

SURE Team Sixth Scrutiny Report

Review of the Operation of the Common Repairs Policy and Tenement Management Scheme (TMS) by PKC's Housing Service



**To be presented to PKC's Housing Repairs Service
on Monday, 26th November 2018
by the SURE Team.**



Foreword

*This sixth scrutiny Report is dedicated to Liz Dewar,
a founder member who sadly passed away on 17th July 2018.*

Perth and Kinross Council's (PKC) Housing Service has been working with their tenants and service users to develop their approach to scrutiny for two reasons: firstly, to ensure that housing services are delivered to a high standard and secondly, to place tenants and service users as customers at the heart of the business.

A staff/tenant working group, the Scrutiny Implementation Group, developed terms of reference for the Service User Review and Evaluation (SURE) Team in 2014. These are to:

- Take an independent view of Perth & Kinross Council's Housing Service performance.
- Prioritise and oversee service users' review and evaluation activities.
- Collect and examine evidence to enable housing services to be reviewed and evaluated.
- Report recommendations to senior management, Convenor, Vice Convenor and Committee as appropriate.
- Monitor and review agreed annual action plans.
- Tell other service users what the SURE Team is doing and encourage them to get involved.
- Validate the Annual Performance Report on the Scottish Social Housing Charter.

To ensure independence, the Council agreed the SURE Team would be supported by an Independent Advisor (IA), with Council staff having a liaison role to enable the SURE Team's activities. PS Consultants was initially appointed by the SURE Team in August 2014 on what was agreed as a 3 year contract. A second 3 year IA contract was tendered in July 2017. PS Consultants was retained as the IA for a further 3 years, with an option of a fourth year until August 2021.

SURE Team members are:

Derek Wilkie, Chair for this scrutiny exercise
Christina Stewart
Elizabeth Bradshaw
Joan Rose
Katrina Whyte

Contents

Section	Section title	Page
Foreword	Foreword	i
Contents	Contents and Acknowledgements	ii
1.	Introduction	1
2.	How we carried out this Scrutiny	2
3.	The Common Repairs Policy	3
4.	The Tenement Management Scheme (TMS)	6
5.	Our understanding of the legal and policy framework	9
6.	PKC's Factoring Service	12
7.	Our Findings and Recommendations	14
Appendix 1	SURE Team witness questions	29
Appendix 2	Scrutiny Timetable and Work Plan	33
Appendix 3	Housing Service TMS data January 2015 – August 2018	34

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Review of the Operation of the Common Repairs Policy and Tenement Management Scheme (TMS) by PKC's Housing Service

Section 1 Introduction

This is a different type of scrutiny exercise than the SURE Team usually conducts. In all our previous scrutiny work, and although the services we have scrutinised are often subject to legal and regulatory requirements, we have generally had a fairly free hand to make recommendations about how those services could be improved. In the case of the Tenement Management Scheme (TMS), however, this is subject to detailed legislative requirements which, at face value, give little scope for, or flexibility in, the interpretation of its provisions.

Our first thoughts when it was suggested to us that the TMS would be a good subject for scrutiny was to decline the invitation and look for another topic where we could usefully make some recommendations. As we began to look at the operation of the TMS in Perth and Kinross, and more broadly at the Common Repairs Policy within which it sits, we began to be interested in the challenge of reviewing service delivery in a subject area that is very heavily prescribed by legislation. **The more we thought about it, the more we began to see that whilst the TMS is more than fair in respects of the rights of owners, it is much less supportive of the rights of council tenants to repairs, maintenance and improvements in common areas within mixed ownership/tenure blocks.**

The remit of the SURE Team is to scrutinise housing services received by all service users. We felt that we ought to pursue this topic not simply to evaluate how well the Housing Service delivers common repairs to service users in general, but to this group of tenants in particular.

Section 2 How we carried out this Scrutiny

2.1 Background Information

In February 2018, June McColl (Service Manager, Housing & Environment) and John Cruickshank (Housing Capital Programme Manager) met with us to explain how the Housing Service delivers the TMS procedure and to invite the SURE Team's views on how these procedures might be streamlined along the lines of the recent revision to the management of void property procedures. In looking at the background information provided we realised the TMS procedure sits within the broader Common Repairs Policy as approved on 28 January 2015. This Policy is due for review, so the SURE Team's Scrutiny is timely. We also looked at how the Housing Service acts as a Factor for seven mixed tenure blocks.

2.2 Evidence Gathering

Once we understood the legal and policy framework, we began to gather information from the following sources:

- The data from the TMS team on the number and size of blocks in mixed ownership, the implementation of TMS procedures to date, how the process is managed in practice, and we asked June McColl and Louise Robinson (Team Leader Repairs (City & South)) further questions which they answered.
- Witness evidence from interviews held with Louise Robinson, Ben MacFarlane (the Council's Legal Service), Lorna Leslie (TMS Administrator) and Roy Robertson (Repairs Inspector) who is involved in assessing and monitoring TMS works on site. These interviews were based on the series of questions in Appendix 1.
- The revised TMS procedures prepared by the staff team following their own internal discussions, which was shared with us in September 2018.

2.3 Managing our time

We considered the relevant legislation, Council policies and procedures and gathered our witness evidence for this Scrutiny between 25 April and 3 July 2018. We were then involved in the annual review of the performance of the Housing Service 2017/18 in respect of the SHR Charter outcomes.

On 2 October we returned to discuss our evidence, the issues arising, and to shape our recommendations to complete the TMS Scrutiny Report. We presented the Report to June McColl and Louise Robinson on 26 November 2018.

We have spent 28.5 hours across 10 meetings to consider, agree and present our Scrutiny as set out in the timetable and work plan in Appendix 2.

Section 3 The Common Repairs Policy

In January 2015 PKC adopted a Common Repairs Policy. It noted that in addition to its efforts to bring all its homes up to the Scottish Housing Quality Standard (SHQS) which would include all the flats in its ownership, the Council also had a responsibility to ensure that the common areas of blocks of flats were in good repair. The accompanying paper to the Housing and Health Committee pointed out that much of the latter part of the SHQS programme had involved “a lot of communal properties and repairs” and had “highlighted the need for a clear policy to deal with communal work, agreement and payment”. The Common Repairs Policy document aimed to meet that need.

The Tenement (Scotland) Act 2004 applies to what it calls ‘scheme property’. In this Scrutiny Report we use the simpler term ‘common parts or areas’ of a building. The 2015 policy document gave the following examples of what it means by ‘the common parts or areas’ of tenement blocks:

- Foundations and outside walls
- Chimneys, stacks and vents
- The close and staircase
- Bin stores and back courts
- The roof
- Gutters, downpipes and drainage system
- Door entry systems
- Common paths

What the Policy set out to do in relation to these was, in essence, to ensure that all owners were aware of their rights and responsibilities and how the Council, in turn, would manage common repairs in mixed ownership properties, giving details of the Council’s procedures and practices. It proposed to do this by ensuring compliance with legislation (particularly the 2004 Act) and by using best practice in communication and engagement both with joint owners and with council tenants in tenement blocks.

The policy document noted that in some cases title deeds for flats may be ‘silent, incomplete or inconsistent in setting how the responsibility for common repairs is to be shared among the flats’ and that an important element in the Common Repairs Policy was, therefore, implementing the procedures of the 2004 Act (‘the TMS’) where this applied. Although it did not specify in detail how many properties this might apply to, it did indicate something of the scale of the problem in the following passage:

“The Council uses the TMS for managing the majority of common repairs carried out in mixed tenure blocks. This is because the title to the Council-owned properties within mixed tenure blocks is the original title granted in favour of the local authority at the time when the land for the entire estate (e.g. Letham or Muirton) was purchased. There are no individual titles for the

Council-owned properties, setting out liability for common repairs, as there are for those which have been sold to tenants. This means that, when read together, the title deeds for most mixed tenure blocks present an incomplete picture.”

The Common Repairs Policy states that implementing an improvement programme (as opposed to repairs and maintenance) presents a particular challenge to a council. Under the TMS, once a scheme decision is made in favour of the works, all owners are legally liable for an equal share of the costs. In the case of improvements, the Council needs all owners to agree in advance to meet their share of the costs before it can proceed.

The Policy states “title deeds are generally silent on improvement” and the TMS itself doesn’t specifically deal with improvements unless they are “reasonably incidental to repairs.” We see this as a potential weakness in the TMS itself because, as we noted in our very first scrutiny exercise about communications around repairs, the line between repairs and improvements can often be a blurred one, as for example when repairs are “capitalised.”

Finally, the Common Repairs Policy contains a commitment to monitor PKC’s delivery. It sets out 11 criteria against which performance will be recorded and evaluated. These are:

- i. Number of occasions in which the TMS scheme is used
- ii. Number of improvements completed
- iii. Cost of common repairs
- iv. Payments recovered from common repairs
- v. Number of repayment plans
- vi. Management of repayment plans
- vii. Number of occasions on which a debt recovery process commenced
- viii. Household characteristics such as age , disability, ethnicity and gender
- ix. Number of disputes and their outcomes
- x. Customer satisfaction in the processing of common repairs
- xi. The number of applications to the Sheriff Court to have scheme decisions set aside

As we understand it, no formal monitoring has been carried out against these criteria, other than the TMS team records all the TMS procedures initiated by the Housing Service and their outcome. We were told that, “The Housing Service cannot monitor everything.” We were surprised, however, to learn that just under one third of the Council’s flats are in mixed tenure blocks. Just over 11% of these are in blocks where the Council owns 50% or less of the flats, and so is not able to control investment in repairs, maintenance and incidental improvements without the consent of at least a majority of other owners.

The Common Repairs Policy was to be reviewed every two years. It is now almost four years since it was approved. The Housing Service should review the operation and effectiveness of the Common Repairs Policy.

The SURE Team believes that the Housing Service should **continue to be pro-active on behalf of Council tenants. (Section 7.1, Recommendation 1)**

The Housing Service should review the monitoring criteria and if it retains this obligation, it should commit the staff and other resources that will be required to meet this requirement. **(Section 7.3, Recommendation 4)**

The TMS is at the heart of PKC's Common Repairs Policy. We set out in Section 4 our understanding of how it works.

Section 4 The Tenement Management Scheme (TMS)

4.1 The Background

The law on the maintenance and management of tenements in Scotland, the common law rules, have been progressively developed since the 17th century. Unlike the freehold ownership of individual properties, the form of 'shared' ownership found in tenement blocks through one or more other joint owners, requires a clear specification not only of the individual owners' rights and responsibilities in relation to their individual property, but also of the joint responsibilities of each owner for the repair, improvement, and maintenance of the common parts of the whole building.

The situation in England is completely different from that in Scotland. In England, the concept of leasehold prevails: individual owners have those individual rights and responsibilities as 'leaseholders' but do not have collective 'ownership' of the building as a whole. That ownership is vested in the freeholder. In the case of a local authority owned block that freeholder is the council which has ultimate authority with respect to issues affecting the common parts of the building. Leaseholders are asked to contribute towards works to overall building structure and common parts with cost limits set for leaseholders by the UK Government.

The Scottish system does not have the same concept of leasehold, so it requires rules and procedures whereby equal ownership partners may institute common repairs, improvements, and maintenance. Each system has its pros and cons.

In Scotland, those rights and responsibilities are set out in title deeds for all owners, including the local authority where they have ownership within blocks. Some title deeds are clear and unambiguous in this respect, but many are not (and in some cases the original deeds may have been lost). In 2004 the Scottish Government, recognising that the specifications in title deeds did not always permit the simple identification of responsibility for repairs, improvements, and maintenance, or of procedures for reaching agreement on those rights and responsibilities, passed the Tenements (Scotland) Act 2004.

We were surprised to learn that although the Act contains the word 'Tenement' it actually applies to all owners, whether of homes, businesses, or shops where the property is divided into two or more flats/units on different floors. It sets out what is in effect *a default procedure* to be used in the event that shared owners cannot, initially, agree on works to common areas of their block.

The Housing Service's figures state that a total of 4,177 flats located in 800 blocks of property of different sizes across the district are now in mixed tenure. The Council owns 2,297 of these flats, which comprise 30.8% of the Council's housing stock as at 31 March 2018. The remaining 1,888 flats are owned by other owners (initially sold to the former council tenant through Right to Buy). Many have been sold on again, in some cases to be

used as private lets. However we note that these figures actually total 4,185, which must include 8 Non-Effective (NEFF) properties within the 2,197 flats in Council ownership. NEFF properties are not currently habitable possibly due to fire or water damage, and/or are awaiting significant refurbishment works.

4.2 How the TMS works

The Tenement (Scotland) Act 2004 talks about “procedures” (for example in Schedule 1 Rule 2) that must be followed to apply the provisions of the Act. These are procedures that *any* owner wishing to apply those provisions must follow. It does not, for example, specifically identify the role a local authority must play as an owner in this context. Any owner may initiate the process and must follow the general procedures laid down in the Act. If a local authority wants to use the provisions of the Act it will have to develop its own detailed policies and procedures for implementing those provisions. This is what PKC’s Common Repairs Policy sets out to do. So, whilst we understand that the TMS is highly prescriptive concerning *what* must be done, *how* a local authority, as an owner, chooses to implement its provisions is discretionary, provided its procedures are consistent with the provisions of the Act. The latter is, therefore, a legitimate subject for scrutiny whereas the former, at least at the local level, is not. To put it simply: only the Scottish Parliament can change the provisions of the TMS, but the Housing Service can change the way it implements these provisions providing that it respects them.

Our initial focus then was on this question of ‘how’. *How* does PKC apply the provisions of the Act? Essentially, the Council’s position is a *pro-active* one. We were interested in the fact that, as the ‘Taking Care of your Home’ leaflet puts it, “Although all owners have the right to set things in motion when repairs to common parts are needed, where the Council owns a flat in the building, we are *likely* to take the first steps to arrange repairs.” This statement simply repeats the Common Repairs Policy’s declaration (p78) that “The Council will make use of the TMS set out in the 2004 Act to manage common repairs proposed by the Council in mixed tenure blocks”. In other words, whereas the original intention of the Act was to provide guidance on how to proceed where title deeds are unclear, and thus act as a default mechanism which may or may not be used, PKC has gone further than this and adopted the provisions in the Act as its template to guide all its actions in respect of the management of common repairs where it is not the majority owner. This is why we described PKC’s approach as ‘pro-active’ and why we endorse it. **(Section 7.1, Recommendation 1)**

4.3 The ‘Taking Care of your Home’ leaflet

The Common Repairs Policy is summarised very clearly for all owners in the Council’s ‘Taking Care of Your Home’ leaflet. It involves four steps for all mixed tenure blocks in which the Council does not have a majority ownership of the flats. It can be simply summarised as:

Step 1 Initial contact with owners

After PKC's initial assessment of a block, it writes to each owner to tell them that it has identified issues with the common parts to the block and that it intends to use the TMS to manage the process. After works and costs have been specifically identified, the Council contacts all owners again to tell them what these works and costs are.

Step 2 Reaching a scheme decision

The 2004 Act makes provision for a vote amongst all owners about the proposal. This is called a 'scheme decision'. Owners, including PKC, each have one vote per flat they own. A simple majority in favour is required for work to go ahead. The Housing Service then communicates the result to all the owners.

Step 3 Implementing the decision

If a majority of owners do not vote in favour (and a voting tie counts as no majority in favour) the process stops at that point, at least until PKC is able to re-visit and possibly revise its proposals for further consideration by owners. Once a majority vote for the works, the Council then gives details of costs, contractors, and the work programme.

Step 4 Invoicing and Payment

Once the work has been completed and signed off, all owners are invoiced for their proportionate share of the cost.

Within Step 3 there is a form of legal redress for owners. This permits an owner who disagrees with the scheme decision to appeal, within 28 days, to the Sheriff Court against that decision. This right can be exercised by owners who do not want the work to go ahead although there is a majority of owners in favour. The Common Repairs Policy itself says that owners, who want the works to proceed, even though the scheme decision was against the proposal, can also appeal (although the summary leaflet does not state this). If the Sheriff Court finds for the owner (or owners), and where the successful claimants are opposed to the work being done, then the Council *cannot proceed unless and until* it can persuade those owners to agree to a programme of works.

There are exceptions to the scope of the TMS in the form of 'emergency repairs'. A council may by-pass its provisions (i) where work "needs to be done to prevent damage to any part of the tenement (ii) or in the interests of health and safety" and (iii) "where there is no time to get a scheme decision organised".

The TMS staff have revised the TMS procedures whilst we have been undertaking this Scrutiny. We endorse the simplification that has been achieved to set out clearly lead responsibility at each stage in the procedure. However, there is no requirement for the

Housing Service to consult with or inform its own tenants in mixed tenure blocks where the Council has equal ownership or less.

Section 5 Our understanding of the legal and policy framework

In thinking through the implication of both PKC's Common Repairs Policy and the requirement of the Scottish Government's primary legislation (the 2004 Act) we were greatly helped by a briefing given to us by Ben MacFarlane from the Council's Legal Services team. What Ben told us was essentially this:

- i. The 2004 Act embodied some of the ideas previous identified by a Law Commission Review, and replaced what had been generally been known as feu (or feudal) burdens with the concept of community burdens. It built upon the provisions in the Abolition of Feudal Tenure (Scotland) Act 2000 which came in to force in 2004. Prior to 2004 those feudal burdens (the responsibility to maintain common parts) could be enforced by a council as the 'Feudal Superior'. After the Tenement Management (Scotland) Act 2004 councils lost that role and these new 'community burdens' were able to be enforced by any owner.
- ii. When the 2000 Act came in to force the title deeds giving ownership of the property was known initially as a Feu Disposition, and then later simply as a Disposition. In the Perth and Kinross Council area there is a difference between the feu dispositions and dispositions in the multi-storey blocks (Market, Milne and Lickley Courts, Potterhill, and Pomarium) and those in other blocks. In the former, what is known as a Deed of Conditions was recorded which defined the common parts of the block and the responsibility of owners in respect of those common parts. When flats were sold under 'Right to Buy' the Feu Dispositions and Dispositions would then refer directly to that Deed of Conditions.
- iii. Whereas flats sold by the Council will have individual title deeds (since the Council will have ensured that this is the case once a sale was underway) this is often not the case for the properties remaining in its ownership. The Council's ownership of those properties may still be derived from the title deeds for the ground on which the properties were built. In those circumstances the apportionment of responsibility for cost sharing amongst all owners will not neatly add up to 100% since the 'responsibility' for costs incurred by a single council-owned flat is not precisely defined in a title deed. Ben noted that in this context the TMS would have to be used.
- iv. The TMS itself is essentially a legacy issue. Although 'Right to Buy' has ended in Scotland its effects will be wide-ranging and long lasting. It has created a new class of owners whose rights, as shared owners of tenement blocks, may prevent local

councils from carrying out programmes of works in the way they would have done before the 2004 Act came into force.

- v. Linked to this, the 2004 Act did not foresee the extent of the secondary transfers of ownership from original 'Right to Buy' purchaser to what are effectively absentee landlords in many cases. In relation to a scheme decision, for example, the Act seems to have envisaged a civilised debate and vote between owner occupiers, including a council where the latter owned properties in the block. In reality, a significant proportion of non-council owners are not in fact owner occupiers at all – with the attendant difficulties of contact and communication where a scheme decision is needed. Although Ben did not say this to us, we also know that managing leasehold properties in England is one of the most difficult tasks social landlords have, since even where the owners (leaseholders in that case) are indeed owner occupiers they are often very reluctant to pay their share of common repairs. Indeed, both in Scotland and England many people who buy flats seem unaware that their initial capital outlay to buy their flat is only the beginning of their financial obligations as residents living in a shared ownership context. (**Section 7.8, Recommendations 14 and 15**)
- vi. The TMS gives the Council no extra powers as against other owners. So although, in a sense, the Council has both a moral and legal obligation to its own tenants, the TMS gives it no specific leverage to discharge those obligations. In this sense, the legislation is less fair to council tenants as it requires their landlord to reach agreement with other joint owners to get a scheme decision agreed by the majority of owners to allow work in common areas of each building.
- vii. Although the 2004 Act makes provision for appeals by owners against scheme decisions, Ben told us that to date no such appeals had been made in Perth and Kinross and that it was unclear how successful such appeals were likely to be. His view was an appeal that was based solely on the grounds that the owner did not want the scheme to proceed would be unlikely to succeed, and that there would have to be something manifestly unreasonable within the scope of the works, or its costs, for that to happen.
- viii. Finally, Ben talked us through the difficulties the Council's Housing Service may have in contacting owners. It had been suggested to us in witness evidence that it could use Council Tax data to identify owners. Ben was clear that this was not permissible. Whilst it may be true that other local councils had indeed used Council Tax data in this way, the provisions of the now superseded Data Protection Act 1998, he argued, clearly prohibited this. "Personal data shall be ... collected only for specified, explicit and legitimate purposes, and shall not be further processed in any manner

incompatible with that purpose or those purposes.” He further pointed out that the General Data Protection Regulations, which came into force in May 2018, have very similar prohibitions (e.g. Article 5(1) (b) “Personal data shall be... collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with that purpose or those purposes.” Information on property and land ownership may be obtained from the Land Register of Scotland, which is a public record. It is difficult to know how up to date this information is. Also the Land Registry charges for this information.

Our general impression about the legal and policy framework within which the Common Repairs Policy (and the TMS) operates is that it was designed originally to introduce and clarify the concept of common ownership in respect of tenement blocks, and to give non-council owners a significant role in determining repair, maintenance, and improvement work to common areas. But in the process it seems to us that it has created some significant problems:

- a. If scheme decisions prevent necessary work to common areas in tenement blocks then it is quite possible that significant dis-repair issues will arise over time in mixed tenure blocks. This has the potential not only to impact adversely on the Housing Service’s ability to maintain properties at the Scottish Housing Quality Standard (SHQS), but also to impact adversely on the lives of Council tenants living in blocks where necessary works are being prevented through lack of agreement and/or the reluctance of other owners to pay for the necessary work.
- b. The overall effect of the 2004 Act has been to reduce the ability of prudent councils to manage the Scottish Housing Quality Standard directly as they could in the past. It does certainly make it much easier for individual owners to prevent unreasonable councils from foisting high costs on owner occupiers; but, at the same time, it potentially punishes prudent councils and their tenants.
- c. As stated in Section 4.3 above, there is no role for tenants in council-owned properties to have a voice equivalent to that of joint owners. Tenants must rely on the negotiation and advocacy skills of the Housing Service in cases where scheme decisions go against necessary work. In this respect, the SURE Team would like the Housing Service to find a way to give their tenants a voice. **(Section 7.6, Recommendation 8)** ,to lobby for change/recognition of the problem **(Section 7.2, Recommendation 2)** and to encourage Council tenants themselves to become involved in appropriate ways to raise awareness of the impact on living in mixed tenure blocks to support the effort to amend the legislation. **(Section 7.2, Recommendation 3)**

Section 6 PKC's Factoring Service

The Council's Housing Service is registered as a property factor under, and is bound by, the provisions of the Property Factors (Scotland) Act 2011. This effectively forms a Code of Conduct with which the Housing Service has to comply.

As a result, the Housing Service will provide core services to external and internal common parts only in certain blocks.

The Housing Service has the delegated authority of the owners within each specific block to instruct and to have carried out repairs and maintenance to the common parts of the block being factored provided that the anticipated cost to each owner of any one item at the time when it is instructed does not exceed £50 excluding VAT or such other sum as may be agreed with a majority of owners of the block.

If the anticipated cost of any such item exceeds £50 excluding VAT per owner it shall be instructed and carried out only when the work has been approved by the requisite number of owners in the block as required by the title deeds or, if the title deeds do not specify such a number, under the provisions of the default TMS process.

In addition, the Housing Service is paid an annual management fee of £20 per owner for the Factoring Service which includes:

- Arranging maintenance and/or repair of the common parts but not the cost of the maintenance and /or repair itself.
- Liaising with contractors and tendering for the best service and price.
- Administrative costs relating to annual statements, invoicing, letters, newsletters and notes of meetings.
- Ensuring that everyone is invoiced for their respective share of costs.
- Working together with debt recovery agencies as detailed in the Debt Recovery Procedure and using other appropriate legal remedies to recover outstanding debts on behalf of the sharing owners within the block.
- Liaising with energy suppliers to make sure that all charges for common supplies such as stair lighting and district heating are accurate and fair.
- Paying energy invoices and recovering the costs from the owners within the block for common supplies.

The Council approved the proposals for the Factoring Service in March 2014, by which time votes had been held as follows:

Blocks agreeing the Housing Service as the Factor

The Housing Repairs & Improvements Service, in conjunction with Neighbourhood Services, held open meetings in September and October 2013 for consultation and voting purposes. All owners within multi-storey blocks were invited to vote on whether to appoint Perth and Kinross Council as the factor. The decision to appoint a factor is made by the majority of owners and the dissenting minority are bound. The Council has one vote for every flat in its ownership (143); 56 private owners agreed and voted in favour of the Council being appointed as the factor; 1 owner disagreed. 50 owners did not reply. As a result of the vote these blocks agreed to the Council becoming the Factor: 1 to 8 Charterhouse Court (8 flats); 7 to 51 Pomarium (45 flats); 52 to 95 Pomarium (44 flats); 1 to 35 Market Court (35 flats); 1 to 35 Milne Court (35 flats); 1 to 35 Lickley Court (35 flats); and 1 to 48 Potterhill (48 flats).

This is a total of 7 blocks comprising 250 flats.

Blocks where the Housing Service continues to provide stair lighting only

There are **9 smaller blocks** in the City/Central and Letham area comprising a total of **30 flats** that over the years through 'Right to Buy' are **now all privately owned**. These were: 14A-B Firbank Road, 28-30 Firbank Road, 35a to 35d Logie Crescent, 6A-B Campsie Road, 35 to 42 Cara Place, 100A-B Glengarry Road, 31A-D Victoria Street, 1A-B Cross Street and 86A-B Rannoch Road. These owners all agreed that the Housing Service should continue to provide these blocks with stair lighting only but no repairs to communal areas.

Blocks where the Housing Service has no further responsibility

In 2014, there were **144 smaller blocks** throughout the district that were fully privately owned. The SURE Team believes that **444 blocks** are now fully privately owned. The Housing Service does not provide these blocks with any maintenance or stair lighting provision. There are no plans to include these blocks in the Factoring Service.

Mixed tenure blocks where the Housing Service is one of several owners

In 2014, there were **1100 mixed tenure blocks** (now reduced to the **800 blocks** referred to in Section 4.1 above) throughout the district where the TMS procedure will be followed for all future works that are required in the common areas. Although a block vote would be required in each case, the SURE Team wonders whether Council tenants in some of these blocks might be better served through the Housing Service proposing to extend its Factoring Service, where the majority of owners agree.

We return to these and other themes in Section 7.

Section 7 Our Findings and Recommendations

We have grouped our findings and recommendations around the following

issues: **7.1 Evidence arising from the legislation**

- i. TMS is a legacy issue. 'Right to Buy' has ended. It has made a big impact beyond the change in ownership initially expected.
- ii. The TMS procedures are designed as rules. They did not factor in subsequent changes in ownership beyond the tenant who became a home owner, the problems of dealing with the common parts, and the impact of deterioration in property condition over time due to owner reluctance to accept shared responsibility for repair, maintenance and improvement.
- iii. The marriage of tenants and owners living in the same mixed tenure block is not working. It's full of contradictions and conflict. The Council as a landlord has a desire to achieve the best for its tenants within its obligations and resources. Council tenants have rights through their tenancy agreement. Some joint owners are private landlords. Some of these are distant from the properties they let. The only way that the Housing Service can contact some private landlords is if private tenants can/will pass on information.
- iv. No owner wants to spend money on repairs and maintenance if they can avoid it. It is a bit like an MOT. Landlords try to get by doing either nothing, or as little as possible, in terms of repairs and maintenance. It's a balancing act. In mixed tenure blocks it has the potential to store up housing condition problems whilst ignoring how this impacts on the quality of life for occupants.
- v. The Council's Housing Service does not have any extra powers as a result of being a local authority. The Council is just another owner albeit perhaps the owner of a number of properties in a block. Any majority group of owners can get together and seek to maintain a block through the TMS process. In practice, it is easier for the Council to take the lead to organise a TMS in mixed tenure blocks as they have the knowledge, resources and finances to do so. Other owners could take on the responsibility and pay the missing shares of other owners in the first instance and then seek to recover the costs in the same way as the Council would. This may not be feasible due to the risk and costs involved.
- vi. The Housing Service does have an extra level of responsibility as a council landlord to its tenants. It cannot proceed with works if they are not agreed to by the majority of owners.

- vii. The TMS sets out a formal procedure including timescales that must be followed. This makes it difficult to streamline the process any further. The TMS staff team has successfully set out a clear process which allocates the lead responsibility at each stage between staff dealing with Administration and Inspection.
- viii. The TMS procedure does not allow for any consultation with council tenants. We think that this needs to change. **(Section 7.6, Recommendation 8)**

Recommendation 1

We recommend that the Council's Housing Service considers changing the way it implements the provisions of The Tenement (Scotland) Act 2004 to reflect the proposals that it accepts in this Scrutiny Report and any issues it has identified. This should be done in a way which respects the Act's provisions and enables the Housing Service to continue to be pro-active on behalf of its tenants to maintain the physical condition of their homes, to protect their rights, and to safeguard their quality of life in mixed tenure blocks.

7.2 The TMS Procedures

We were given the TMS data in Appendix 3.

Two tables show the breakdown of what are described as '**completed**' and **current small TMS Schemes** by Locality and in total district wide from approval of the Common Repairs Policy in January 2015 until the end of March 2018.

From this we note that a total of **292 small TMS schemes** have been *initiated*, of which:

- i. Sixty-three were led by the Housing Service, completed and the owners invoiced.
- ii. A further 21 were led by other owners and were completed, with the Housing Service paying its share of the repair costs.
- iii. In total only **84 TMS schemes (28.7%)** have been successfully completed to date across the district. This means that despite the staff input, a positive outcome for Council tenants has not been reached. With current legislation, it is hard to see an improvement on this ratio.
- iv. In 29 cases the majority of other owners did not agree to the works and to paying their share.
- v. One hundred and twenty-nine TMS were cancelled and closed down for various reasons including running out of time.

- vi. **A further 207 small TMS schemes are currently being progressed** by the Housing Service. Only time will tell whether a better overall success ratio can be achieved, although 33 of them (15.9%) are awaiting sign off by an Inspector in August 2018 as completed.

The Common Repairs Policy also noted that “title deeds are generally silent on improvement” and that the TMS itself doesn’t specifically deal with improvements unless they are “reasonably incidental to repairs.” We see this as a weakness in the TMS itself because, as we noted in our second Scrutiny exercise about ‘Communication around PKC’s Responsive Repairs Service’, the line between repairs and improvements can often be a blurred one, as for example, when repairs are ‘capitalised’.

However, in terms of:

- i. **Current TMS Improvement Contracts**, of 180 blocks where TMS was applied, 32 schemes had been agreed by all owners (18%); 98 had been agreed by a majority outcome (54%) and 50 (28%) had a NO vote outcome so cannot be progressed at this time. None of the agreed schemes had been started on site by March 2018. Assuming the 130 agreed TMS Improvement Contracts do proceed to completion, this would be a 72% success rate. These works include replacement of floor tiles; installation of controlled door entry systems and work to the external fabric of the blocks.
- ii. **The current planned TMS Maintenance Programme relating to external work and close painting** is proposed for 108 blocks. 100% owner agreement has been reached in 37 of these blocks (34%); majority agreement has been reached in 38 blocks (35%); and the remaining blocks have a NO vote outcome. Maintenance schemes are due to start in 21 blocks. If these maintenance programmes in all 96 blocks are completed as agreed, the Housing Service would achieve an 89% success rate.

The Housing Service has gone further than using the TMS procedures just as its ‘default’ position. Instead, the Council has adopted the provisions in the Act as its template to guide all its actions in respect of the management of common repairs irrespective of its level of ownership. This is why we described PKC’s approach as ‘**pro-active**’, and why we endorse this approach (**Section 7.1 Recommendation 1**).

Recommendation 2

In addition to doing what it can directly, the Housing Service should help to raise awareness of the concerns we have identified by working with other council landlords in their peer group, and nationally with the Scottish Housing Regulator and the Scottish Government. The aim would be to focus discussion on the current problems and potential

future disrepair issues in mixed tenure blocks to achieve legislative change so that all councils can fulfil their obligations as the landlord to their tenants.

Recommendation 3

With appropriate advice and support, Council tenants could assist to raise awareness and to be part of this ‘campaign for change’. This would require support from Housing Officers, local Registered Tenant Organisations (RTO’s), the Perth and Kinross Tenant and Resident Federation, and regional tenant networks. Tenants could also lobby local MSPs to get the legislation reviewed.

7.3 Review of the Council’s Common Repairs Policy

The Common Repairs Policy has been in operation for almost four years since January 2015. It is due to be reviewed. As we understand it, no formal monitoring of the Common Repairs Policy has been carried out yet although the Housing Service has a record of all TMS initiatives, the progress made and outcomes achieved as discussed in Section 7.2 above.

Recommendation 4

The Housing Service should review the operation and effectiveness of its Common Repairs Policy and decide whether to keep the current monitoring commitment. If it does so, the Housing Service should agree the appropriate criteria to be used and allocate the resources that are required to fulfil the monitoring obligation.

7.4 The scale of the problem across the Perth and Kinross District

The Council has lost around 10,000 of its rented homes through the ‘Right to Buy’ scheme. As a result the Housing Service manages 800 blocks which comprise 4,177 individual properties (flats) that are now in mixed ownership/tenure. Of these, 2,297 are council owned and 1,888 are in private ownership, either in owner occupation or as private lets.

We have been advised that the 2,297 flats in Council ownership comprise 2,289 which are occupied or void awaiting work before re-letting and 8 are Non-effective properties (NEFF), which are not suitable for habitation, although we do not know why.

The Housing Service has said that of the 800 blocks and 2,297 flats in Council ownership (although the actual breakdown provided has been rounded up to total 2,300) there are:

- . 328 blocks where the Council is the majority owner totalling 1,471 properties/flats
- . 230 blocks where the Council is the minority owner comprising 349 properties, and

- 242 blocks where the Council and other owners have an equal ownership share, comprising 480 properties.

The Housing Service must be concerned about its ability to carry out the ongoing repair, maintenance and improvement of the mixed tenure blocks where the Council is a minority landlord with 50% or less ownership. The homes *most at risk of future disrepair problems* in the common parts and/or from the flats that the Council does not own are *the 829 flats in the 472 blocks* across the district where the Council is either a minority landlord or at most has equal ownership. This affects approximately 11.13% of the Council's housing stock of 7,450 at 31 March 2018. In both cases disrepair has the potential to impact adversely on the flats in Council ownership and on the quality of life of Council tenants.

Across the district, are another 444 blocks now entirely in private ownership. These blocks are potentially vulnerable to future disrepair issues if the joint owners fail to agree to invest adequately in the maintenance of the common areas. At a future date, these blocks might potentially create a problem for the Council in its district-wide strategic housing role should the deterioration in their physical condition reach the point at which the Environmental Health Service might have to intervene.

Recommendation 5

The proposed 2019 Housing Stock Condition Survey will assess the condition of a cross-section of the Council's homes to identify future maintenance and investment needs, and plan for indicative costs. The Housing Service should ask the surveyors to focus in more detail on the 472 blocks in mixed tenure where the Council has 50% or less ownership. This would provide a realistic assessment of the scale of the problem that the Council might have to manage in the future to prevent a reduction in homes meeting the Scottish Housing Quality Standard or in the overall quality of life of its tenants in mixed tenure blocks.

7.5 The operation of the Factoring Service

We have looked at the size of these blocks. They vary from as small as two flats per block to 48 in Potterhill and 89 in total in Pomarium. The majority, around 506 flats or 64% have four flats per block.

The Housing Service has been appointed as the factor in seven of the larger blocks of flats to investigate and carry out repairs on behalf of all owners up to the value at estimate of £50 per repair per flat, with an annual management fee of £20 per flat.

We asked some questions about the Factoring Service which we have set out below together with the replies we were given.

- Qi. Is there is a limit per flat per annum to the number of repairs or an overall annual cost ceiling eg say a maximum of 10 repairs at up to £50 each i.e. £500 contribution?

Ai. *There is no maximum number of repairs per property. As yet the Housing Service has not had to carry out any repairs above this threshold i.e. more than 10 repairs per flat.*

Qii. In practice what is the average number of repairs completed each year in the factored blocks?

Aii. *This varies depending on the type of communal items the Housing Service is responsible for which varies from lifts in some blocks and communal heating in others.*

We were given the table below which confirms the number of repairs per block. 100 have been carried out in total as at August in 2017/18:

Property Factors - Rechargeable Repairs 2017/2018	
Property	No. of Repairs
Market Court	29
Milne Court	20
Lickley Court	20
Charterhouse Court	4
Potterhill	10
Pomarium - Block 1	6
Pomarium - Block 2	11
Overall total	100 repairs

Qiii. Has the annual fee received by the Housing Service for the Factoring Service per other owner changed?

Aiii. *We were advised that this remains at £20.*

We assume it was set at this level so that it wasn't off-putting to other owners. The work carried out by both the TMS Administration and Inspection staff to deliver the Council's Factoring Service is more demanding than this fee produces as income to offset the costs to the Housing Service.

Q iv. Would it be feasible to expand the Factoring Service to more mixed ownership blocks if other owners agree?

Aiv. *We were advised that this would not be feasible at this time.*

Qv. Does the Housing Service continue to promote its Factoring Service to get more business?

Av. *We were told that this is not something that the Housing Service advertises.*

Qvi. Does the Housing Service have the capacity to deliver the Factoring Service and is it actually covering the staff costs involved for the amount of income recovered against providing the service?

Avi. We were advised that the Factoring Service was introduced to protect Council tenants and to ensure that private owners paid their share for communal repairs. It was not set up to cover staff costs. The current factoring of seven blocks works well. The Housing Service introduced a new invoicing procedure last year to ensure that customers are kept up to date on a monthly basis about current costs and that invoices are issued annually. This means that the Council is cash-flowing the Factoring Service.

We conclude from this that factoring is successful. Could the Housing Service do more to promote this approach particularly in the larger mixed tenure blocks where it has 50% or less ownership? This will not be easy to do as the Council's vote cannot be relied upon to get the initial majority scheme decision (unlike in the seven factored blocks).

In terms of the potential for expansion of the Factoring Service, we estimate that there are just over 100 blocks which contain 8 or more flats, and around 37 of these blocks have 10 or more flats.

The expansion of factoring would place more demands on the TMS Administration and Inspection teams. We wondered if it would be more cost effective to extend the Factoring Service to the larger of these blocks (and where a majority of joint owners agree) to help to prevent deterioration in their physical condition and to maintain quality of life for those living there.

However, we do not know whether this would:

- Offset staff time spent in initiating the small TMS initiatives which had the lowest ratio of successful completion at 28.7% and in effect balance out the overall demands on staff time.
- Require more staff resource in the TMS administration and/or inspection team.
- Be a more cost-effective approach in the medium to longer term to help to maintain the overall quality of these blocks on a 'little by little basis' to better protect the interests of Council tenants.

The Council's Factoring Service seems to have been set up as a loss leader to try to ensure that responsive repairs in these blocks were carried out on a timely basis to maintain the overall quality standard. Our recommendation that the stock condition survey should focus on the condition of the mixed tenure blocks should help to inform the Housing Service's decision about whether to proceed to extend the Factoring Service, and if so, on what scale.

Recommendation 6

We see the Factoring Service as another way of the Council being pro-active on behalf of its tenants. The Housing Service has no plans to expand this Service. A majority of joint owners in each block would have to agree to its doing so. We recommend that the Housing Service use the results of the Stock Condition Survey to assess the feasibility of extending the Factoring Service to the larger blocks in mixed tenure with 10 flats or more, and where the Council owns 50% or less of the properties.

Recommendation 7

We think that there is scope to increase the annual fee for the Factoring Service, possibly in stages, up to say £30 per annum. This would bring in more income to help offset any increase in staff and operational overhead costs to the Housing Service.

7.6 Can the Housing Service do more to protect its own tenants where its overall ownership is equal with other owners or is in the minority in mixed tenure blocks?

The Housing Service wants to protect its tenants in mixed tenure blocks so that their needs are not overlooked where the Council has 50% or less ownership. This is why the Common Repairs Policy, the TMS procedures, the 'Taking Care of your Home' leaflet and the Factoring Service have all been approved and implemented. In this sense, within the legislation, the Council has been *pro-active*.

The SURE Team is concerned that in some cases Council tenants might be treated less fairly than they might have been had the ownership of the block in which they live remained entirely in Council ownership. The impact of the unwillingness or refusal of other joint owners to agree to works in common parts will be on Council tenants living with the consequences and with no other housing option.

The SURE Team is aware anecdotally of some difficult issues that have arisen in this way. Due to the legislation, Council tenants' rights have been placed second to those of other joint owners. We do not know the extent of tenant concerns, queries and informal complaints when delays occur in carrying out repairs to common parts.

(Section 7.7, Recommendation 13)

The Council as the landlord could look to be more pro-active to redress the imbalance and to protect the interests of its tenants who are experiencing problems due to the reluctance or inability of other joint owners to pay for the necessary repairs to common parts. The Council might not be able to do this alone, but by acting jointly with other council landlords it might raise awareness, lobby, and have an effect in seeking legislative change.

Could the Housing Service work with other Council departments to invoke the use of Emergency Repairs powers sooner and/or more frequently (albeit for a smaller amount of

work) to demonstrate its commitment to do its utmost to protect the interests of its own tenants by using its wider powers relating to Environmental Health and Safety legislation?

The Housing Service could also ensure that it gives tenants in mixed tenure blocks a voice, by engaging directly with them when repairs concerns are voiced and/or when the Housing Service is aware that TMS responsive repairs, planned maintenance and/or TMS improvements works are proposed, and/or where these proposals have failed.

Could the Housing Service do more to get across to other owners the impact in human terms of the failure to agree to necessary repairs and/or to get owners to change their minds when initially they have refused to recognise the need for repair works?

Where the Housing Service has been unable to secure the agreement of enough joint owners to allow repairs, maintenance or improvements to be carried out, a prospective tenant should be told by the Housing Officer before the flat is signed for, even though in reality, this person may have no other housing option.

Recommendation 8

There is no step either in the original, or the recently streamlined, TMS procedure for the Council to consult with its own tenants who live in mixed tenure blocks. Council tenants' concerns about the condition of their own home and any problems in the common areas should be discussed in appropriate ways in each Locality. Locality Housing Officers should find a way to give their tenants a voice through consultation on a block or scheme basis particularly where the Council owns 50% or less of the flats in a mixed tenure block.

Recommendation 9

The Council should invoke the use of Emergency Repairs powers sooner and more frequently (albeit for a smaller amount of work). This would demonstrate that it will do its utmost to protect the interests of its own tenants when joint owners have failed to agree to essential works in common areas. Where possible, Locality Housing Officers should seek to use the wider powers available to the Council under Environmental Health and Safety legislation.

Recommendation 10

In a mixed tenure block where the Council owns 50% or less and before the signing of the tenancy agreement takes place, the Locality Housing Officer should disclose to the prospective tenant that repair obligations in the common areas cannot be discharged without the agreement of at least the majority of owners in the block for the work to be done and paid for.

Recommendation 11

When the Housing Service has been unable to secure the agreement of enough joint owners to allow a TMS procedure to be carried out, a prospective tenant should be informed of that fact by the Locality Housing Officer before they sign for a flat in a mixed tenure block.

Recommendation 12

The Housing Service should provide information on the TMS procedure in the Pre-tenancy and in the Welcome Packs. Before signing the tenancy agreement for the property, the tenant should be made aware of the possibility that delays might be encountered in repairs to the common areas in a mixed tenure block, where the Council owns 50% or fewer flats.

7.7 Recording of Tenants' Concerns

We asked if the Housing Service has any evidence that PKC tenants are 'treated less well' because of living in a mixed tenure block where the Housing Service has failed to get other owners to agree to works being done in common areas. We were advised that no formal complaints have been made. We are aware that tenants are contacting the Repairs Centre and the TMS Administration team to report repairs and to ascertain progress, some of which relate to the common areas. **These calls about tenant 'concerns or queries' are not formally recorded or monitored.**

The Team Leader Repairs (City & South) acknowledged that Council tenants and new applicants have little housing choice. Tenants find it hard to refuse/decline an offer. They don't know the mix of ownership in a block at letting. They are just desperate to move in. It is only later that they find out the limitations that can be created by joint ownership. The Team Leader Repairs (City & South) said she wasn't aware that this was a problem. However, when asked, the TMS Administrator said that the TMS team does receive this type of calls.

This is similar to the problem that the SURE Team identified in the first Housing Service Complaints Scrutiny where individual tenant concerns were not formally recorded at the front desk, so went 'un-noticed' by the Housing Service. As a result of that scrutiny exercise, we have been told that Housing Officers are now formally recording 'concerns' and are asking if the tenant wants to make a formal complaint.

We think this same approach should be followed in respect of queries and concerns that are expressed about the lack of progress in carrying out repairs in common areas in mixed tenure blocks to allow the Housing Service to assess the scale of the problem and to use this information as evidence of the need to either change how it complies with the provisions of the Tenement (Scotland) Act 2004 and/or in voicing concerns alongside other council landlords to press for effective legislative change.

Recommendation 13

The TMS team needs to properly understand the concerns of Council tenants living in mixed tenure blocks where the Council's ownership is 50% or less and be aware of the scale of the problem. All Housing Officers should keep a log of each query, concern and informal complaint from Council tenants living in mixed tenure blocks over a pilot exercise period of between 6 – 12 months.

7.8 Maintaining ownership records in mixed tenure blocks, raising awareness of local solicitors and educating joint owners

In terms of legislation and General Data Protection Regulation, it is not permitted to use information acquired for Council Tax purposes for any other purpose. Article 5(1) (b) of the GDPR states that: "Personal data shall be ... collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with these purposes." Using Council Tax data for other purposes would definitely not be permissible.

The new General Data Protection Registration (GDPR) legislation which came into effect on 25 May 2018 reinforces the value of personal data and of using it only for the purpose it was given. Ben accepted that this puts Council tenants in mixed tenure blocks in a difficult position. **The SURE Team accepts this.**

Information on the current ownership of ex-Council properties can be obtained from the Land Register of Scotland, which is a public record, for a small fee (£4) per property but PKC would not be certain how up to date the information is. **The SURE Team recognises that this might not be a cost-effective approach to follow.**

Some joint owners don't realise at the time of purchase of their flat what their future repair and maintenance liabilities might be. Some owners inevitably are stretched because of the purchase price with little, if any, resources to pay for their on-going repair obligations. It would appear that only a few solicitors draw attention to the responsibilities of (and repairs and maintenance cost implications for) owners in mixed tenure blocks. The need for the education of owners in mixed tenure blocks was raised as a concern by the TMS staff team in their own review of the TMS procedures. We think that the Housing Service needs to be pro-active to encourage more solicitors to draw their clients' attention to these matters.

The Housing Service has produced a clear, attractive summary leaflet called 'Taking Care of your Home' which is aimed at other owners in mixed tenure blocks. This should be made available as widely as possible amongst solicitors in the district (although the SURE Team recognises that some of the solicitors carrying out conveyancing may not be local) and through local voluntary advice and support agencies. The aim would be to raise awareness and to encourage private tenants to inform absentee landlords to maintain contact with the Council for advice and support on improving the management and quality of their properties.

Recommendation 14

The Council's Housing and/or Legal Service should write annually to all local solicitors enclosing copies of the 'Taking Care of your Home' leaflet to ask them to routinely inform prospective purchasers of:

- i. The importance of fulfilling their repair and maintenance obligations in their own flat and as a joint owner, to agree and to pay a fair share towards the cost of repairs in the common areas in mixed tenure blocks**
- ii. The Council's TMS procedures and the Factoring Service, and**
- iii. Should the purchaser be a 'buy to let' landlord, to tell them about the Council's Scheme to support private landlords in managing privately-let property. This would increase awareness, help to improve management standards and encourage their involvement with this Scheme.**

Recommendation 15

The Council's Housing and/or Legal Service should write annually to all voluntary advice and welfare support organisations in the district enclosing copies of the 'Taking Care of your Home' leaflet to help to raise awareness amongst all tenants who use these advice or support services of the issues which arise from joint ownership of blocks.

7.9 The TMS staff resource (Administration and Repairs Inspection)

We asked about the resources in the TMS team. Lorna Leslie is the Administration Supervisor for a team of 3 FTE staff who provide a wide range of administration support to the Capital Improvement team. This includes dealing with central heating, double glazing, kitchen and bathroom renewal and planned maintenance programmes. **The equivalent of 1 full-time equivalent staff member (FTE) is dedicated to TMS procedures to multi-tenure blocks.**

The Repairs Inspectors estimate that they spend approx. 0.5 days per week covering TMS for small repairs. This can obviously vary depending on the number of repairs reported through the Repairs Centre. The construction industry background, core skills and building trade experience of Repairs Inspectors at appointment varies widely.

We know from the data in Appendix 3 how many TMS initiatives are being progressed annually, in addition to other capital repairs, maintenance and improvement programmes.

The TMS Administrator is very hands-on in managing, co-ordinating and monitoring a series of spreadsheets which set out the repairs issues, timescales and progress achieved in each TMS procedure. The TMS Administrator is reliant on Repairs Inspectors whose experience and knowledge varies significantly. Is there sufficient management control, given that the Housing Service structure is delivered through four Locality teams, the use of six different IT software platforms, and the in-built time limits within the TMS procedure?

Work involved to secure agreement from multiple owners to any work is subject to legally binding timescales and the agreement of at least the majority of owners. This is a time-consuming process which requires attention to both the calendar and to the actual detail of each TMS initiative to ensure a successful outcome.

The SURE Team is concerned that staff resources are considerably stretched. Due to the set timescales, this is a pressured role. We know that any recommendations for additional staff resources would be at the expense of funding some other aspect of work from within the Housing Revenue Account. However, the Housing Revenue Account must already be subsidising some of the staff costs required to deliver both the TMS procedures and Factoring Service. Legislation limits what the Council as one landlord can do. The Council cannot pay for repairs for which it is not responsible.

The views of the TMS Administration and Inspection staff from the internal staff review of TMS procedures were shared with us. We recognise the staff frustrations. We also agree with their list of the value and benefits of TMS procedures. These are:

The values and benefits of TMS procedure as suggested by the staff team:

- Owners have to pay their share of repairs and improvements works.
- There is transparency in the system throughout the whole process and an open dialogue with owners about works, etc.
- The Housing Service explains well to owners what is happening and their part in the process.
- The process is well structured.
- Security door installation was successful. It has made a positive impact, although some SURE Team members have concerns about whether this does improve safety. It may do from an anti-social behaviour or reduction in crime perspective. However, we have some concerns about the Health and Safety aspects and the possible restriction of exit away from the close, for example, in the event of a fire.

- The TMS process does help to keep the fabric of our buildings in proper order and demonstrates the commitment to invest that the Housing Service has made in our properties.
- Private owners do get good value from repairs and improvements through access to the expertise, contractors who comply with the Council's procurement procedures, and not having to pay the VAT on their share of the TMS repairs cost.

Recommendation 16

The Housing Service needs a dedicated TMS team rather than a diverse group of colleagues acting as an ad hoc team.

Recommendation 17

We fully support the Staff proposals for streamlining the TMS procedure. We recommend that these are adopted. The streamlined procedure does identify specific lead responsibility between Administration and Inspection for each task to enable the TMS process to be managed better.

Recommendation 18

We support the TMS staff proposal for refresher training relating to TMS procedures as highlighted during their recent review.

7.10 Enhancement of IT software platforms to better support the TMS procedures

The TMS Administrator relies on multiple spreadsheets and a diary to record and to monitor all proposed and agreed actions in respect of the initiation, management, co-ordination and completion of TMS in mixed tenure blocks. We understand that this data is held on six different IT software packages: Northgate; Eric; Housing Property database; Sharepoint; P-Drive; CRM. It is a time-consuming process and is a demanding task for the TMS Administration team and the Repairs Inspectors to monitor, manage and update. The Housing Service needs to support its staff to enable them to carry out their roles effectively.

We understand that the demand for the use of TMS procedures has increased over the last three years. Current procedures mean that a lot can either go wrong or fail to be achieved within the specified timescales, so TMS is very difficult to manage and control.

The SURE Team would like the Housing Service to review and to consider investment in software to facilitate work in mixed tenure blocks to provide an IT platform that is fit for this purpose. This again is an additional cost which would impact on the overall Housing Service budget if an IT upgrade has not been considered in the current, or anticipated in a future, budget. We think this would be cost-effective if it enabled the same staff team to be able to deal with any proposed extension to the Factoring Service.

Recommendation 19

The SURE Team recommends that the Housing Service invests in an IT platform which reduces the demands placed on the TMS staff team and is fit for this purpose. We believe this to be an essential investment. If this type of IT upgrade has not already been anticipated in this year's or in future annual budgets, it will impact significantly on the overall finances of the Housing Service.

7.11 Response from HMT

As in all previous Scrutiny exercises, we request that HMT report back to us within 6-8 weeks to give their response to our Report and Recommendations.

Recommendation 20

We recommend that the Housing Management Team consider this Report and our Recommendations to decide what can be taken forward in Housing Service Improvement Action Plans. The SURE Team requests that you report back in early 2019.

Appendix 1 – SURE Team Witness Questions

Service User Review and Evaluation (SURE) Team Scrutiny of PKC Housing Service's 'Common Repairs Policy and Tenement Management Schemes (TMS)'

Questions for Legal Services (to assist the SURE Team in their scrutiny)

1. We understand that there are many different types of title deeds relating to properties sold by the Council through Right to Buy. Can you please explain how many different types of title deed relate to the 800 blocks of flats which were formerly owned by the Council but which are now in mixed tenure where the Council's ownership varies significantly from one or more?
2. From a legal perspective, can you outline the main type of issues or problems that arise in mixed tenure blocks when it comes to clarifying each owners' responsibilities for the upkeep, management and maintenance of common parts when title deeds for some flats that have been sold are either not detailed enough, incomplete or inconsistent? How frequently does this type of problem arise? How do you advise the Housing Repairs team?
3. We understand that there have never been any appeals to the Sherriff Court by owners who are dissatisfied with a scheme decision in the 3 years or so since the TMS was agreed. Can you explain why none has been progressed to appeal? If any were to go to appeal how long would you expect the appeal stage to last?
4. We understand that PKC is one of only two local authorities that does not allow its Housing staff to obtain information from the Council Tax service in respect of updated ownership of properties sold through Right to Buy which have been sold on again (maybe several times) from the former tenant in order to keep records of ownership in mixed tenure blocks updated. What are the legal issues around this? Would it not enable a Council to better deliver its landlord function to its tenants who seem to have almost no voice or rights in the TMS process?
5. The balance of PKC's TMS procedure seems to protect the interests of other joint owners rather than looking after their tenants' interests. How could that balance be redressed?

6. Is there any good practice that PKC might benefit from that other Council landlords use when dealing with common repairs in mixed tenure blocks to either try to streamline the TMS process or to adjust the balance away from the interests of other owners to being more focused on addressing any detrimental impact on their tenants' quality of life when other joint owners refuse to consider or to pay for works to common parts in mixed tenure blocks?
7. Have you any suggestions/advice that might help Housing Repairs staff to improve the Common Repairs Policy and/or the TMS procedures?

Service User Review and Evaluation (SURE) Team Scrutiny of PKC Housing Service's 'Common Repairs Policy and Tenement Management Schemes (TMS)'

Questions for TMS Administrator – Lorna Leslie

1. We have seen the formal TMS procedure and letters could you talk us through what you do and how this process works in practice please?
2. Could you talk us through the Overview and Area Small TMS Analysis figures (enclosed) so that we are clear what this information means and what actions have been carried out to date please?
3. Is it more difficult to make progress in some Management Areas than in others? If yes, why is that? Does it relate to property type or size (number of flats) or the response of other joint owners?
4. Roughly how long does the TMS procedure take to deliver from start to finish? Is the process more difficult to deliver in practice than the legislation or the TMS procedure implies?
5. Where are the main stumbling blocks/hold ups?
6. What works well in your opinion about the current TMS procedures?
7. What works less well?
8. The balance of PKC's TMS procedure seems to protect the interests of other joint owners rather than looking after the tenants' interests. Do you get phone calls from tenants complaining about the condition of their home because of delay in getting works done to the common parts through lack of joint owner agreement?

9. Have you any suggestions on how a better balance could be achieved to make the TMS procedure work better for the tenant as we are concerned that the focus on the council tenants' needs might be overlooked where the Council has insufficient ownership to make things happen and where other joint owners don't agree?
10. Is there any good practice that PKC might benefit from perhaps that you are aware of that other Council landlords use when dealing with common repairs in mixed tenure blocks to either try to streamline the TMS process or to adjust the balance more in favour of council tenants' needs to improve their quality of life?
0. From doing your job, have you any suggestions/advice that might help to improve/streamline the TMS procedures in PKC or would be helpful to get the work done quicker?
1. Have you any other suggestions or comments to make to help us in our scrutiny of the TMS process?

Service User Review and Evaluation (SURE) Team Scrutiny of PKC Housing Service's 'Common Repairs Policy and Tenement Management Schemes (TMS)'

Questions for TMS Repairs/Property Inspector – Roy Robertson

1. We have seen the formal TMS procedure and letters. Could you tell us about your role in assessing the condition of the common parts and the type of works that are normally required in mixed tenure blocks please?
2. We have seen the overview table of improvements and planned maintenance (enclosed) could you talk us through it so we understand what the Council has been trying to do in mixed tenure blocks?
3. Could you talk us through the typical problems that you experience in trying to get repairs done under the TMS procedures?
4. Is it more difficult to make progress in some Management Areas than in others? If yes, why is that? Does it relate to property type, size or condition?
5. Could you talk us through how many visits you make or how long the process takes from identifying the works needed to completion in a typical mixed tenure block?
6. Where are the main stumbling blocks/hold ups?
7. What works well in your opinion about the current TMS procedures?
8. What works less well?
9. The balance of PKC's TMS procedure seems to protect the interests of other joint owners rather than looking after the tenants' interests. Do you get phone calls from tenants

complaining about the condition of their home because of delay in getting works done to common parts where other joint owners don't agree?

10. Does this happen a lot?
11. Have you any suggestions on how a better balance could be achieved to make the TMS procedure work better for the PKC tenant?
12. Is there any good practice that PKC might benefit from perhaps that other council landlords use when dealing with common repairs in mixed tenure blocks to either try to streamline the TMS process or to adjust the balance more towards improving the PKC tenants' quality of life?

Appendix 2 - Scrutiny Timetable and Work Plan

Date	Time	Topic – as currently known
Monday 12 February	11-12 noon	Initial outline of topic and TMS procedures with June McColl, Service Manager – Housing & Environment and John Cruickshank, Capital Programme Manager
Wednesday 25 April	10am-1pm	Discuss TMS procedure and the performance information on the TMS programmes to explore the scope of this scrutiny exercise
Tuesday 15th May	1pm-4pm	Discuss Common Repairs Policy (CRP); discussion with Louise Robinson, Team Leader Repairs (City & South) on the staff's proposed Review of the CRP Policy & TMS procedures; and prepare questions for witnesses
Tuesday 29th May	2pm -5pm	Witness evidence. Interview with Louise Robinson, Team Leader Repairs (City & South) and Ben MacFarlane, PKC Legal Service based on questions in Appendix 2, circulated in advance
Wednesday 13 June	2-4.00pm	SURE Team interviews: Lorna Leslie (Administrator for TMS) on the TMS procedures in practice and with Roy Robertson, Repairs Inspector for TMS work based on a list of questions circulated in advance
Tuesday 3 July	2-5pm	Discuss findings from all staff interviews and first thoughts on conclusions and recommendations. The IA to obtain information from Louise Robinson on the gaps identified in our evidence gathering.
Tuesday 2 October	2-4.30pm	Reminder of previous discussion and review of our initial conclusions and recommendations
Tuesday 16 October	2-3.30pm	Review of legislation, PKC policy/procedures, factoring and development of draft recommendations
Tuesday 30 October	10-1.30pm	Discuss first draft of CRP/TMS Scrutiny Report to agree content, conclusions and recommendations
Monday 16 November	2-5pm	Finalise Scrutiny Report and agree presentation and script
Monday 26 November	10-1pm	CRP/TMS presentation rehearsal and presentation to June McColl, Service Manager – Housing & Environment and Louise Robinson, Team Leader Repairs (City & South)

Appendix 3 - PKC Housing Service TMS data January 2015 - August 2018

	A	B	C	0	F	J	K	L	M	N	0	P	CAI
	Small TMS Completed By Area												
2		City	South	North	Letham	Totals							
3													
4	Number of Completed MS	125	54	52	61	292							
5	of which:												
	Number of TMS Completed and Owners Invoiced	18	19	10	16	63							
7	Number of TMS Completed but works couldn't proceed	17	5	1	6	29							
8	Number of MIS Cancelled	84	22	35	38	179							
9	Number of TMS Completed by Owners & PKC Paid Share	6	8	6	1	21							

Full TMS process completed, works carried out at owners invoiced.

TMS carried out, but works couldn't proceed due to being unable to get the majority of owners to agree to the works and paying their share.

TMS can be cancelled for a number of reasons such as the Prs have close down as too much time has passed, Admin have cbse down as Prs haven't returned any info, on investigating its been

Private Owners have completed This and PKC have agreed and paid our share(s).

Current Small TMS By Area

	City	South	North	Letham	Project Manager	Owner Led	Totals
13							
14	Number of Current T1.15	64	37	40	56	5	207
15	of which:						
16	Are within the TMS Process	16	12	10	13	0	51
17	Are awaiting a sign off by the Property Inspector	10	8	3	12	0	33
18	Are awaiting further information from the Property Inspector	18	8	20	19	2	67
19	Are with the Admin to Team to action	20	9	7	11	0	47
20	Are awaiting a response from Legal	0	0	0	1	0	1
21	Are awaiting a response from Property/Estates	0	0	0	0	0	0
22	Are awaiting response from Improvements	0	0	0	0	3	3
23	Are awaiting further information from the owner	0	0	0	0	3	3

These are all within the T1.15 process - in the voting period, in the appeal period or awaiting response from the Sheriff Court.

These are blocks where MIS and the works have been completed and we are awaiting the Property Inspector to sign the works off.

These are a mixture of waiting confirmation of which contractor to use, awaiting additional info (e.g. prices for scaffolding) or they are to issue works following completion from TMS process being complete.

These are a mixture of new TMS for Admin to start or admin to issue invoices to owners following sign off from Prs.

These are with the Paralegals so they can check the title deeds

This is with TES as there are 2 residential properties that share common parts with the Tourist Information Board.

These have been passed to Project Manager to see if there is capacity to carry out the works under an Improvements Contract

These are with the Owners awaiting further information e.g. the three quotes.

A

C

D

E

Current Improvement Contracts TMS

Contract Name	Contract Ref	Contract Status	Blocks Where TMS Applied	100% Agree Outcome Number	Majority Agree Outcome Number	No Vote Outcome Number	TMS To be Started
North Milton Floor Tiles Replacement	7/291104 PH2	COMPLETE	46	4	24	18	0
Controlled Door Entry Phase 5	7/29/104 PH4	COMPLETE	43	0	36	7	0
External Fabric Phase 1	7/29/93 PH1	COMPLETE	28	15	10	3	0
External Fabric Phase 2	7/29/93 PH2	COMPLETE	14	13	24	17	0
External Fabric Phase 5	7/29/93 PHS	WORKS ONGOING	9	0	4	5	0

180

32

98

50

0

Current Planned Maintenance Programme TMS

Contract Name	Contract Ref	Contract Status	Blocks Where TMS Applied	100% Agree Outcome Number	Majority Agree Outcome Number	No Vote Outcome Number	TMS To be Started
Planned Maintenance	HP-17-01 - Letham External	Ongoing on site	27	9	15	3	0
Planned Maintenance	HP-17.02 - South External	Ongoing on site	74	16	5	3	
Planned Maintenance	HP-17-03 -North External	Ongoing on site	75	12	17	5	c
Planned Maintenance	Close Painting - Letham	TMS to be started	19	0	C	0	19
Planned Maintenance	Close Painting - South	TMS to be started		0	C	0	
Planned Maintenance	Close Painting - North	TMS to be started	1	0	-	0	
Planned Maintenance	Additional Blocks	Ongoing on site	.	0	1	2	

103

37

13