



## **GWSF response to *Common Repair Provisions for Multi-owned Property: A Cause for Concern* (provisional report from the Scottish Parliament Working Group on Tenement Maintenance)**

**February 2019**

### **General comments**

GWSF warmly welcomes the draft report, which is a thorough and perceptive summary of a complex and multi-faceted issue. In particular the report is very effective in highlighting the fragmented nature of the Scottish Government's approach to the issue of private housing condition in the last 15-20 years or so.

The Forum is broadly supportive of all three of the report's main recommendations:

- Compulsory **owners' associations**, established as corporate bodies so that they can enter into contracts
- Compulsory **sinking funds** to pay for ongoing maintenance costs, enforced by a requirement to pay any outstanding contributions during conveyancing
- **Five yearly inspections** of the common parts of tenements by a qualified professional, to show what work is needed and how much it is likely to cost. This should be made publically available

Whilst the whole tenements issue is a hugely important one for community controlled housing associations, our direct interests in the issue are, by nature, somewhat narrower than those covered in the report. This is because whilst we very much recognise the barriers thrown up by the lack of a factor, and by ignorance about the condition of the building, these are not the main problems in our sector.

This makes the first and third of the above recommendations less immediately relevant in the housing association sector. But the proposals remain important to us because many of our members have fully private, unfactored blocks in their area which are in poor and deteriorating condition and are increasingly a blight on the local community.

### **Longer term versus shorter term change**

There can be no doubt that a new, strategic approach, and widespread and radical reform, as the report calls for, is needed. But GWSF very much believes that,

realistically, this will not happen overnight, even if the proposals can gain the right political support. This makes it crucial that changes which are less radical, but would still help improve some of the problems, are considered in the shorter term: some would not require legislation and can be achieved through adjusting policy and funding approaches.

The level of political resistance we will see to these proposed, fundamental and much-needed reforms cannot be underestimated. In fact, evidence of such resistance is already surfacing. Addressing the Joint Housing Policy and Delivery Group on 20 February, Housing Minister Kevin Stewart said evidence was needed that the reforms were necessary, and that the report did not cite consultation with owners themselves.

These are clear deflection tactics from a Minister who already appears keen to ensure that no such radical approach is taken any time soon. To suggest there is insufficient evidence of a problem seems barely credible. On the consultation point, we are surely no more likely to ask owners (including private landlords) whether they think their blocking of works should be tackled than we were to ask smokers if they thought banning smoking in public places was a good idea. On some issues it is simply a matter of political leadership.

### **Facing up to the need for compulsion**

GWSF does recognise that there will be wider anxiety about the compulsion aspects of the proposals and, in particular, about the call for owners to be required to make regular sinking fund contributions. This is something which is much easier to do when starting from scratch – most obviously in the case of new build blocks, and so would almost certainly have to be phased in, beginning with new owners, as they would be clear about the requirement before making the purchase of the flat. This would inevitably mean a lengthy period in which some owners in a block were contributing whilst long standing owners were not, or at least were not required by law to.

Sinking fund contributions are the norm in enough other countries to dismiss the notion that the change is too fraught to consider. Wherever they are the norm there will once have been reservations about key issues such as ability to pay and how contributions are looked after. We do not believe there is any question over what happens to the contributions when an owner sells up: the contributions are for long term maintenance and should remain in the Sinking Fund when an owner leaves.

So despite the practical challenges that this proposed reform entails, it is not sustainable to continue with the madness of owners having no financial responsibility to help maintain a building they share with other households. Councils and housing associations which manage flats effectively build up reserves designated for long term major repairs and improvements: owners should, with fair and appropriate phasing-in, be required to do likewise.

Our comments on further, specific points raised by the report are covered below.

### **Lack of an overarching Scottish Government strategy on private housing**

The report homes in very well on the lack of an overarching national strategy on private housing. Arguably the final report might wish to make observations on a key cultural and political factor which seems to GWSF to feature more in Scotland and the UK than it does elsewhere, namely government reluctance to intervene, or 'interfere' as it may be perceived, in the affairs of owners. Some might argue that this is just about not wanting to lose votes, but our sense is that it goes well beyond this, i.e. that it is something deeply embedded in our culture. But not interfering in the affairs of owners is fine if the home in question is self-contained: it is a different thing altogether where the home is in a shared block.

The current administration's ongoing shelving of the (relatively meek) proposals on minimum energy efficiency standards for home owners is a classic example of putting off till tomorrow anything that looks like telling owners what to do. Even the recently introduced, cross-tenure standard on smoke alarms is fairly meaningless as no-one will be enforcing this among owners.

### **Growth of the private rented sector**

Not surprisingly, the growth of the private rented sector is referred to throughout the report. But the report perhaps does not state explicitly that one outcome of this is that it makes it even less palatable for local and national politicians to contemplate providing financial incentives to owners.

Recharging missing shares – notwithstanding that this is resource-intensive – and offering equity loans etc. (as covered later in our response) will need to be used more in relation to coercing non-resident (as well as resident) owners to take their responsibilities seriously. And even these tools do involve a form of funding assistance for private landlords, as any sensible approach to this issue will need to, one way or the other.

But the Forum believes there will be cases where the local authority will need to go further and consider providing an element of non-repayable grant, at least for some proportion of the required work, especially in cases of low value flats, if the work is to be progressed at all and tenants are not to be denied essential works to their homes.

Currently local authorities face no legal barrier to providing grants to resident or non-resident landlords, but the practice has become much less common since the new framework based on the Scheme of Assistance was introduced on the back of the Housing (Scotland) Act 2006. A Minister-led change of emphasis, along with a return to ring-fenced resources for local authorities, will be needed if hard-pressed councils

are to be able to use their discretion to make limited grant available in cases where badly needed work will otherwise not go ahead, especially in mixed tenure blocks.

### **Central funding of financial assistance for repairs and improvements**

One barrier the report does not appear to make reference to is the fact that ring-fencing – as happened with the former Private Sector Housing Grant – is now less likely than it has ever been as a result of the SG/COSLA concordat which is meant to offer maximum flexibility to councils to spend money as they choose to locally. As the report is calling for greater Scottish Government resources to go into private housing condition, then it must, by default, be calling for those resources to be ring-fenced. We know that this will continue to be a difficult argument to win with local authority bodies, let alone with the Scottish Government itself.

### **Scottish House Condition Survey**

The report's analysis of the diminishing credibility of SHCS is very good. It suggests that improvements in social sector housing may partly explain the general improvement in the quality of homes. GWSF wonders whether there may also be a disproportionate improvement in the standard of owner-occupied homes which are *not* in common ownership, and that the small sample size may be masking this difference.

### **Equity release – a definite option in some circumstances**

The report mentions that (a decade or so ago) the Scottish Government was looking to develop an equity release product aimed at supporting owners to pay for works. Ostensibly it was the financial crash that put an end to plans to launch a 'National Lending Unit', but in reality it was just as much the case that there was reluctance among senior officials for the state to act as a lender to individuals.

It has been really good to see the Scottish Government take initial steps towards once again going down this route, through the current, pilot equity release scheme in Glasgow and seven other local authority areas, through the Energy Saving Trust (in some areas in conjunction with Care and Repair).

Whilst this scheme is aimed more at covering the cost of smaller energy efficiency works than more expensive repairs and improvements, it is proving popular as word spreads about the availability of the loans. GWSF would urge the Scottish Government to continue promoting and expanding the area coverage of equity loans: whilst there is a cost in both administering and underwriting the loans, it is not only cheaper than giving grants but also addresses politicians' reluctance to throw money at owners and private landlords.

## **Use of ‘missing share powers**

The Minister has said on more than one occasion that local authorities need to be more willing to use their power to pay the shares of owners who are unwilling or unable to pay and then recharge the owners. He rightly cites cases where the mere threat to use this power results in payment by owners.

But we would urge the Minister to engage more systematically with local authorities over this issue and not just berate them for (in some cases) failing to use their powers. Issues around identifying up-front funding to pay for missing shares, as well as the staffing resources needed to administer the powers, are significant barriers in the current financial climate, and should not be dismissed lightly by Ministers.

In relation to the new (October 2018) power for housing associations too to be able to pay missing shares, we are aware of a few member associations which have said they might consider using this option. But it would be helpful for the report to acknowledge a key distinction between council and housing association use of missing share powers – namely that when a council uses the power, it is effectively underwritten by the General Fund, i.e. by council tax payers, whereas if associations do so, it is tenants underwriting it – the poorest segment of the population underwriting costs which are the responsibility of owners.

## **Next steps**

GWSF looks forward to engaging with the Parliamentary Group and with wider stakeholders to play our part in helping sustain the momentum that is growing on the issue of flats in common ownership. We will also be engaging with Ministers and will be clear with them that doing nothing is not a sustainable approach.

GWSF is preparing its own report on barriers to carrying out tenemental improvement, by way of an update to our 2015 report Our Crumbling Tenements, and we look forward to publishing this in the Spring.