it on to another owner in the block and contact can be established that way. Whether a tenant would want to do that or not is debatable depending on the issue at hand and of course the passing on of personal information and the question of whether this constitutes a data breach or not.

Debt recovery

Provisions do exist but they are not enacted due to concerns over owners losing their properties over small (in relation to property cost) amounts.

Could limitations be put in place in relation to sums and principles around 'homes' rather than all rented/second properties etc?

Rateable Shares:

Andrew Steven (AS): Title deeds - what proportion of properties have this problem?
Expensive research to conduct

AS: Expanding/responding to positive and supportive comments relating to rateable shares, and how/when any changes could be implemented?

Comes back to issue of not having a clean slate, having to take account of the title deeds and the Human Rights Act. There are precedents in legislation that the Scottish Parliament has passed for removal of property rights. In particular, there is the abolition of the feudal system in 2004.

Preservation provisions which can be used in run-up can ensure compliance with ECHR. Some owners might take the view that floor area or equal shares is fair. For those objecting there would be a timeframe for them to preserve. To have a change across the board you would need some sort of preservation scheme.

Jackie Timmons - City of Edinburgh Council: Proposes sub-group conversation about this topic. Surveying all the flats, social housing in one LA area to assess this would be too large a job, operationally.

Duty to Maintain standards and tied votes:

AF – Tenement Action Group: tied vote becomes a vote for the status quo and against repair and maintenance. Could we not change this so that a tied vote in relation to maintenance is regarded as a vote for that action?

4. Next steps

GS - Chair: In favour of the sub-group model? Group in agreement.

Further discussion on how to form early proposals by summer, with refinement possible over Christmas to ensure within 12 months further report available to influence thinking at right point in the parliamentary cycle.

Mike Heffron - Secretariat: Meeting with civil servants to update on outcomes of meeting, can also get a sense of timescales as part of upcoming legislation. Get some of the issues that we are looking at inserted into consultation.

AM - Secretariat: Believes letter is essential to ensure that different groups are all on board. There are Scottish Government departments who are trying to get staff involved in issues, a letter would help support that work/resource ask.

There was MSP support and agreement – it was noted that this group has credibility and work previously has been taken seriously. From the report, to a parliamentary debate – the group is effective due to spread of interest at MSP and professional level.

ACTION: Formation of working groups to take forward developing recommendations. Aim to produce recommendations before end of June 2023. Note: *Working groups who can assess what the risk and benefits are, working with stakeholders, provide reassurance to SG and parliament that there are people behind this, looking at the issues, no unintended consequences.* Secretariat to take note of interest from group, assist with coordination.

ACTION: Draft letter for SG informing them of current actions and intent, as well as asking for any progress updates needed. **Secretariat to action**
Update: due to SNP Leadership contest and expected Cabinet changes this will be sent to new CabSecs/Ministers when they are in post.

ACTION: The group's make-up will be published on BEFS website as a matter of priority - Secretariat

5. AOB

David Gibbon (Tenement Action Group): Would like to see progress on five-yearly tenement report. Could be collaboration between RICS and RIAS, with input from SG. Three-way format, could be put in to action without legislation. Especially if tick box in home report

asking if there was a 5 year report on building. **GS – Chair:** could consider this as a recommendation s a group.

JC - AHSS/RIAS/Tenement Action Group: Supports this. RIAS has prototype report, can be shared. Very happy to work on it. Need to move forward the home report. Suggestion of Home Report just for tenements.

Robert Toomey – RICS: Waiting for an update from SG as to when review is coming round. Very happy to work with RIAS and others on this.

Jocelyne Fleming – CIOB: CIOB also happy to take part and be involved.

GS – Chair: Next meeting date to be set, should take place before the summer.