



ARRANGEMENTS FOR COMMON REPAIRS IN SCOTLAND: A LITERATURE REVIEW

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The views expressed in this report are those of the author and do not necessarily reflect those of Communities Scotland.

EXECUTIVE SUMMARY

1. The brief for this literature review set down a defined set of objectives. The prime purpose was to consider the variety of actor experiences in organising and carrying out common repairs on multi-owned property. Of particular interest were home owner arrangements to ensure the necessary repair works are specified, executed and paid for. Within this context the role played by private property management companies, or factors was to be considered, as was that of local authorities and housing associations, again in a property factoring context. The views of other professionals involved in this process were also to be sought, namely solicitors, surveyors and builders. Although not directly specified in the brief it was also appropriate to examine any literature on home owners experiences of such property maintenance practices. Consideration was also to be given to whether sinking funds are employed to fund regular property maintenance. The review was also to examine whether there were noticeable differences in the property maintenance or common repairs experiences between different property types. Finally, were there were obvious gaps in the literature these were to be noted and commented upon.

2. The following issues emerged from the literature as being key to understanding current arrangements and practices in relation to common repair works.

- Home owners capacity to engage with, or avoid regular property maintenance and common repair works are legally determined by the title deeds which pertain to their property. These legal documents, which define the rights and responsibilities which fall from the ownership of a particular property, are of markedly variable quality. The literature reveals significant the failings in title deeds provisions in relation to organising and paying for common works, both in old traditional tenemental property and in flatted property recently purchased under the Right to Buy provisions. While it is generally assumed new title deeds represent a marked improvement on those drawn up in the past, given the fact the property to which they apply are typically less than 20 years old, their robustness in terms of major repair matters remains largely untested.
- The switch from landlord ownership, whether public or private, to individual home ownership has compounded the organisation difficulties in organising such work, and the lack of a standardised, or codified set of title provision to deal with these basic property management matters has added to owners and property managers difficulties. The current reform of both titles and burdens will address certain of the more glaring problems in this area, but this in itself will not provide a total solution. Owners in the future could choose collectively to improve on the provisions present within their title deeds, or alternatively opt to abandon certain working provisions. Reform of the common law, or Law of the Tenement will introduce a standardised system to tackle such matters, but only where title conditions are silent. In complying with the provisions of the European Convention on Human Rights it is not now possible to introduce retrospective legislation that would alter existing property rights.
- Renovation grant monies, originally provided to rectify the significant physical deficiencies in traditional tenemental properties, soon became viewed as a solution to failed maintenance practices on the part of home owners. Over the last 30 years access to significant amounts of public subsidy have effectively papered over the failings present in many title deeds. With the rapid withdrawal of this subsidy arrangement executing major works will now require owners to co-operate utilising the provisions set down in their title documents. Just as the

provision of grant monies was the catalyst to a number of consumer guides to help home owners through the grant system, the transition to a non grant regime has produced a significant number of new consumer guides which detail their individual and collective responsibilities in such matters.

- The views of property professionals in relation to this area of work are not well researched, with only a few studies making passing reference to specific attitudes and experiences. Major omissions exist in relation to solicitors, surveyors and builders views of managing and executing common repairs. There is clearly much scope for future research to fill this void, given the key role these actors play in such matters. The experiences of local authorities and housing association are better documented, but this is largely due to very recent work in relation to good practice in housing management. This work reveals a significant and worrying failing in local authority property management services to Right to Buy owners. This failing has also been well articulated in recent consumer studies of this group of owners. These reveal that non payment and non participation have more to do with consumers protesting about a poor quality and unaccountable service, rather than any ignorance about what is expected of them in relation to paying for property maintenance. Asking home owners about their experience of property maintenance matters, also a recent development in this research area, has also highlighted how institutional factors impinge upon individual courses of action. The on-going Scottish House Condition Survey should provide a wealth of home owner perceptions about property maintenance and common repair work.
- In relation to institutional barriers the literature reveals that the current operation of the house purchase system in Scotland mitigates against potential home owners taking proper cognisance of their collective property maintenance responsibilities. The vast majority of home-owners opt for a valuation, rather than a proper physical survey of the potential property purchase. There is also evidence that house buyers, and flat buyers in particular are not properly informed about their title deed obligations and whether the deeds are in fact operable. The housing market has also long been renowned for not reflecting a price differential for well maintained property, a fact which is exaggerated within hot markets. It is suggested introducing a consumer perspective in relation to house buying in Scotland, similar to the ambitions being pursued in England and Wales, would help address some of these failings.
- Differences in property type were not found to be a major determinant in explaining variations in common repair practice. A more significant determinant would be the age of property, and whether the property had previously been in public ownership. A combination of low income owner occupation, non traditional house construction and poor local authority factoring services ensure that major problems exist in certain types of Right to Buy property. Low income owner occupation is shown to be a major contributory factor in regard to poor property maintenance.
- Self factoring was also highlighted as an area that is under researched given the dominant role it must play in the organisation and execution of maintenance on multi-owned property in Scotland.

- Sinking funds are not a feature of property maintenance practice in Scotland. This partly reflects the lack of proper legal safeguards for the management of such monies. It is also the consequence of attitudes about who owns the funds in any sinking fund. Traditionally where sinking funds have existed the common view is that the sinking fund is composed of a set of individual contributions, rather than a collective fund used for the benefit of all. Therefore when someone moves out of the building they expect to take their personal contribution with them.
3. The critical difficulty in this whole area is how to ensure how individual rights are made to take collective responsibilities. Under Scots Law the individual rights are pre-eminent in such matters, even when the rights of the individual have the rights of other individuals. The notion of the collective which is a core principle in dealing with such matters in other countries is markedly under developed in Scotland.

CONTENTS

	Page
INTRODUCTION	1
RESEARCH AIMS	1
BACKGROUND	2
Tenure Change	2
Private Renovation Policies	3
Right to Buy	6
LEGAL CONTEXT TO COMMON REPAIRS	7
Title Deeds	7
Law of Tenement	8
Common Interest	9
Reform Agenda	9
CONSUMER HANDBOOKS	13
Common Repairs in Private Tenements and Flats	13
Common Repairs in Council Right to Buy Property	15
Common Repairs in Housing Association and Scottish Homes Right to Buy Property	19
OTHER ISSUES TO BE CONSIDERED	20
Life Cycle and Residence Periods	20
Institutional Barriers to Property Maintenance	21
Consumer Feedback on Factoring Services	21
GAPS IN THE LITERATURE	22
CONCLUSION	24
ANNOTATED BIBLIOGRAPHY	26

INTRODUCTION

1. This literature review documents existing published material on the operational arrangements for common repairs within private residential property in Scotland. It was commissioned by Communities Scotland to assist the work of sub group D of the Scottish Executive's Housing Improvement Task Force. This group is currently considering what reforms may be necessary to improve the operation of common or shared obligations in respect of private residential property.

RESEARCH AIMS

2. The prime aim set for this literature review was to source and summarise published work, whether academic, consultancy or more ephemeral material such as consumer guides and information booklets, which consider the variety of actor experiences in organising and carrying out common repairs. Particular attention was to focus upon the arrangements for ensuring an agreement between owners was reached, both in terms of what was needed to be done and how the associated works would be paid for. Consideration was also to be given to the specific management arrangements for undertaking such work.

3. Within this broad context a range of secondary objectives were also defined. These included assessing the extent to which professional management agents, or factors, are used to organise such work, and whether this acts to encourage common repairs. Consideration was also given to whether local authorities are directly involved in facilitating common repairs, either through direct grant payments, enforcement action, or via direct management involvement in such work. The particular circumstances in which such work was required was to be noted, and whether such involvement was considered to be successful.

4. The published views of others involved in the repair and maintenance process, whether factors, solicitors, local authorities and builders was also to be sought. Although not specifically mentioned in the brief the published views of homeowners were also sought. It was felt such material would draw out the particular problems these groups encounter when initiating or undertaking common repair works. The extent to which sinking funds have been utilised and how successful these have been in practice was also to be examined. Consideration was also given to whether there are any significant differences in the experience of executing common repairs, or general property maintenance work, between different types of housing, namely, pre-1919 tenement flats, Right to Buy property or modern flat developments. Within this context consideration was also given to whether title deeds provisions act to facilitate, or constrain the undertaking of common repairs and property maintenance work. Finally, the review was also to offer some suggestions as to where there are significant gaps in information, knowledge and understanding of the common repair issue.

5. To undertake this task this literature review first starts by considering the dynamics of tenure change in Scotland, drawing out the implications of this for property maintenance matters. Legal material, and the recently emerged agenda for property law reform is then examined given its central significance to common repair matters. Understanding the changing legal context of Scots property law is undoubtedly a core issue given that it determines how all common repairs are administered. More detailed consideration is then given to the variety of consumer, or homeowner guides which have been produced to encourage regular and on-going

property maintenance. Examination is then made of other in-house material produced by local authorities to encourage common repairs, first at a time when improvement and repair grant assistance was readily available and laterally in relation to the common factoring of Right to Buy properties. The gaps in the literature highlighted by this review will then be considered, with suggestions being made as to possible avenues for future research. The review concludes with a full bibliography.

BACKGROUND

TENURE CHANGE

6. Over the last 40 years there has been a marked growth in individual home-ownership in Scotland, both from the private rented and latterly, the public rented sector. Useful property history texts which trace the nature and dynamics of this change are provided in Adams, (1978), Rodger (1989) and Murie (1996a, 1996b). Scottish Homes (1994) and Murie (1996a) also provide good statistical material tracing this pattern of tenure change. As a result, in December 1999 out of the 2,305,000 dwellings in Scotland 62.3 per cent were owner occupied, 25.3 per cent rented from local authorities, 6.7 per cent rented from private landlords and 5.6 per cent rented from housing associations (Scottish Executive, 2000a). This is in marked contrast to the same pattern twenty years previous, when there were 1,964,000 dwellings of which 34.6 per cent were owner occupied, 54.3 per cent were rented from public bodies (local authorities, the SSHA and New Town Corporations) and 11.1 per cent were rented privately (which included housing associations) (Murie, 1996a derived from Scottish Office Housing and Constriction Statistics).

7. While the development of more flexible and accessible mass credit systems, largely explains this pattern of change, both the Rent Act, 1957 and the Housing Act 1980 helped ensure an accelerated pace of change. The 1957 Act proved to be the prime catalyst in the switch from private renting to individual owner occupation, as landlords sold out to sitting tenants, or on the open market, rather than continue renting in what was now a decontrolled rental market. The 1980 Act introduced the statutory Right to Buy to tenants of public sector housing, and this has brought about the most dramatic of tenure shifts as tenants, encouraged by deep discounting, were able to purchase their own home.

8. The switch from large landlord holdings, to that of individual home ownership has also brought about, in its wake, major repercussions in the way property is managed and maintained. Where once there was a landlord, with the responsibility of maintaining a large number of properties, now there were a large number of individual homeowners. In many parts of the country these tasks fell to the landlord's agent, the factor. However, with the switch to individual ownership the factors were, in large part, retained (Sim, 1995). In addition there is the added complication that much of Scotland's owner occupied stock is also flatted, and consequently multi-owned. In total 38 per cent of Scotland's privately owned stock is defined as being flatted, a figure increased in recent years by the fact that 75 per cent of Right to Buy sales have been flats (Scottish Homes, 1997). Within flatted property responsibility for the management and maintenance of the property is shared between owners, but there can be marked differences in how this is actually organised and paid for. For example, the flat owners within a block could employ a property manager, or carry out these tasks themselves. However, in certain Right to Buy properties the owners may be legally obliged to continue purchasing property management services from their previous landlord. The actual legal duties in this regard are set down in the

individual properties title deeds. These may not, however, provide for a workable nor equitable arrangement, as will be discussed later.

9. Tenure change is core to understanding many of the problems and issues associated with on going property maintenance, as is the high proportion of flats within Scotland. The sharing of responsibilities through multi-ownership is one aspect, as is the significant rise in low-income owner occupation. Individual attitudes and understandings of the property maintenance matters is also relevant, as are maintenance considerations in relation to the current operation of the housing market. Each of these matters will be considered below.

PRIVATE RENOVATION POLICIES

10. With the growth of owner occupation from stock that had previously been privately rented major house condition problems merely transferred tenure. The poor quality of original construction, the small space standards and the lack of basic amenities such as an inside toilet or hot running water were key problems. These problems were added to by the historic lack of regular ongoing maintenance, in part due to long lasting rent restrictions. The lack of income to cover costs, let alone to fund improvements, was a major disincentive to landlord investment in the stock (Kemp and Rhodes, 1994).

11. To try and address this major housing quality problem the Labour government of the mid 1960s rapidly moved housing policy away from financing slum clearance, and the direct public provision of new public sector housing, to supporting the individual home owner directly, through the development and promotion of improvement grants (Robertson, 1988). Improvement grants, which had been introduced in 1949, were substantially financially enhanced to enable owners to bring their property up to a statutorily defined tolerable standard, and/or have all the standard amenities fitted.

12. Robertson (1992a) describes the development of this policy, within the Scottish context, by tracing how improvement policy took time to come to terms with the tenement, both in terms of its physical structure and its multiple ownership arrangements. The tenement, the industrial urban nineteenth century housing form, was the core consideration of Scottish improvement policy given the very significant concentrations of BTS (Below the Tolerable Standard, as defined by the Housing (Scotland) Act 1969) housing to be found in this stock. While inserting the basic amenities into these blocks had long been technically possible, the core problem was finding the means to ensure collective, rather than individual action on the part of owners within a block (Robertson, 1992a). This was achieved through the advent of the Housing Action Area (HAA), under the Housing (Scotland) Act, 1974. This Act provided an improvement template that combined attractive financial incentives with potentially strong powers of compulsion, both of which were administered by local authorities (Duncan and Cowan, 1976, Robertson and Bailey, 1996). This legislative approach, combined with significant levels of public subsidy, led rapidly to a widespread, spatially varied, improvement programme that was very much urban focused (Bailey and Robertson, 1997a).

13. The overall impact of this programme is detailed in a major Scottish Homes funded study (Robertson and Bailey, 1996; 1997a). This work notes that the variation in improvement standards was very much related to the type of renewal delivery mechanism adopted by the local authority. In the west of Scotland, and Glasgow in particular, housing associations were employed as the prime improvement vehicle within HAA's, improving their own property and that of participating owners to high

standards. In the rest of the country individual owners, employing standard improvement grant monies were central to the initiation and execution of improvement works. The limitation of available funding, while ensuring the property was no longer BTS, did not produce as high standards as that of housing associations in the west (Robertson and Bailey, 1996). That said, over time the monies made available to individual owners to carry out comprehensive refurbishment of their BTS property did rise significantly.

14. In an early evaluation of Glasgow's HAA programme MacLennan (1985) notes that HAA targeted housing association investment had produced notable house price changes in the surrounding stock of unimproved property, leading to the re- invigoration of local housing sub-markets. Robertson and Bailey (1996) noted similar shifts in house prices in both their Glasgow and Edinburgh case study areas, but credit this to the withdrawal of clearance procedures, rather than the impact improvement monies per se. Whatever the reason for the renewed interest in this housing, both studies illustrate a rapid growth in demand within what had been very depressed local housing markets. This revitalisation of tenement housing markets also brought with it increased individual interest in renovation grants (Robertson, 1986).

15. This massive capital targeted investment in the older private housing stock via HAAs between 1975 and 1993 involved the renovation of some 68,000 BTS dwellings (Robertson and Bailey, 1996). It also played a major part in encouraged a wider interest in improvement and repair grant work on the part of private home owners. With the worst stock now improved, individual home owners saw merit in now tackling their own property. Many also bought into these areas, taking advantage of the generous renovation grant regime available. During the improvement grant heyday, which ran from 1977 through to 1986, the prime focus of improvement policy moved away from tackling sub tolerable housing, though substantial grant payments, to tackling block fabric disrepair, via the smaller repair grant subsidies (Robertson, 1997). The literature of this period reflects this change in approach and the desire on the part of national and local government to develop a range of differing strategies for managing grant spend (Scottish Development Department, 1983; Robertson and Sim, 1985; Hart and Alexander, 1989; Robertson and Bailey, 1996).

16. These developments in local authority Non Housing Revenue Account (Non-HRA) programmes were the catalyst to the publication of a small number of guides and/or booklets which were specifically designed to encourage grant aided common repair works (Scottish Consumer Council, 1984; Gilbert and Flint, 1988; 1993). Not only did they provide a basic guide to building elements and the relevant property law and grant procedures, but they also detailed where to go for professional help in taking forward an improvement or repair grant project. A core message in these publications was also that after receiving publicly funded grant investment, an on-going and regular property maintenance programme should be put in place. This was also a condition of receiving the grant award. Unfortunately, from evidence provided by the fore mentioned review of the HAAs, and a later study of owner attitudes to property maintenance, those who had been in receipt of significant sums of public money were still not participating in regular maintenance. Rather they persisted with a crisis management approach to property maintenance (Robertson and Bailey, 1996; Pawson et al, 1997). Action was only forthcoming when a major crisis such as a leaking roof occurred.

17. Some authorities did try to make it a condition of grant that owners set in place more robust title conditions. This did, however, prove difficult to insist upon. Common repair work carried out in the Edinburgh New Town, administered by the Edinburgh New Town Conservation Trust, generally required the adoption of a new title deed for the affected property (Robertson, 1992b). This was to ensure that a workable and modern management regime was put in place, rather than the property continuing to be solely reliant upon the 'law of the tenement' (Robertson, 1992b). Certain Glasgow housing associations adopted a similar practice when carrying out comprehensive refurbishment that involved the participation of owner occupiers, but again with variable success (Robertson and Bailey, 1996).

18. With the rapid and sustained demise of the renovation grant programme from 1985 onwards, a process accelerated at the time of local government re-organisation with the abandonment of the 'ring fencing' of Non-HRA budgets by local authorities, there has been a wholesale abandonment of local authority organised common repair projects. This is because the monies to carry out such work have just not been available (CIH, 1997). In addition, local authorities have been increasingly reluctant to undertake statutory enforcement action under public health or building procedures because they do not have the grant resources to remedy such situations (CIH, 1997, Leather, 2000).

19. Overall, local authorities have moved away from being pro-active in relation to initiating targeted improvement and repair works, instead opting to reactive. A small but useful study of these changes is provided by White (2001) who examined the impact of substantial grant allocation reductions had on Stirling Council Non HRA programme. Her study revealed that the available monies funded one-off individual grant applications, on a first come first serve basis, rather than going to fund the previous large scale local authority co-ordinated major repair schemes. In addition, disproportionate amounts of grant funding went on property adaptations to support the Council's community care programme.

20. The recent changes to the grant system, ushered in by the recent Housing (Scotland) Act 2001, and in particular the introduction of means testing for grant awards, will continue the demise of this programme (Corbett, 2001). This marks a fundamental change in housing policy, as significant as the earlier switch from clearance to improvement. In future responsibility for effective property maintenance will lie solely with the owners.

21. To assist and encourage greater public awareness of their responsibilities a new set of property maintenance guides have been recently produced (Young and Paterson, 2000, Robertson, 2001). Unlike the previous guides, which drew heavily from the opportunities offered by the then generous grant regime, the new guides lay strong emphasises on owner responsibility and legal obligations. Details are also provided of how to seek out professional help from property managers, surveyors, architects and builders.

22. Overall, the grant system was expanded and made financially more attractive in the late 1960s and early 1970s. This policy was designed to ensure a basic standard of accommodation could be provided to those who had to endure slum conditions (Robertson, 1997). In this aim, within a Scottish context, it was largely successful (Bailey and Robertson, 1997a). There are, however, certain notable residual problems remaining in relation to BTS housing (Govanhill Housing Association, 2000). It was, however, never the grant systems intention to subsidise owners who failed to properly maintain their property but, in effect, that is exactly what happened.

There was also a feeling, based admittedly on anecdotal evidence, that in certain areas which had undergone substantial grant activity, a dependency culture had emerged which hampered on-going property maintenance on the pretext that grant monies would sort matters when the need arose (Leather and Revell, 2000). Now with the effective demise of the grant system a new property maintenance culture will require to emerge, or the condition of property will deteriorate, undermining the substantial gains made by public investment. Given the relatively recent nature of much grant work, it may be some time before the lack of on-going investment in the fabric of the countries housing stock begins to show through (Robertson and Bailey, 1996).

RIGHT TO BUY

23. As with the previous tenure change issue, from privately rented to individual home ownership, the switch from public renting to owner occupation has altered the nature of property management and maintenance matters. Where once the local authority was solely responsible for almost all repairs and maintenance works, these matters are now typically shared between the owners and the Council. In large part this is a function of actual building form given the high proportion of flatted property sold under the Right to Buy (Atherton, 1990).

24. These arrangements are not without problems. A number of studies, conducted over the last 10 years, have revealed significant consumer disquiet about the poor quality of factoring service provided by Councils (PIEDA, 1990; Russell and Welsh 1998; Welsh, 1999). It should also be acknowledged that the quality of Council property maintenance services overall has historically not been that good (Stanforth et al, 1986). The recent Baseline Study of housing management also confirms both the general and specific conclusions. A large part of the problem is that the local authorities themselves offer a poor quality repairs service, and for Right to Buy owners it is largely unaccountable and unresponsive to their needs (Scott et al, 2001). Further, a significant proportion of public sector house construction was for reasons of economy non-traditional and collective in nature. A significant proportion was also poorly constructed. This has had major long-standing and challenging maintenance repercussions (Stanforth et al, 1986).

25. There has also been a growing concern about failure of Right to Buy owners to adequately maintain their property. Council's note, for example, that their desire to carry out improvements to their tenanted stock is often held up or abandoned due to non-participation of Right to Buy owners (North Lanarkshire Council, 2001). Such owners either do not wish to, or cannot afford to participate in such major repair schemes. At the same time, it has been noted that Right to Buy owners, given their age and employment status may not be best able to fund such work (Leather, 2000; Leather and Anderson, 1999; North Lanarkshire Council, 2001).

LEGAL CONTEXT TO COMMON REPAIRS

26. The organisation of common repairs and general property maintenance matters within any multi-owned property is based upon the shared legal obligations that fall from the ownership. Reform of the common law, the so-called 'law of the tenement', has been under discussion for over 20 years. Undoubtedly, one of the pressures for change has been the dramatic change in tenure detailed above. More pressing, however, has been the need to conduct a wholesale reform property law given the recent abolition of feudal tenure. Central to this reform process is the updating of titles and burdens, the cornerstones of the property ownership system in Scotland. Only once these reforms are enacted, and on the statute book can the common law, the so-called 'law of the tenement', be reformed. All these changes will come about within the next five years. Taken as a package, this will dramatically alter the basic framework for organising common repairs. This section considers the literature on these issues in detail.

27. Within any block of flats, or other multi-owned property, there are common parts, such as the roof, stairs, garden area and external walls, which are typically the joint responsibility of all owners. Specific responsibilities will be defined within the title deeds for that particular property. Three aspects of the Scots law of property govern the ownership, management, maintenance and use of such common property. These are either detailed in title deeds provisions for the property, or in the default provisions provided by the so-called 'law of the tenement'. The common law rules of 'common interest' also play a role. It should be noted, however, that any provision made in the title deeds takes precedence over the 'law of the tenement'.

28. Reid (1996) provides the definitive legal text, in relation to Scots property law. This readable textbook details what exactly constitutes property ownership in Scotland, via what he terms 'real conditions', namely the obligations and servitudes which constitute the rights and responsibilities that fall from ownership. A useful lay persons review of the law that pertains to multi-owned properties and the current reform agenda is provided by Robertson and Rosenbury (2001).

TITLE DEEDS

29. The rules detailing the owners' responsibilities for the upkeep, management and maintenance of the common elements are almost invariably to be found in the property's title deeds. Title deeds define not only the physical extent of the property, but also specify the rights and responsibilities that pertain to that particular property. Specific management arrangements can also be set down in another secondary deed, the most common of these being a Deed of Conditions. The imposition of specific rights and responsibilities is through legal mechanism of real burdens. Burdens are a Scots Law conveyancing device that ensures that defined obligations are made to run with the title of the property. It is, therefore, the real burdens, servitudes and any conditions that apply to the property that set down such responsibilities.

30. The differing development histories of Edinburgh and Glasgow have produced notably different title deed provisions, which in turn, have important knock on consequences for current, and future property management arrangements. In particular, they help explain why property factoring arrangements are traditionally more prevalent in the west of Scotland, and have only recently emerged in the East with the advent of new purpose built flatted accommodation (Robertson and Rosenberry, 2001).

31. Elliot and McCrone's (1975; 1978) pioneering work on Edinburgh property ownership patterns in the late nineteenth century provides some insight as to why Edinburgh developed a different set of property management arrangements from those of Glasgow. In Edinburgh, individual landlord holdings tended to be larger, hence there was not the same need to purchase specialised management or development services, as landlords due to the scale of their operations could deal with such matters themselves. In the west of Scotland, and Glasgow in particular, factors acted as both development co-ordinators and property managers for large numbers of small property investors. Sim (1995), in his study of the Scottish house factor, describes how tenement property was traditionally managed, through the use of specific Deeds of Conditions that were drawn up by the individual factoring, or property management companies. These documents were designed to introduce a degree of standardisation in relation to property management, given that factors could often be working for a variety of owners within one tenement block. As a result, within the Deed of Conditions, provision is typically made for the appointment of a factor. Arrangements for apportioning the cost of any works or services may also be detailed within this document. With the rapid onset of individual owner occupation, from the 1950s onwards, the existing Deed of Conditions merely transferred on from the landlord owner to the new homeowner. As a result, Deed of Conditions, which are prevalent in the west of Scotland, have to a degree, eased the co-ordination of repair and maintenance works. In contrast, in Edinburgh the lack of such documentation has meant many homeowners have to rely upon limited provisions within their title deeds, and/or the common law.

32. While the legal theory of property ownership is sound, practice often produces a less than satisfactory outcome. Although specific governance requirements can be included within the title deeds, this is far from a universal practice. Generally speaking, the older the title deeds the less detail they contain. Many very old tenement properties, such as those in Edinburgh's New Town, have very limited deed provisions and, therefore, rely heavily upon the common law for their governance regime. Specified management arrangements are often partial or inadequate, the result of either poor initial drafting or the inability to predict situations that will arise in the future. The advent of multi ownership was not something that was envisaged when these many of these blocks were constructed. Crucially, the titles fail to prescribe a decision-making process that allows owners' to come to a decision that is binding on them all. Owners may, therefore, be obliged to maintain the common parts, but the title deeds do not allow for majority decision-making. As a result, organising repair and maintenance work can become an administrative nightmare. There are also examples of flats within the same building having different or contradictory title deeds. More modern title deeds are assumed to set in place a more comprehensive and workable set of management arrangements, but given the short length of their existence they are relatively untested in relation to major repair works (Robertson and Rosenberry, 2001).

LAW OF TENEMENT

33. The common law provides a basic default position for all tenement properties. Where title deeds are silent in respect of a particular issue, then the common law applies. However, the 'law of the tenement' adopts the view that ownership within a tenement is individual, the only exception being the common entrance (or close), the roof above the close and the common stairs (Reid, 1996). In the case of the common stairs, however, only those flats that obtain access, via the stairs, share that particular maintenance responsibility (Reid, 1998). All other building elements are deemed to be in the individual ownership of one or other of the flat owners. Owners of top floor flats have the responsibility for maintaining the roof immediately above

their property, and ground floor flats have the same responsibility for the solum immediately below their flat. Ownership of all internal walls separates at the mid point, and each owners owns their respective portion of the external walls. Under the common law there is, therefore, no requirement for a common decision making body, because there is no commonly owned property (Scottish Law Commission, 1998a).

34. The problem with this arrangement is that such apportionment of responsibilities is generally considered to be unfair. Top and ground floor flats have a disproportionate liability for repair and maintenance costs. The argument that these differences are reflected in property value variations; namely that ground floor and top flats are generally cheaper than mid flats, is no longer accepted. As a result of this perceived unfairness, individuals often come to different informal arrangements with the cost for roof repairs, for example, being equally shared. Such agreements are, however, not legally binding on all owners, unless they are properly set down in the title deeds. A change in ownership can often bring to an end such informal arrangements. Collectively altering the title deeds for all properties within a block to reflect these management changes have rarely been pursued due to the legal costs and associated administrative complexities involved. In a recent study which considered the current property law reform agenda it was made clear by property professionals that the common law was rarely, if ever used in Court action to resolve neighbour disputes about common repair responsibilities (Robertson and Rosenberry, 2001). This study also revealed that owners try and work round issues, typically in a time of crisis, on the basis of goodwill because legal redress is fraught with difficulties.

COMMON INTEREST

35. Finally, the law of 'common interest' is designed to protect individuals property rights. Under Scots Law each flat owner has a right of 'common interest' in those parts of the building which, although they do not own, provide either shelter or support to their property (Reid, 1996). An owner can carry out building works to their property but such works must have regard to their duty of 'common interest'. Removing an internal wall, for example, which is of structural significance to the building would be a breach of 'common interest'.

REFORM AGENDA

36. As noted above, the whole land ownership system in Scotland is currently being reformed. Although the Abolition of Feudal Tenure Etc. (Scotland) Act, 2000 has received Royal Assent, it still awaits a vesting date, given that other associated legislative reforms require to be brought forward before the entire package can be implemented. Critical in this context is the reform of title conditions that underpin land ownership in Scotland. The Scottish Law Commission recently published its recommendations in this regard, and the accompanying draft Bill was subject to a Scottish Executive consultation exercise in the Spring of 2001 (Scottish Law Commission, 2000; Scottish Executive, 2001). This follows an earlier preliminary consultation exercise (Scottish Law Commission, 1998b). It is then envisaged that the Scottish Executive, after considering the broad range of submissions, will publish its own Bill in autumn 2002, for consideration in the following session of the Scottish Parliament.

37. Reform of real burdens is fundamental to ensuring any reform in common repair arrangements. In particular, the designation of a distinct sub set of real burdens - 'community burdens' - will have a major bearing on ownership rights within multi-owned property. This is effectively a new name for an old idea; namely that owners

who share common facilities require to be subject to a common regulatory regime, which in future will be created by 'community burdens'. Only after this piece of legislation has been passed will the 'law of the tenement' reforms be considered. It is also worth noting that certain key proposals outlined in the Scottish Law Commissions 'law of the tenement' report are taken up within the Draft Title Conditions (Scotland) Bill. The most important of these is the Model Development Management Scheme which is proposed as a model management scheme for administering the obligations that fall from the 'community burdens' (Scottish Law Commission, 2000). This model had a previous incarnation as Management Scheme B in the Scottish Law Commissions 'law of the tenement' proposals (Scottish Law Commission, 1998a). It is, therefore, critical to fully understand what is being proposed, and consider how these changes will affect future management arrangements for multi-owned properties.

38. Ensuring transparency in relation to property ownership is a central feature of these reforms. In future, title conditions, the associated real burdens and any associated rights to enforce will require to be clearly identified within the title documents held by the Land Registry. Individual land registration will clearly record all burdens on the property, as well as on the property that benefits from these particular burdens (Scottish Law Commission, 2000).

39. The abolition of the feudal property law effectively extinguishes all feudal title conditions. Such feudal burdens were created by the original landowner to set down certain use conditions to which all future vassals were required to adhere, in effect an early form of land use planning (RICS, 1999). Any feudal burdens that are to be preserved will, in future, require to become real burdens, that is they will have to relate solely to the land. All existing non-feudal real burdens will remain enforceable, should the owners wish this to be the case. Real burdens, the more recent legal creation, allow servitudes to run with the title of the property. The power to enforce servitudes on all future owners explains why flats can be owned in Scotland, whereas the equivalent property in England and Wales is sold under leasehold arrangements. Until the imminent introduction of Commonhold it was not previously possible under English law to enforce 'affirmative covenants' against subsequent purchasers of flat or multi-owned property (Robertson and Rosenberry, 2001).

40. In future all burdens will require to be real, that is they will need to be tied to the land, and not to a person. Where the current title deeds impose on two or more owner's burdens that are identical or equivalent, then these burdens are taken to be mutually enforceable by each owner. Owners, by contrast, can currently use one way burdens to secure certain land use rights over another owner. Such burdens are typically created when an individual sells off part of their land to allow another house to be built on what was previously their ground. Such burdens will continue to be registered, but only as long as they benefit the land, and not the individual. For all property, currently expressed rights will survive for a period of 10 years. The implication here is that as this is the average turn over period for any property, the real burdens will be examined through the conveyancing process and if any are found wanting, they would not be re-registered.

41. Community burdens, will be real burdens that confer reciprocal obligations on all owners within a 'community', such as a block of flats. They will also be used to set down maintenance arrangements for common ground within a residential housing estate. All existing real burdens that stipulate a collective, or shared responsibility will, in the future, automatically become community burdens. Again they will be subject to the general proviso that the burdens are implied, and can be enforced.

42. In future a majority of affected owners will be able to vary or extinguish community burdens. The new registration process also opens up opportunities to create new community burdens. Where a real burden is inoperable, for whatever reason, the affected owners can choose not to register it. Owners who have no interest in the right to enforce an existing real burden will not bother to register such rights. This aspect of reform offers an opportunity to overcome many of the problems outlined earlier. Workable common management arrangements can be preserved, or be created. Equally, they could also be abandoned because, in future, owners will be able to pick and choose the community burdens to which they wish to be subject.

43. Where owners, by a majority choose to abandon certain title conditions and do not set in place an alternative approach, will find themselves subject to the new default system that will emerge from the imminent reform of the common law. This will be touched on later. Where a dispute arises between owners in relation to enforcing, varying or extinguishing a real burden the Lands Tribunal for Scotland will arbitrate. In coming to a view in such cases the Lands Tribunal is expected to judge the disputed decision on the basis of its reasonableness, and to aid them in this task reasonableness is defined under seven separate headings. Reasonableness is taken to relate to changed circumstances; the extent of any private benefit; the extent of any public benefit; changes in enjoyment; the practicality of compliance; the age of the condition in dispute; whether there is any planning or other constraint. Any other material circumstances should also be taken into account (Scottish Law Commission, 2000).

44. There is a Model Development Management Scheme within the Scottish Law Commission's recommendations. This has been developed to govern what are termed 'community facilities', as determined by specific community burdens. The basic model suggests the creation of an association, which would be a body corporate. The association's membership would be composed of all owners who are subject to the specific community burdens that apply to a particular set of community facilities. This could be the common elements of a block of flats, or merely the common ground in a residential housing estate. These associations would be expected to meet once a year to approve a budget, and accept the previous years accounts for the ongoing maintenance of the said community facility. The annual meeting would appoint a manager, who would have responsibility for managing the necessary work, and collect the required monies in advance. The manager is also expected to regularly inspect the property and advise the owners of any issues arising from these inspections. There is also an expectation that the manager would supervise any works that take place on the defined community facility. The association may also be able to make, or amend regulations in respect of recreation facilities. Its regulations or obligations will be binding on owners and any tenants resident within the block. There will also be a new power, within real burdens, to allow an association to own or acquire any part of the development. This, of course, assumes that someone is willing to sell, for example, the common ground to the association. There is also scope to establish a sinking fund to cover any future major repairs. Provisions are also outlined for the manager to invest these monies. The owners will also have the power to hold a special general meeting to dismiss the manager, should their performance fail to meet expectations. There will also be a separate statutory power to dismiss the manager should the owners so desire. This, in part, reflects the problems which have arisen in private sheltered housing complexes where the developer obliges all future owners to purchase management services from their preferred supplier, typically their own organisation (Scottish Executive, 2000).

45. Robertson and Rosenberry (2001) note that from a property manager's perspective the idea of running back and forwards to their clients to get the required approvals represents a hassle. Their clearly stated preference is that once the range of tasks has been clearly specified and agreed by the AGM the manager should be left to get on with it. The problem here, argue Robertson and Rosenberry (2001) is that the owners association could become, in effect, merely an advisory committee with no real power. Only the associations AGM would be vested with real power, which is in relation to specifying the actual management contract and hiring and firing the manager. Robertson and Rosenberry (2001) conclude that the notion of the empowered owner, which underpins such arrangements in other countries, fails to come to the fore in the Scottish proposals, rather it is a continuation of the notion of an empowered manager.

46. The lack of guidelines or procedures in relation to sinking fund monies was also considered a cause for concern (Robertson and Rosenberry, 2001). This study noted that sinking funds are not a feature of property maintenance practice in Scotland. This partly reflects the lack of proper legal safeguards for the management of such monies. Given the problems that have previously been encountered in this area, with either owners association office holders or the manager walking off with significant sums of money from the sinking fund, more precise guidelines were expected, similar to those outlined for Commonhold managers in England and Wales. Financial scandals caused by property managers abusing sinking funds led the French Government to introduce strict laws to protect consumers from such abuses, and there is a view similar safeguards would be required if sinking funds were to become mainstream in this country (Bailey and Robertson, 1997b). It is also the consequence of attitudes about who exactly owns the funds in any sinking fund. Traditionally where sinking funds have existed the commonly held view is that the sinking fund is composed of a set of individual contributions, rather than a collective fund used for the benefit of all. Therefore when someone moves out of the building they expect to take their personal contribution with them. Sinking funds are seen to remain as part of the owners property and not that of the property itself (Bailey and Robertson, 1997b).

47. The real point of contention, however, as discussed in Robertson and Rosenberry (2001) is that a developer, in future, will still be able to set in place either all, or just parts of this model management scheme. They could also amend it, or simply choose to ignore it and continue using their own standard title deed. While this may suit the developer, in other countries consumer interests take precedence.

48. In relation to the critical issue of funding common repair and on-going maintenance works Wortley and Steven (forthcoming) focus on two key benefits that will emerge from these proposals. Currently, if the real burden contains an obligation to pay, this is not valid in law because a specific amount is typically not specified. The basic legal principle here is that where there is uncertainty owners cannot be expected to pay. Whereas if the burden states there is an obligation to maintain, then this is legally valid. What the suggested reforms will achieve is to rectify such uncertainty by clarifying all obligations to pay as obligations to maintain.

49. The second issue concerns the situation where four or more owners share a specified maintenance responsibility. Where this occurs, then the majority would be able to instruct and, single households would no longer have the ability to obstruct work (Naysmith, 1999). A related point is the proposal that common charges debt will be transferable to any new purchaser as a heritable property, and not be defined as

a personal debt as is the case currently. This will mean outstanding debts will require to be paid on the sale of the property, something property managers have long argued for.

50. Taken as a whole, these proposals argue Robertson and Rosenberry (2001), are in stark contrast to the statutory approach pursued in countries such as Australia and the United States, and that which will shortly be introduced in England and Wales, following the advent of Commonhold. In all these countries an entirely new legal regime was created to deal with the complexities of individual ownership within multi-owned property. The proposed reforms to the current legal system in Scotland opt for a continuation of a standard legal approach, through a single property ownership code. The Scottish Law Commission's proposals for reform both in terms of titles and burdens and the 'law of the tenement' will result in legal clarifications which, in effect, introduce a degree of retrospection where current burdens are either unclear or inoperable. The alternative of developing a new ownership arrangement would, it is argued, involve developing an entirely new system and this would have significant cost implications. As Scots Law currently stands, the alternative path, that of commonhold or co-ownership, would demand that each and every owner agree to any proposed course of action which, in effect, means that unanimity is required in decision making. In practice, this is almost impossible to achieve.

51. Real burden reform also takes the view that there is no straightforward way of dealing with the future. Rather than opting for a standardised statutory system, which would require regular reform to cope with changing situations, the Scots Law tradition is to keep the system as flexible as possible. While legal interests generally supported this view, in line with long-standing Scots Law traditions, other interests groups expressed deep reservations about the sense in retaining such unlimited flexibility (Robertson and Rosenberry, 2001).

52. Having set down the problems with the current legal arrangements for common repairs, and the proposals to rectify some of these matters, as part of a wide ranging property law reform process, the review now considers the various materials produced to encourage owners to undertake common repair works. It has long been felt that one major reason for the lack of common repair work is due to a lack of owner understanding of their responsibilities. The complexity of the associated law, and the failings inherent in many title deeds are felt to add greatly to this lack of owner understanding.

CONSUMER HANDBOOKS

53. There has long been a view that a core aspect of this problem is that homeowners are not necessarily clear about their actual responsibilities in relation to common repairs and on-going maintenance (Leather, Littlewood and Munro, 1998). Providing better and more accessible information was, therefore, seen to be one means of addressing this issue. Other countries adopt a different approach in this regard. Consumer protection is given a much higher priority through statutory measures of disclosure. This is also the approach shortly to be adopted in England and Wales through the introduction of statutory Sellers' Packs.

54. Consumer information has been produced in two distinct phases, one that ties into the period of major private improvement grant activity, and the other in relation to growing maintenance problems that have emerging in former Right to Buy stock. Each of these will be considered in turn.

Common Repairs in Private Tenements and Flats

55. As a result of significant improvement grant activity, during the late 1970s and early 1980s, spurred on by substantial and sustained Non HRA budgets, there was a perceived need to encourage both co-ordinated repair work and, following on from that, regular property maintenance. The advent and development of local authority promoted renovation mechanisms, especially in Glasgow (Robertson and Sim, 1985; Robertson, 1987) and Edinburgh (SDD, 1983; National Building Agency, 1981), encouraged high levels of owner-occupier participation in such projects. Glasgow's use of Section 44 Agency Agreements and the paralleled development of the Phased Tenement Improvement Programme in Edinburgh, resulted in thousands of architect / surveyor co-ordinated common repair schemes. These projects focused on major repair works to roofs, associated rainwater goods, stone work, windows, the common close environment and the backcourt, or backgreen. Further, as a condition of grant, those in receipt of such awards were technically responsible for ensuring the on-going regular maintenance of the property so that the benefits of such renovation work was not undermined. Checking whether this stipulation was carried out was rarely, if ever followed though by the local authority.

56. The growth in owner occupation within traditional tenemental property, encouraged the Scottish Consumer Council (1984) to produce the first basic users guide for all flat owners in Scotland. The other push factor was the advent of the Right to Buy, and the growing number of new homeowners emerging in multi-owned property factored by the local authorities. All multi-owned property whether a traditional tenement, modern flat, conversion or a former council four-in-a-block was covered, given the similarity of management issues. It, therefore, informed owners about their rights and responsibilities and explained what they required to do to ensure their building was properly maintained. As with all such guides it gave advice on the practical help that can be obtained from surveyors, factors, solicitors and advice agencies. Details were also provided about local authority grants and loans available at that time.

57. To support both owner participation in major renovation works and subsequent on-going maintenance activity Gilbert and Flint (1992) produced the *Tenement Handbook*. Very much the product of Glasgow's massive tenement improvement programme it is by far the best example of the type of guide. Not only did it provide a comprehensive guide to the various building components within a traditional sandstone tenement, but outlined how to organise common repair schemes and on-going property maintenance. Details of the then available grant system were also provided. In addition, it also contains an interesting section on self-factoring, which builds upon earlier work by the same authors for Glasgow District Council (Gilbert and Flint, 1988). Self-factoring was seen to be a means to address the situation where the factor had abandoned providing a service, because of the number of outstanding repairs and the inability, or unwillingness of owners to pay for their services. The resulting publication from the initial project was never properly promoted, nor was it published in large numbers. Although the scale of self-factoring throughout Scotland it likely to be very significant, actual numbers are unknown.

58. After a long gap there has been another burst of owners information guides spurred on by a continuation of disrepair in private property, despite over twenty years of public investment via grants. The persisting problem of private sector disrepair, most notably within pre-1919 tenemental properties, was highlighted in the last Scottish House Condition Survey (Scottish Homes, 1997). In addition, recent research evidence on maintenance practice in flats showed that part of the problem was that owners were unsure of their responsibilities. Failings in the conveyancing

process meant their maintenance responsibilities were not always made clear to them at the point of purchase, and subsequently they found it difficult to work around problems with their title deeds (Pawson et al, 1997). The evaluation of Scotland's Housing Action Area programme also revealed an almost complete lack of regular on-going maintenance in owner occupied tenemental property which had been subject to HAA procedures (Robertson and Bailey, 1996). Now with the effective demise of funding for the improvement grant system the latest guides had to place a greater emphasis on owners taking greater responsibility for property maintenance problems (Chartered Institute of Housing, 1997).

59. In line with this changed emphasis the new guides provide practical information about the problems to look out for and how to effectively deal with them. Young and Paterson (2000) provide a basic maintenance schedule for the average house and then go on to detail where to get help should problems be found. It does this by providing a step by step property check, with pictures, of what to look out for and encourages owners to establish and use a maintenance logbook. Suggestions are also made as to how to get the best out of architects, contractors, quotations and building contracts. Robertson (2001) adopts a similar approach in relation to maintenance issues within multi-owned property. The booklet first details the basic legal arrangements that govern multi-owned property. This is designed to ensure individual owners know what is expected of them in regard to basic maintenance work, and what they should expect from their neighbours. How to organise work in relation to addressing a set of basic problems, typically associated with roofs, is then outlined. Guidance on where to seek advice in relation to particular problems is also provided. The guide also emphasises the need to ensure familiarity with the actual maintenance responsibilities prior to purchasing the property.

60. This issue is also touched on in two recently published house purchase booklets (Council of Mortgage Lenders, 2000; Scottish Executive, 2001). Both mention the need to consider the on-going cost of repairs and maintenance when working out the true cost of buying a particular property. As mentioned before this is not something the current house buying system in Scotland is perceived to do well (SCC, 2001).

61. Traditional factoring companies provide the other source of information about property management and maintenance. Hacking and Paterson, one of the country's largest property management companies are typical in that they publishes a standard brochure detailing the type of service they provide (Hacking and Paterson, 1998). It is common practice for this to be supplemented by a owners handbook tailor made for each managed development, given the particular variations that exist in the title deeds and any accompanying deed of conditions. This is because the actual service provided to any one property can vary quite markedly. For example, where an owners association is in existence there will be a particular set of requirements for the property manager which have been directly agreed with the association. There may also be particular facilities that require servicing, such as underground car parking, lifts or a communal heating system. Most factoring businesses provide similar publications to existing or potential customers, but the quality does vary markedly. More recently, the advent of private sheltered housing, such as that provided by Hanover Housing Association or McCarthy and Stone has demanded a specialist service to owners, covering the management, maintenance of the property and care services to the residents. Recent concerns about the quality of the management service provided to such owners saw the Scottish Executive setting in place a voluntary code covering management practice in owner occupied sheltered housing (Scottish Executive, 2000c). There is an interesting tie up here between this voluntary code and the expectations that may fall from the model

management scheme in relation to community burdens. The recent Court of Session ruling by Lord Wheatley in relation to the Hanover Housing Association Millbrae Gardens development in Glasgow also has wider implications in relation to future management practice in these schemes (Scottish Courts, 2002).

Common Repairs in Council Right to Buy Property

62. Local authorities initially started producing leaflets about organising common repairs to assist tenement owners, and the local authority administrators, in bringing forward projects for grant funding. Such material is now hard to find, but is not that useful today given the marked changes that have taken place in the availability of improvement and repair grants. Some authorities have recently attempted to come forward with good management practice guidance, to encourage owners to collectively organise on-going property maintenance (Aberdeen City Council, 1999; City of Edinburgh Council, 2001). Both these publications focused on pre-1919 tenements, with Aberdeen encouraging owners to keep an eye out for basic problems while suggesting a variety of local property professionals who could help should the need arise. Edinburgh has adopted a far more pro-active role through promoting a new Council run factoring business, the Stairs Partnership. This is partly a consequence of Edinburgh's Council's long standing tradition of effectively being the factor of last resort given their strong local intervention powers that emanate from the City of Edinburgh District Council Order Confirmation Act 1991 (Pawson et al, 1997; Bailey and Robertson, 1997).

63. More recently, local authorities have started to develop leaflets detailing the common factoring services they offer to Right to Buy owners. This has become increasingly important given the financial significance this income now has to many housing departments. The full participation of Right to Buy owners in common repair projects is also vital to ensuring such work is carried out on the council's own housing stock. While in the past unpaid owners costs were funded out of the HRA, with the ever-increasing growth in Right to Buy numbers this is no longer either a sustainable or equitable policy to pursue. Local authorities are now developing more dedicated owner services, and proper charging systems. As a result of these developments, specific information booklets are being produced. Glasgow City Council's is typical in that it outlines in broad-brush terms the relationship between the Right to Buy owner and their former landlord (Glasgow City Council, 1999). Again the specific contents of the properties title deeds are critical here, with just about every authority having a different Title Deed format.

64. Another key reason for this changed approach to dealing with owners has been the marked failings of the current arrangements. This has recently been highlighted by two Scottish Consumer Council studies (Russell and Welsh, 1988; Welsh 1999). The Scottish Consumer Council has long had an interest in Right to Buy owners. For example, Atherton (1990) provided a range of baseline data on how many people had exercised their Right to Buy, which followed up on the original work carried out by Scottish Office (Foulis, 1985). The Atherton (1990) study paralleled a Scottish Office commissioned study that considered the contents of local authority title deeds and examined their ability to deal with mixed tenure management issues (PIEDA, 1990). This report highlighted the defects present in so many local authorities title deeds and suggests reforms to address these problems.

65. The two later studies considered the role of local authorities in maintaining property sold to former tenants, but from two distinct perspectives, that of local authorities themselves and then the Right to Buy owners. The first study involved a survey of all local authorities in Scotland, of which only 27 councils responded

(Russell and Welsh, 1998). The issues raised in this study included the legal and practical relationship between owners and the respective Council's. This led into an examination of the actual management standards for the factoring of property. The need to provide owners with information about their repair and maintenance responsibilities, and the arrangements for consulting owners about proposed work were also detailed. Finally, the use and misuse of title deeds and the Council's legal position in providing factoring services was also considered, as were the arrangement for providing buildings insurance for Right to Buy owners.

66. Overall, the study reported a very poor post purchase service to owners, with poor quality control revealed given local authorities had no real idea how many owner repairs had been carried out. The study made comment about the significant lack of good practice amongst Scottish councils and the need to implement and improve the nature of housing management practice throughout Scotland. It also made recommendations advocating reform to the legal structure pertaining to flat ownership in Scotland. Some of these recommendations were aimed specifically at the Law Society of Scotland, and national bodies such as Scottish Homes and CoSLA and at local authorities themselves.

67. The second study detailed the experiences of homeowners who share common repair responsibilities with their local authority, as a result of them exercising the Right to Buy (Welsh, 1999). Homeowners in six local authority areas were sent questions, and 900 individual responses were elucidated. The core of this study examined homeowners' experiences of common repairs, local authority factoring services and the buildings insurance products offered by local authorities. The study discusses Council attitudes towards homeowners, in general, and then examines how owners get the repairs done, how they are consulted about the work and associated costs, the actual payment process and the quality of the work done. The study also touches on the amount of information made available to owners prior to purchase, and what other sources of information about common repairs can be accessed.

68. The study concluded that Right to Buy owners were receiving a very poor service. Owners reported that they could not request specific repair work, but rather received what was offered which, in the main, was poor quality. The study also found that where the Council acted as factor, but there was no cash available for the associated Council owned stock, repair works would not take place. This, in the author's view, represented a clear conflict of interest. Owners also made it clear they resented being billed for work they had either not requested or did not know had taken place. Further, owners were unaware that the Council took as much as a 25 per cent commission on the compulsory common insurance policy they administered. Finally, owners were annoyed that they could not dismiss the Council as factor, so again they had no effective means of redress if they had a complaint about the quality of service provided. The avenues of using either the local councillor or the Local Authority ombudsman was not considered useful in this context.

69. This study also revealed that 75 per cent of those surveyed had no problem in paying factoring fees, but the majority refused to do so because of the complaints they had with the service, or because of the poor quality of work delivered. There was, in their opinion, no other effective means of seeking redress other than withholding payment. This finding raises an interesting point, in that non payment of factoring fees was not a low income issue, nor was it due to a lack of understanding of what is expected of them. Rather it is more a consumer issue, in that homeowners resented having to pay for a service they have no say in. A similar set of issues were

also picked up by the Housing Management Baseline Study for the Scottish Executive in its detailed examination of factoring services (Scott et al, 2001).

70. With the publication of two recent good practice guides on factoring, SFHA (1999) and Chartered Institute of Housing (1999) there was felt to be comprehensive and up-to-date guidance on the practice of mixed tenure management. However, the research revealed that local authority landlords did not even recognise that they were providing property management services to owners of ex-Right to Buy property (Scott et al, 2001). The study also noted that a wide range of approaches to setting factoring or management fees existed, and in a number of cases it was admitted that owners costs were in fact being subsidised by tenants. It was also found that most staff dealing with multi tenure housing had received little training and their awareness of factoring guidance was slight. A number of officers considered it to be the 'Cinderella' service in housing. Finally, the study also took the view that it was hard to resolve these operational problems given the fundamental nature of so many of the underlying identified problems. These included unsatisfactory title deeds, landlord inability to implement improvement work, problems getting owners to agree to repairs and maintenance, and problems associated with recouping costs and administrative fees.

71. Other recent studies in this area have looked at the actual condition of former Right to Buy properties and tried to identify innovative approaches to the management and financing of repair work (Leather and Anderson, 1999). Leather and Anderson assessed the condition of former Right to Buy properties using a re-analysis of data from the 1996 Scottish House Condition Survey. They then surveyed the various approaches to the management of repair work through the use of six case studies: namely, the factoring service run by the City of Glasgow Council; Cumbernauld Partnership, which deals with common repairs to tower blocks; working with owners in Dundee; Renfrewshire Council's repairs procedures; Birmingham's Urban Care initiative to encourage repairs and improvements by private owners; and, finally, various Dutch initiatives to encourage repairs in dwelling blocks with mixed ownership. Having conducted this work the study then set out a series of recommendations and a framework for good practice to be adopted by local authorities. Again much was made of the need for good title deeds, dedicated factoring services, better information, robust decision making mechanisms and alternative sources of finance.

72. The condition of the 350,000 properties sold in Scotland under the Right to Buy was also the focus of a study by CURS, at the University of Birmingham for Scottish Homes (CURS, 1999). This work also considered the mechanisms to facilitate and finance common repairs in this sector, while also highlighting examples of good practice on the part of Housing Association and Local Authorities. The latter ambition proved hard to achieve given the apparent dearth of good practice, which was also evident from the studies detailed above.

73. This study also revealed that on average, Right to Buy dwellings have lower outstanding repair costs at £1,926 per dwelling, than non-Right to Buy owner-occupied dwellings at £2,881, and Social Rented dwellings in general at £2,112. Even when differences in dwelling age, type and size profiles between tenures are taken into account, Right to Buy dwellings still tend to have lower repair costs. This no doubt reflects the fact that the better quality council houses sold disproportionately, many of which were detached or semi detached (Atherton, 1990). Despite this overall picture, over 36,000 Right to Buy dwellings have repair costs in excess of £4,000, with flatted dwellings, especially tenements, tending to have the

highest repair costs. The costs of repairs to common areas in flatted properties do not, however, form a high proportion of these repair costs. That said, repairs to external elements in flats, which often need to be organised collectively, form a much higher proportion of repair costs. The fact that work on tenements typically requires scaffolding has major cost implications.

74. This study picks up on the need to have clear and comprehensive title deeds in place. These were seen to be critical in order to establish responsibilities in relation to common repairs. Unfortunately, it also noted many social landlords had failed to provide such a document when selling under the Right to Buy. It is also the case that with local government re-organisation some authorities now have to deal with as many as six separate title deeds. The work also revealed that many owners would benefit from improved information and advice on repairs, which again ties into previous discussions about improved information requirements. By adopting a number of new approaches, which included advice, information, surveys, education classes, tool loan schemes, builders' lists and handyman services, social landlords could assist Right to Buy owners. Social landlords were also encouraged to consider providing, or supporting, new funding sources for repair work including small loans with reduced set up costs, credit unions, and other savings mechanisms in order to supplement or replace grant aid. Exactly how any of these services could be funded given the difficulties social landlords had in accessing owner contributions was not considered.

Common Repairs in Housing Association and Scottish Homes Right to Buy Properties

75. The Scott et al, (2001) study noted that housing associations were more likely to recognise their role in factoring, because traditionally they offered such services to owners other than those who had bought under the Right to Buy. Most housing associations had long contended with multi-ownership property issues, given that development funding had long demanded the need to accommodate homeowners in both rehabilitation and new build schemes. That said, associations have only recently had to deal with the management implications of the Right to Buy, given its late introduction in the housing association sector. As a result, certain associations have only recently felt the need to develop a distinct common factoring dimension to their business operations. Again, to promote such services dedicated information leaflets have been produced (Queen's Cross Housing Association, 1999; Partick Housing Association, 2000). These are broadly similar to the type of material produced by dedicated property management companies, or surveyors (Hacking and Paterson, 1998; Ross and Liddell, 1998).

76. Housing associations, as was noted earlier, are also subject to specific performance standards in relation to common factoring (SFHA, 1999). These covered the various statutory requirements of a housing association factoring service, some information on title deeds and the organisation of a factoring service from both a management and an accounting basis. Housing association performance in these matters has also been subject to specific performance audits by Scottish Homes (Scottish Homes, 1999). There was a specific reference to a factoring service, by which all associations would be measured, but the focus here was more on finance and auditing matters rather than examining actual management practice. Interestingly, the consultation issued by Scottish Homes in relation to the revised performance standards and their assessment criterion made no mention of factoring per se (Scottish Homes, 2001). That said, the emerging performance standards, which the new regulatory body Communities Scotland will apply all social landlords sets down the following standard: "*We are fair, efficient and effective*

factors for other property owners. We manage factoring funds on behalf of owners in a proper and accountable manner". (Communities Scotland et al, 2001). Given what this literature review reveals about current local authority practice, in relation to factoring this will no doubt prove a hard performance target to meet.

77. Despite these frameworks and good practice guidance there is evidence that owners are not paying their share of common costs and this is leading to problems in delivering housing association major repair schemes (Partick Housing Association, 2001). One Edinburgh association has recently made a policy decision to sell off tenement flats when they become vacant, if they do not have the majority share within the stair and where expenditure to bring the stock up to standard is judged high. The problems of getting other owners to pay their share of costs are a key consideration in this decision.

78. The SSHA, with the advent of the Right to Buy in 1980, developed a standard Title Deed that it then applied to any property sold under these procedures. The SSHA also produced a Right to Buy handbook which they issued to all prospective and actual purchasers detailing their on-going maintenance responsibilities. Scottish Homes the successor body to the SSHA inherited this standard Title Deed. With the subsequent transfer of what was the SSHA stock to other housing association landlords this Deed then transferred onto them, as did the factoring responsibilities for any Right to Buy owners. Further, as the feu superior the receiving landlords also had certain common land responsibilities, which with the imminent abolition of feudal ownership will require to be made communal burdens or be abandoned.

79. Again despite all this effort problems with owners, in relation to day-to-day and major repair works, have arisen. It would appear that although procedures had been in place they were not always adhered to. Some of the new receiving associations have reported major problems getting owners to pay for factoring services, because they had not been asked to do so in the past. Major problems also arise when major repairs are being contemplated, as owners' agreements are not always easy to secure. Further, as local authorities have found where there are substantial numbers of Right to Buy owners this has a major bearing on the long term financial well being of the housing body.

OTHER ISSUES TO BE CONSIDERED

Life Cycle and Residence Periods

80. In attempting to explain this lack of on-going investment on the part of owners in their property Leather, Munro and Littlewood (1998) focused on owner-occupiers behaviour towards repair and maintenance. This work revealed that people's length of residence has a major bearing on their motivation in this regard, with younger people, who had recently moved in, were more inclined to undertake work. However, the emphasis was on enhancing both the comfort and aesthetic appearance of their home rather than investing in exterior or more hidden structural elements of the property.

81. Life cycle considerations were also viewed as significant in relation to whether owners were motivated to carry out on-going maintenance or basic repairs. As people got older, and residence periods increased, this motivation declined. A combination of their personal understanding of technical matters, a fear of disruption and the financial implications of the associated costs also had an influence on such motivations. This research has undoubtedly encouraged policy makers to produce

more consumer information to address some of these perceived information constraints.

82. This work has subsequently been developed by Leather (2000) into an explanatory model of household's likely pattern of maintenance and repair behaviour, or as he terms it 'under investment scenarios'. A key message which emerges from this work is that low-income owner occupation is a core problem, and that the situation is likely to get worse given the increasing ageing population who are now resident in owner occupied property. In addition, the growth in single person households due to relationship breakdown and increasing insecure employment adds to this low-income homeowner group (Ford and Wilcox, 1998). This is an under researched area, namely the relationship between the expansion of owner occupation as a mass housing solution, and the capacity of low-income groups to sustain the various financial commitments of this tenure.

83. The charity Age Concern has been trying to promote equity release as a means of helping older owners pay for needed improvement or repair works. The thinking here is that many elderly owners although income poor, are equity rich in terms of the property they own outright. If they can find the means to release some of this equity then they could pay for needed repair works. Unfortunately, the financial products on the market are poor, and suit those who already could afford to carry out the work. A significant number of low-income owners are also equity poor, so taking out a new mortgage is not an option, and reducing the family's potential inheritance is not attractive. The literature in this area is almost exclusively English based, with the Anchor Trust and the Joseph Rowntree Trust funding much of it (Bradford Network, 1999). To date there have been no specific Scottish research studies but some Care and Repair projects have tried to access this type of funding with mixed success (Age Concern and Shelter, 1996).

Institutional Barriers to Property Maintenance

84. There are also other institutional factors that are significant in this regard. It has long been known that the housing market rarely rewards investment in property maintenance, in that financial outlay to ensure a property is well maintained is not recovered on sale, given the low price differential between a well maintained house and one in poor order. Demand for housing in particular locations can often mean that there is no price differential in respect of quality.

85. Leather (2000) touches on this in terms lender attitudes to repairs and maintenance, which in turn have a direct bearing upon individual motivations. Lenders are primarily financial institutions, so their prime interest is in the securing of their loan. Lenders have little interest in property maintenance, given that as long as prices continue to rise overall their investment will not be threatened by any deterioration in the stock condition. If a sale is forced in the future, as a result of non-payment of the mortgage, then the receipt will still be more than the outstanding debt, plus the lenders costs (Bailey and Robertson, 1998).

86. In the Scottish context flats make up a relatively high proportion of the cheaper end of the housing market. Flats are also not considered to be a long term housing option for those intent on moving up the property ladder (Bailey and Robertson, 1997b) Spending money maintaining, or even repairing a flat is not within many first time buyers short term financial plans. These people are probably aware of their responsibilities in relation to property maintenance, but choose to ignore them given their long term housing ambitions.

Consumer Feedback on Factoring Services

87. The Friends of Glasgow West Conservation Trust have just completed a survey involving 500 flat owners in the Hyndland and Partick areas. It represents the first survey to test private flat owner's views of the property management and maintenance services. The core findings, which are about to be published, were that people well understood, in broad terms, their responsibilities in relation to common repairs (Friends of Glasgow West, 2002). The vast majority of owners thought they looked after their buildings very, or fairly effectively. Half of the respondents participated in close meetings, but equally half did not. Most of those surveyed were in an organised factoring scheme, but this dealt with problems as and when they arose. Surveyed owners were unlikely to set up schemes for regular maintenance, preventative repairs, condition surveys and sinking funds. In fact, one third of respondents were unaware of what exactly these measures were, raising in the Trust mind concerns about the quality of information and advice. That said, there was a good level of understanding about the importance of on-going property maintenance and two third agreed that expensive repairs were worth it in the long run. The survey also revealed that two thirds of respondents were unsure if works were actually carried out properly. The study also noted that half of those surveyed had lived in their properties for less than 5 years and a third knew little about the properties previous maintenance history.

88. Overall, these results do not reflect the standard stereotype of owner attitudes towards factoring and property maintenance. A fifth of owners stated that maintenance was held up by factors delays, and a similar number noted financial problems as a cause for delay. Absentee owners were also a significant problem in this respect. Of most interest was the finding that the vast majority of owners saw value in professional advice, but at the same time two thirds said it was hard to know who to trust. These findings illustrate that there is an interplay of a more complex set of inter related issues that add to property maintenance problems not just a question of limited resources or a lack of information and advice.

89. The question format of this survey was forwarded to the Scottish Homes House Condition Survey Team and certain questions about common factoring and attitudes to property maintenance in multi-owned property have been incorporated into the latest Scottish House Condition Survey, which is currently in the field. The results that emanate from this package of questions should greatly enhance our understanding of owners' attitudes to property management and should make very interesting reading. This new information will fill a very significant gap in our understanding of these matters.

GAPS IN THE LITERATURE

90. A number of gaps in the literature appeared during the course of conducting this review. These are listed below.

- Empirical evidence from both the Scottish Consumer Council and the Glasgow West Conservation Trust reveals that there are a range of barriers which stop people being pro-active in relation to on-going maintenance work. Crisis management does appear to overcome some of this inertia. People do appear to know what is expected of them in relation to property maintenance, but they choose for a variety of reasons not to comply with these obligations. In the case of Right to Buy owners there is strong evidence that they do not comply because

they are dissatisfied with the quality of service offered by their local authority factors. Marked culture changes on the part of local authorities are required to resolve this issue. Similar consumer issues would appear to apply to conventional factor services, but the scale of this problem is less. Then there are the difficulties that arise from trying to accommodate absent owners who rent out their property. An inability to pay their share of costs also has a bearing, especially for low-income households. Overall, this evidence challenges the value of providing basic information to owners, given that they are well aware, in broad terms, of what is expected of them. That said, there clearly needs to be more research on consumers' views of factoring services, common repairs and property maintenance matters. As noted above, the current Scottish House Condition Survey, given its national coverage may provide some answers given the incorporation of new questions on this topic, but the samples will require to be sufficient to ascertain meaningful results as to what homeowners actually think about these matters. Following the publication of the House Condition Survey results it might be necessary to conduct more detailed surveys in a sample of areas spread across the country which are subject to different property management regimes. It is only in recent years that research in this area has moved to asking homeowners, the consumers of services, what exactly they think. The lack of this perspective has been a major research omission.

- There is also no published research on the various professionals' attitudes to their respective tasks in relation to property management and maintenance. The views of solicitors, architects, surveyors and factors are not clearly set down anywhere. Robertson and Rosenberry (2001) do articulate the views of surveyors and factors in relation to the organisation of repairs works on tenemental flats, but this is but one part of a broader review of property law reform. Understanding the attitudes of the other supporting institutions would be useful, although given that time is money with these professional groups there are major problems in being able to access their views. Asking the representative bodies of these professionals a series of questions about their experiences of providing such services, and how their business opportunities could be improved would be a useful start.
- The actual scale of self-factoring is completely unknown, although throughout Scotland it is likely to be significant. There is clearly a need to examine the incidence and day-to-day operation of self-factoring in flats.
- The research agenda also needs to examine whether low-income owner occupation is actually sustainable, given the current set of macro economic circumstances. This issue, for overtly political and practical reasons has not been researched, but it is undoubtedly a core consideration in this context. In the rapid switch to mass owner occupation can low-income groups afford to adequately maintain their homes? Given that pensions have, according to Age Concern, not kept pace with the Average Earning Index and the income generating value of their savings has suffered due to the long period of low interest rates does this add to their problems in regard to property maintenance? Further, the massive and rapid growth in low value, low demand housing in old industrial towns and cities in the North of England illustrates there is a limit to market for owner occupied housing in certain parts of the country (Robertson and Whitehead, 2000). Similar low value, low demand pockets currently exist in Scotland. At present no one is researching whether current levels of low-income home ownership are sustainable, either to the individual or society. Should the State, for example, be expected to subsidise the bottom end of the market? Exploring

this issue would provide a useful backdrop to the issue of long term property maintenance.

- Finally, the current house purchase system in Scotland does not adequately highlight the on-going cost of property repairs and maintenance. All those housing market professionals whose business ambitions depend on achieving the highest possible price for a property consider the introduction of such information at the marketing stage unhelpful. People generally only find out these re-current costs after they move in. Given the research evidence, and particularly that supplied by the Scottish Consumer Council, shows that the current conveyancing system is failing owners in this regard, would the introduction a Seller's Pack, shortly to be introduced in England and Wales, not be a welcome improvement given the condition of the property and the legal obligations in respect of maintenance would be disclosed right at the start of the marketing process? Would the information disclosed in such a pack alter consumers views about the actual running costs associated with certain property and increase their awareness of property maintenance matters, in general, when contemplating purchasing a new property. The introduction of a Sellers' Pack in England and Wales could allow these questions to researched in the very near future. Comparative work with other European countries such as Denmark which has long pursued full legal disclosure may also prove productive in this regard. Does changing the system and expectation of house purchase alter peoples attitudes towards long term property maintenance?

CONCLUSION

91. In conducting this literature review it is noticeable that certain themes stand out strongly, while others are almost absent. With the switch from landlord ownership, whether private or public, to individual home ownership the property maintenance task has become infinitely more complex. With multiple owners within a block, in effect, unanimity has been required for any decision about property maintenance to be pursued. The title deeds that were passed down from the previous landlord owners to the new individual owners have not always set in place a robust property management systems. The same is true for new deeds, the only difference here being that they have not been as subject to the same degree of testing as those that have existed for older multi-owned property. That said, the evidence also suggests the previous single landlord decision making mechanism, was certainly far from perfect. Failure of design, build quality and maintenance practice by the previous landlords have been passed on to subsequent owners. Unfortunately, in many cases it has been a hard struggle for new owners to make up these shortcomings. Right to Buy owners of 'system build' property stand out as being badly disadvantaged in these matters. The lack of separation between the owners new property maintenance responsibilities and those of the old landlord also adds to these problems.

92. It is interesting to note just how significant the failings of title deeds features in old tenemental property and those purchased under the Right to Buy. Lessons in this regard appear not to have been learnt, perhaps because the deeds were originally constructed to suit the needs and interests of old landlords, rather than the new owners, and the capacity to reform them has always been severely limited. The lack of standard guidance in these matters, unlike the practice adopted in other countries, has undoubtedly added to homeowners difficulties. As the earlier discussion of the legal reform literature revealed, if someone is intent on not paying their way in

relation to the cost of common works, they can often get away with it. While the proposed legislative reforms will narrow certain of these evasion routes, there are still likely to be opportunities to pursue this course of action in the future. And while the opportunity to amend title deeds will become easier it will be interesting to see whether this actually occurs. Will individual owners come forward with more appropriate management systems to deal with community burdens? Will the voluntary management scheme, working with the reformed background common law address most of the current deficiencies with title deeds? Or will a more robust set of reforms which take a consumer perspective as their starting point, rather than the concerns of professional legal interests to these matters, not prove necessary?

93. The marked decline in the public subsidies made available for dealing with deficient property has promoted a range of public information guides. These replaced the guides that sought to assist owners in accessing these monies. Will the advent of this material better inform homeowners about their responsibilities in relation to on-going property maintenance matters? And if having better informed consumers is seen to be critical in this new subsidy free environment then are there not other, better vehicles available to transport this information?

94. Grant monies were designed to solve severe deficiency problems but, in effect, became a solution to failed maintenance practices on the part of homeowners. Whether the recent loss of these once generous subsidy systems will result in a more mature attitude towards property maintenance is a moot point. While basic guides can outline the broad picture of expectations, the devil is in the detail of the individual's title deeds.

95. Finally, the literature also reveals that non-participation in property maintenance has a broad range of individual explanations, many of which are interrelated. The recent advent of asking consumers about their perspective of the issue and the urgent need to ask property professionals to set down their views would be both useful and instructive. Individual perceptions of the financial and personal benefits that emerge from adopting different courses of action in relation to common repairs and on-going maintenance need to be better understood. Only then can we hope to appreciate how institutional factors actually impinge upon these individual perceptions. Such an approach to future research would also help improve our understanding of what impact certain changes in institutional approaches would have of individual actions. Developing a more consumer-focused response on the part of property managers, might for example pay great dividends. So might the adoption of a more consumer focused approach to house purchase.

96. Hopefully this literature review and the questions that have emerged out of this work will assist the Scottish Executive's Housing Improvement Task Force in its consideration of what reforms may be necessary to improve the operation of common or shared obligations in respect of private residential property.

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Settings and Service Charges' Leasehold Management and Factoring.

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Book chapter building on from the previous one, in that it focuses on four significant features of the marked recent growth in owner occupation. First, it considers the relative stability of the Scottish home ownership market, in comparison with the turmoil faced south of the border during the same period. Second, the central significance of the Right to Buy is considered in the recent expansion of home ownership overall. Third, consideration is given to the changes in income support and MIRAS assessing its influence on changing tenure patterns. Finally, the chapter considers the influence of housing policy on the distinct phases growth in owner occupation in Scotland.

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Basic guide to the factoring service provided to homeowners by Partick Housing Association Ltd.

Pawson, H., et al, (1997), **Collective Action and the Maintenance of Owner Occupied Flats**. Edinburgh: Edinburgh School of Art/Heriot Watt University.

Academic study exploring the problems that are specific to flat owners in Britain. Details the problems associated with the leasehold system in England and Wales under the topic headings of defective leases, wasting asset, control of management, leasehold enfranchisement and proposals for reform. Scotland is examined through examination of the common law, conveyancing practice, role of local authority and proposals for reform. Questions whether the removal of legal deficiencies is enough to create a solid foundation for the future management of flats in Britain,

PIEDA, (1990), **Repair and Maintenance of Properties in Mixed Ownership**. Edinburgh: Scottish Office Building Directorate.

Based on a limited number of case studies, this report highlighted the potential problems for the future arising from the fragmentation of ownership of formerly publicly owned blocks. It highlighted the defects of the current legal framework for flat ownership in Scotland and discussed methods adopted to address these difficulties in some instances.

Queens Cross Housing Association, (1999), **Queens Cross Housing Association Factoring Guide**. Glasgow: QCHA.

Basic guide to the factoring service provided to homeowners by Queen's Cross Housing Association Ltd.

Reid, K., (1996), 'The law of the tenement', in Law Society of Scotland, **The Law of Scotland: Stair Memorial Encyclopaedia: Volume 18 - Property Law**. Edinburgh: Butterworth.

Standard text on the Scot's common law of property.

Reid, K., (1998), 'Reform of the law of the tenement', in **Journal of Law Society of Scotland**, 43,4,21-23.

Brief journal article outlining the Scottish Law Commission's proposals to reform the 'law of the tenement' (see full SLC report below).

Robertson, D., (1986), **The Glasgow Database Project: the Second Report on the Incidence and Effects of Housing Rehabilitation Spending in the City of Glasgow 1974-1984**. Glasgow: Glasgow District Council.

Reports on a study which created a computerised database covering all publicly funded improvements carried out in the city's pre-1919 tenemental housing stock over a 10 year period. Details the distinct renovation contributions made by the three main public agencies involved in private sector renewal, namely, Glasgow District Council, the Housing Corporation, and the SDA. The report assesses the impact of their activities and spending under three distinct categories, the Housing Action Area Programme, the Renovation Grants Programme, and the Backcourt Improvement Programme.

Robertson, D., (1988), **Glasgow Rehab: An Examination and Evaluation of Tenement Improvement in the City of Glasgow between 1964 and 1984**. Thesis submitted for the Degree of Doctor of Philosophy, University of Glasgow.

PhD thesis which traces the development of housing renewal in Glasgow, focusing particularly on the role of community-based housing associations. By examining all publicly funded renovation awards issued 1974-1984, an attempt is made at measuring the effectiveness of targeting expenditure. Concludes by highlighting the various factors crucial to Glasgow's successful older neighbourhood regeneration strategy.

Robertson, D., (1992a), Scottish improvement policy, 1945-75. Coming to terms with the tenement. *Urban Studies*, 29, 7, pp 1115-36.

Traces the development of home improvement policy in Scotland, illustrating how the traditional tenemental housing form initially hindered then eventually shaped policy in a distinctive way. Describes the constraints on home improvement policies and the reasons for these. Also covers the political prejudice against landlords and social attitudes to tenement housing. Examines several influential policy reports that advocated home improvement and traces their progression into legislation. Illustrates Glasgow's significance in framing this switch in policy approach.

Robertson, D., and Bailey, N., (1996), Review of the impact of Housing Action Areas, **Research Report, 47**. Edinburgh Scottish Homes.

Reports on the results of a research project which reviewed the impact of Housing Action Areas for Improvement (HAAs) as a mechanism for alleviating poor housing conditions and achieving area regeneration. Describes the legislative framework for HAAs and the programme of work to date. Discusses the different approaches local authorities can adopt and outlines two models typical of the approaches adopted. Uses figures from local authority returns to the Scottish Office and information from eight case study areas. Examines the impacts of HAAs on tenure patterns, the physical fabric, socio-economic characteristics, residents' views, the housing market and local economic activity. Comprehensive and rigorous academic analysis of this major renewal programme.

Robertson, D., (1997), **Quality in Housing Policy, Internal Discussion Paper**. Edinburgh: Scottish Homes.

A 'think piece' commissioned by Scottish Homes that was designed to feed into their policy review process. The report traces the cyclical nature of housing quality concerns in housing policy. Notes that after a period of retrenchment concerns about housing quality rise and result in legislative and associated policy and public investment changes. These, in turn, wane over time. Also notes that housing quality has rarely, if ever been the core consideration of housing policy, but rather an add on to other policy ambitions such as health promotion and employment.

Robertson, D., (et al), (1992b), **Stirling Town Centre: Developing a Renewal Strategy for a Unique Historic Town**. Stirling: Stirling District Council.

A report commissioned by Stirling District Council detailing the potential for renewing the old historic centre of the town. Provides results from a detailed physical and social survey of three distinct neighbourhoods within the historic core. Opportunities for development are then listed accompanied with a

detailed cost report for the associated work. This is followed by a brief housing market analysis. Finally, a renewal strategy is outlined which draws on examples of good practice from other parts of Scotland.

Robertson, D., (et al), (2001), **We Are All Responsible: An Owners Guide to the Management and Maintenance of Common Property**. Edinburgh: Scottish Executive.

Scottish Executive published booklet that highlights the responsibilities of management and maintenance which go with the purchase of a flat. Explains what is meant by communal repair and maintenance, what owners should do, what should be expected from neighbours and how particular repair and maintenance problems can be resolved. The focus is to ensure first time buyers and 'Right to Buy' owners clearly understand the property maintenance responsibilities that come with home ownership.

Robertson, D., and Rosenberry, K., (2001), **Home Ownership with Responsibility: Practical Governance Remedies for Britain's Flat Owners**. York: Joseph Rowntree Trust and York Publishing Services.

This comparative socio-legal study details Britain's long lasting problem of accommodating individual home-ownership within multi-residential property. It examines and evaluates the day-to-day operation of different property ownership regimes in parts of the USA and Australia, which combine a freehold interest in the individual property with collective ownership of the building's common parts. The results of this evaluation offer different models for possible UK practice. The research concludes that the introduction of Commonhold in England and Wales will establish a new home-ownership system, which closely mirrors those operating in Australia and the US. However, additional structures will be needed to support this change, in particular good information and advice and a responsive and inexpensive system for resolving disputes.

Robertson, D., and Sim, D., (1985), **Repairing Older Private Housing**. Glasgow: University of Glasgow, Centre for Housing Research.

Proceedings of a conference held in June 1984 jointly organised by the University of Glasgow's Centre for Housing Research, Glasgow District Council's Housing Department and ASSIST Architects. The papers presented at the conference covered: repairs and improvement in the Scottish housing market; the legal framework for repair; the role of the local authority in organising repair - the case of Glasgow; the role of the factor in the maintenance and repair of tenements; tenement repair and the owner-occupier; community repairs schemes, finance for urban renewal; repair and the private landlord; and improvement and rehabilitation policies in western Europe and the USA.

Robertson, D., and Whitehead, J., (2000), **Sellers' Pack in Low Value, Low Demand Housing Areas**. London: DETR.

Study of professional and consumer attitudes in two low value, low demand private housing areas towards the Governments' intention of introducing a compulsory Sellers' pack for all future housing transactions. Focus group studies with buyers and sellers in Burnley and Bradford noted their support

for the introduction of a House Condition Report, as part of the pack. This would, in their opinion, make the buyer more aware of house condition matters right at the start of the house buying process, rather than problems being revealed later on. The notion of introducing greater transparency in the house buying process was also welcomed by property professionals.

Rodger, R., (ed.), (1989), **Scottish Housing in the Twentieth Century**. Leicester: University of Leicester Press.

A collection of academic essays about Scottish housing policy in the twentieth century written by authors from a variety of disciplines. The focus is very much on the public sector with a strong focus on the early development of council housing and the SSHA.

Ross and Liddell, (1998), **Residential Property Management Services**. Glasgow: Ross and Liddell Ltd.

Basic guide to the basic factoring services provided by this commercial property management company.

Royal Incorporation of Chartered Surveyors, (1999), **Submission on the Scottish Law Commissions Discussion Paper on Reform of Real Burdens**. Edinburgh: RICS.

Submission by the RICS on the initial proposals by the Scottish Law Commission for reforming real burdens. It notes surveyors concerns that certain positive features of feudal real burdens, such as their land use planning function will be lost with reform.

Russell, F., and Welsh, J., (1998), **Factors in common: how local authorities manage common repairs to property in mixed ownership in Scotland**. Glasgow: Scottish Consumer Council.

Discusses the findings of research into the role of local authorities in maintaining property sold to former tenants. Examines some of the issues raised including: the relationship between owners and the council; the need to provide owners with information about their responsibilities; arrangements for consulting owners about proposed work; the use of title deeds; management standards for factoring of property; the council's legal position in providing factoring services; and the arrangement of buildings insurance for Right to Buy owners. Comments on the notable lack of good practice amongst Scottish councils and the need to implement an improved structure of housing management throughout Scotland. Lists some recommendations aimed specifically at the Law Society of Scotland, national bodies such as Scottish Homes and CoSLA and at local authorities.

Scott, S., Currie, H., Dean, J., and Kintrea, K., (2001), **Good Practice in Housing Management**. Edinburgh: Scottish Executive.

Presents the findings of the second stage of a project carried out to review progress in housing management practice in Scotland since the publication of the 'Baseline study of housing management' in 1995. Aims to assess current housing management practices, using information from a postal survey, focus groups and an analysis of secondary data, and to make comparisons

with the baseline study. Describes the findings on: the organisation of housing management (with figures on number of employees, tenancies, performance information gathering, etc); tenant participation; housing allocations; homelessness services; void management; rent arrears performance; anti-social behaviour and crime; housing management and community care; property management services; and housing management and social inclusion. Looks at the sources of good practice guidance used by the housing organisations, and the need for more guidance on certain topics. Includes an appendix on policy responses to low demand. The findings of the research project are also published in two other reports: 'A review of the literature' and 'Case studies, conclusions and recommendations'. There is also a six-page research summary that outlines the overall findings from the research.

Scottish Courts, (2002), **Opinion of Lord Wheatley in the cause HANOVER (SCOTLAND) HOUSING ASSOCIATION LIMITED, Petitioner; For Judicial Review of a decision of MICHAEL SANDFORD Arbitrator**. Edinburgh: Scottish Courts.

Lord Wheatley's recent adjudication in the Judicial Review of a case brought by Hanover Housing Association Ltd against Michael Sandford, adjudicator in relation to Hanover's provision of management services to a private housing development they built and manage in Millbrae Gardens, Glasgow.

Scottish Consumer Council, (1984), **Under One Roof: A Guide for Flat Owners in Scotland**. London: HMSO.

Guide for all flat owners in Scotland, whether the property bought is a tenement flat, modern flat, a conversion or a former council flat. It deals with such questions as, who is responsible for repairs? Who pays? Whose job is it to instruct tradesmen to carry out work? The main aim of the guide is to inform owners about their rights and responsibilities. It also explains what owners can do to ensure that repairs are done to their satisfaction and that their building is properly maintained. It gives advice on practical help from surveyors and factors; financial help in the form of local authority grants and loans, and help from solicitors or advice agencies.

Scottish Consumer Council, (2000), **Home Truths: Experiences of Recent Homebuyers in Scotland**. Glasgow: SCC.

Report outlining a recent survey of house purchasers' experiences of the Scottish housing buying process. Mirrors closely the findings of a DETR study of recent buyers and sellers' that was conducted in 1997. Raised questions about the system of blind bidding and multiple surveys but found the issue of multiple surveys was confined to a few hot markets.

Scottish Consumer Council, (2001), **Consumers and the House-buying Process in Scotland**. Glasgow: SCC.

Research report that brings together the findings of various recent studies on house buying in Scotland and complements it with the results of a postal survey involving 2,000 recent buyers in five of Scotland's registration counties. Makes a number of recommendations for reform. Notes with concern the high number of purchasers who were not offered proper advice

from their solicitor on their title deed obligations. In particular notes that only half the flat owners surveyed had received appropriate information about the operation of common repairs and maintenance, while a third received no information at all.

Scottish Development Department, Building Control Division, (1983), **Phased Tenement Improvement Project**. Edinburgh: Scottish Office.

Report details a phased approach to carrying out the rehabilitation of tenement flats in an Edinburgh Housing Action Area. The first phase covered works of common repair and improvement, covering the common fabric and services, organised on a close by close basis. The second phase covered the informal repair and improvement to individual flats, carried out at a time to suit individual owners or tenants. The concept of two phases identifies how the work was organised, rather than the timing of execution of the works. In practice most houses had the second phase works completed before completion of the entire common first phase works. The compulsory powers of HAA legislation were played down during the project and the co-operation of owners was encouraged through the appointment of a Development Officer for the duration of the works.

Scottish Executive, (2000a), **Statistical Bulletin, HSG/2000 7**. Edinburgh: Scottish Executive.

Presents a standard analyses of housing activity including information on private sector house sales, new house building, improvement to existing dwellings and homelessness applications. Contains details of private sector improvement grants and rent registration statistics.

Scottish Executive, (2000b), **Titles Conditions (Scotland) Bill Consultation**. Edinburgh: Scotland.

Sets out the Scottish Executive's plans for the reform of the law on title conditions, and invites responses to these proposals. It also contains a draft Bill which was drawn up by the Scottish Law Commission. Executive notes its intention to introduce the Commissions Bill but has certain reservations that it wants to consult on. The main stated purpose of the reform is to ensure greater clarity in the law. The second is to reduce the number of outdated burden by making it easier to discharge them. These are core to the ambition of introducing a modern, rather than feudal, property ownership system.

Scottish Executive, (2000c), **A Framework Code of Management Practice for Owner Occupied Sheltered Housing**. Edinburgh: Scotland.

A voluntary code of good practice drawn up between public, private and voluntary organisations designed to improve the quality of management provided to private sheltered housing complexes. Sets down guidance on the procedures that managers should follow and the standards of service which owners should expect to receive. The code focuses on good quality management services and it is expected that its provisions, where relevant, should feature in management contracts. Notes that the imminent reforms of property law in Scotland are likely to support this code.

Scottish Executive, (2001), **Thinking About Buying: A Guide to House Purchase In Scotland**. Edinburgh: Scottish Executive.

A basic information booklet detailing the questions that prospective homeowners should be asking when contemplating house purchase. It also lays emphasis on the need to ensure that prospective owners are also able to keep the property in good repair.

Scottish Federation of Housing Associations, (1999), **Raising Standards in Housing**. Edinburgh: SFHA and Scottish Homes.

This document acts as the 'bible' for registered social landlords in Scotland. It aims to provide guidance on a range of landlord activities. Includes chapters on: allocations; factoring; governance and accountability; managing housing with support; maintenance; complaints; equal opportunities and management accounting. Each chapter discusses key principles; legal framework and good practice guidance on key topics. Appendices include samples and examples of documentation. Although not as comprehensive as the Chartered Institute of Housing manual, it does discuss the rationale for recommended practices and focuses on key issues.

Scottish Homes, (1994), **The Public Sector in Scotland**, Scottish Homes Working Paper. Edinburgh: Scottish Homes.

Statistical analysis that looks at the size and distribution of public sector housing, types of housing and socio-economic characteristics of tenants. Reports on housing costs and income levels, Right to Buy, and transfer of public sector stock. Covers the residualisation of public stock.

Scottish Homes, (1997), **Scottish House Condition Survey**. Edinburgh: Scottish Homes.

Details the findings of the Scottish House Condition Survey (SHCS) 1996. Outlines the survey's findings under the following headings: summary of findings, profile of housing stock, profile of households, below tolerable standard, dampness and condensation, repairs and costs, thermal efficiency and heating arrangement, access and adaptations, housing standards and services, repairs and improvements, housing aspirations, incomes and housing costs, housing satisfaction and rural housing. Includes details of key descriptors that were employed in the analysis, which relate to physical aspects of dwellings and socio-economic dimensions, together with information on the questionnaire used. Detailed appendices contain information on methodology, definitions and response rates.

Scottish Homes and Scottish Federation of Housing Associations, (1999), **Performance Standards for Registered Social Landlords**. Edinburgh: Scottish Homes and SFHA.

This updated edition of Performance Standards sets out the criteria that Scottish Homes will use to assess the performance of RSLs and is aimed at all landlords who register with Scottish Homes. It incorporates a Best Value approach and emphasises that the quality of compliance is important. RSLs are not only expected to have good written policies, but they must also demonstrate outputs and outcomes. The standards cover governance and

accountability; housing management (concentrating on allocations, voids, tenancy agreements, rent estate management and participation); maintenance; development and financial management.

Scottish Homes, (2001) **Performance Standards and Assessment Criterion**.
Edinburgh: Scottish Homes.

Document setting out the Performance Standards expected of RSLs and the assessment criteria under which housing associations and other registered social landlords will be judged.

Scottish Law Commission, (1998a), **Report on the Law of the Tenement**. Scot Law Com No 162. Edinburgh: Scottish Law Commission.

Scottish Law Commissions report on the reform of the common law, which was requested by Parliament in 1984. Contains two guiding principles. Firstly, all existing and future tenemental property will be subject to these default provisions, and these are detailed in Management Scheme A. Secondly, all existing ownership rights and responsibilities, as defined within the title deeds will remain in place. Overall, the proposals represent a legal compromise in which all existing property rights remain, but the background law is altered.

Scottish Law Commission, (1998b), **Reform of Real Burdens**. Scot Law Com No 106. Edinburgh: Scottish Law Commission.

Discussion paper on the reform of real burdens the responses to which fed into the Report on Real Burdens (see below).

Scottish Law Commission, (2000), **Report on Real Burdens**. Scot Law Com No 181. Edinburgh: Scottish Law Commission.

Scottish Law Commissions report on the reform of the law on real burdens. A substantial document, amounting to 505 pages, which details the current law and makes the case for reform. Proposes new rules for the creation of real burdens that will require to be written and registered in the property registers against both the benefiting and burdened properties. Also sets down special rules for community burdens and a model management scheme for these burdens which was previously discussed under the 'law of the tenement' reforms. Finally, proposals are made to make it easier to vary or lessen burdens. Recommendations will apply to all burdens no matter when they were created.

Sim, D, (1995), **The Scottish House Factor: A Study in Housing Management**.
Stirling: Housing Policy and Practice Unit, Department of Applied Social Science, University of Stirling.

Describes traditional Scottish tenements and the background to their development. Outlines the responsibilities of the various owners and focuses on the Scottish practice of factoring, and in particular looks at the way in which the factors' role has changed in recent years. Examines the factors' responsibility for repairs and maintenance, and discusses the relationship between the amount of rent and repair and improvement work. Looks at attitudes of both owners and factors to repair work. Considers the increasing role of housing associations and local authorities in the factoring process,

and mentions the impact of Compulsory Competitive Tendering.

Stanforth, J., MacLennan, D., and Malcolm, J., (1986), **The Delivery of Repair Services in Public Sector Housing in Scotland**. Edinburgh: Scottish Office Central Research Unit.

Comprehensive study of local authority council house repair and maintenance services. Used a case study approach that looked at practice in 6 local authority areas. Found a variable quality of service and made a number of suggestions as how the service could be improved through the adoption of good practice.

Welsh, J, (1999), **In A Fix: The Views and Experiences of Owner-Occupiers in Scotland Sharing Common Repairs Responsibilities with the Council**. Glasgow: Scottish Consumer Council.

Details the experiences of homeowners in Scotland who share common repair responsibilities with their local authority as a result of buying their council houses. Discusses council attitudes towards homeowners, getting repairs done, recouping costs, the quality of the work done and consultation with owners. Looks at the amount of information available to owners before purchase and sources of information about common repairs. Reports on people's experiences of common repairs, the factoring service in Scotland and buildings insurance. Provides appendices with a summary of a report on how local authorities manage common repairs to property in mixed ownership in Scotland, and also the survey data from six council areas.

White, S, (2001), **The Pattern of Private Sector Housing Grant Activity in Stirling 1995 –2001**. Dissertation submitted for Diploma in Housing Studies, University of Stirling.

Dissertation study of the demise of Stirling Council's Non HRA budget over that last six years using a specially created data set. Reveals the switch away from comprehensive Council sponsored grant funded renewal projects to one off awards to individual homeowners on a first come basis. Also notes a rise in grant work associated with property adaptations which meet the Council's community care ambitions.

Wortley, S., and Steven, A., (forthcoming), The modernisation of real burdens and servitudes: Some observations on the Title Conditions (Scotland) Bill Consultation Paper, ***Scottish Law and Practice Quarterly***.

Academic article examining a number of issues raised in the Scottish Law Commission's Consultation Report on Real Burdens. The authors argue that the Scottish Executive, by seeking to accommodate certain broader policy objectives detailed in their draft Title Conditions (Scotland) Bill, may dilute the overall impact of these reforms.

Young, R., and Paterson, L., (2000), **How Fit is your House**. Edinburgh: Scottish Homes Home Point.

A Scottish Homes Home Point guide to external housing maintenance, providing practical advice, with the aid of pictures, about what to look out for in relation to disrepair. It then details how to deal with architects and

contractors in resolving any major problems, giving advice on getting quotes and dealing with building contracts.