

For Discussion

Agenda Item 8.1
Date of Meeting: 30/04/25

To: The Management Committee
From: The Technical Services Manager
Subject: Damp and Mould Case

1. Introduction/Purpose

- 1.1 The purpose of this report is to present Committee with information relating to an ongoing damp and mould case which is the subject of legal proceedings and gain the views of Committee for the potential next steps.
- 1.2 In December 2024 we received a court citation relating to a property that claimed we were in breach of our landlord duties by failing to keep the property in a wind and watertight condition. That works to the property should be carried out within 28 days to insulate the walls and floors to new build standards, replace the windows to new build standards, re position radiators, re plaster beneath the windows, replace all areas and finishes damaged by mould. Failure to do these works within 28 days then a payment of £20,000 would be sought. Payment of damages of £12,000 and court expenses are also sought. The full Citation is available on the resources section of oneAdvanced (Committee Meeting – Additional Information\April 2025\ Agenda Item 8.1).
- 1.3 The property is a 4 in a block, 3 apt lower flat in the SST stock. It was improved circa 2008-9 prior to the stock transfer in 2010 – EWI (external wall insulation) and new windows. It has a sole tenancy with one other occupant with permission to reside. The block is factored by Lowther and comprises of 2 owners and 2 Rosehill tenants (both lower flats).

2. Timeline

- 2.1 Prior to a report of drips from a window cill during September 2022 no repairs had been reported since May 2020 and no previous reports of the drips or damp and mould since the tenancy commenced during October 2020. We have records that date back to 2010. The tenant alleges that this was an issue from 2016/17 when his mother was the tenant. During the visit in September 2022 the windows were checked and it was reported that the issue was condensation.

2.2 During December 2022 mould was reported, a Technical Officer visited the property and advice was given to address the condensation. At this point the property was inspected for obvious building defects and none were found. The notes from this visit included providing advice to the tenant about heating and ventilation of the property and the mould presented was on the frames of the windows. At this point we did not do follow up visits on mould cases as we were in the process of developing our approach to damp and mould.

2.3 A disrepair claim was received from Lanarkshire Law on 11.10.23 this prompted a further visit to the property, further works being instructed, passing the claim to our insurers and at that point we also commissioned a building surveyor (Whitecross) to provide an impartial report into the property as the disrepair claim also included a report by a Professor Tim Sharpe (Architect). Both reports are available on the resources section of oneAdvanced (Committee Meeting – Additional Information\April 2025\Agenda Item 8.1).

The disrepair claim was refuted in writing by Rosehill and set out some proposed additional work to help assist the tenant to control the condensation in their home along with offering our Welfare Rights Service. The Whitecross report notes the level of poor air quality in the property.

2.4 A follow up visit was carried out in April 2024 that showed a greatly improved environment, and further minor works were undertaken with a further follow up visit scheduled as per our Damp and Mould Policy.

2.4 The court citation was received on 12 December 2024.

2.5 A further follow up visit was carried out on 19 December 2024. The responses are noted below in an extract from the inspection sheet.

Questions for tenants :

1. Have you noticed any difference since work has been done ? YES, NO MOULD
2. Are you still experiencing mould issues or any new mould issues? NO
3. Are you happy that the work done has rectified this issue ? YES
4. Do you want us to carry out a further follow up in a couple of months ? YES

- 2.6 The citation was passed to our solicitor TC Young and our insurers Zurich. Zurich advised that they would appoint a solicitor to act on our behalf and we confirmed with TC Young that this was an acceptable approach. The solicitor confirmed that Zurich in terms of settling the claim would only pay out for the damages part of the claim and not any of the building works or legal fees.
- 2.7 Full records of the property along with narrative was provided to the appointed solicitor Clyde and Co during January. At the end of January Clyde and Co intimated that they would no longer be representing Rosehill in this case as the amount of damages indicated by the pursuers solicitor only amounted to a few hundred pounds so Zurich would no longer be defending the claim as the other element relating to the building works was the largest part of the claim. At this point we reverted to using TC Young.
- 2.8 All information provided to Clyde and Co was passed over to TC Young and Clyde and Co also shared their case file with TC Young. TC Young reviewed the case and suggested that in the first instance we appoint an impartial specialist surveyor to report on the condition of the property along with reviewing Professor Tim Sharpe's report. They advised our previous report provided by Whitecross could be deemed biased as we appointed them and have previously used them on a handful of occasions.
- 2.9 TC Young appointed an independent surveyor, Greig Adams who carried out a visit to the property on 12 March 2025 and prepared a report dated 25 March 2025. In summary the report concludes that:
- The Property is presently wind and watertight whilst various improvement works have already been undertaken prior to his inspection.
 - Greig was unable to confirm whether the property is reasonably fit for human habitation without further investigation into the underlying causes by recording environmental data present during instances of condensation and also to establish if this is a Landlord related matter or otherwise.
 - The trickle vents on the current windows provided adequate ventilation at the time of the inspection.
 - The repositioning of radiators is not considered essential to preventing condensation and mould, in the absence of sufficient environmental data collection. Further, Greig states that defining remedial works without determining the source(s) appears illogical.
 - It is premature and speculative to suggest that further thermal upgrade is either necessary or that there is a breach of requisite standards in relation to same. There is a lack of adequate recorded

data during relevant periods when the property is affected by condensation and/or relevant mould growth conditions in order to establish the underlying cause(s) resulting in mould contamination.

- In relation to the removal and replacement of walls, Greig was unable to concur that such remedial works are necessary or reasonable. It is unclear on the technical basis as to why complete replacement are required as a necessity. Drying operations combined with mould decontamination and cleaning works would typically suffice to such parts.
- The report concludes that further investigative works are required to truly identify the cause(s) of the condensation and mould.

The full report is available on the resources section of oneAdvanced (Committee Meeting – Additional Information\April 2025\ Agenda Item 8.1).

2.10 The report was reviewed by both myself and TC Young and it was decided that the next course of action would be to sist (pause) the case to carry out further investigative works. This would involve data loggers being placed in the property.

2.11 TC Young motioned to sist the action to allow for further investigations to be undertaken into the underlying causes of the condensation and mould within the property. They submitted that it would be premature to fix a date of proof (court date) on the basis that further investigation was required on the recommendation of Greig Adams following his inspection in March. TC Young submitted that Greig could not concur that the works suggested by the pursuer would reasonably reduce the condensation and mould issues and that significant sums could be expended with no guarantee that this would solve the issues. TC Young submitted Greig's suggestion that dataloggers are installed to problem areas within the property in order to obtain environmental data that can be reviewed, and the underlying causes can then be determined. TC Young advised that Greig suggested this is done during colder months and therefore a sist is sought to allow the necessary investigations to take place in the winter months. TC Young submitted that remedial and improvement works have been undertaken by Rosehill and, in Greig's opinion, the property is presently wind and watertight. Further, TC Young submitted that we are a charitable organisation and therefore any expenditure must be justified as ultimately it may have an impact on our ability to provide our services.

The pursuer's solicitor opposed the motion to sist. He submitted that the foundation of the pursuer's case is based on the opinion of Professor Sharpe. He submitted that the report was intimated in September 2023 and that Rosehill have been on notice since then. Further, he advised that it is the pursuer's position that the issues have been ongoing since

he took over the property in 2020. He then submitted that Rosehill have had ample opportunity to carry out the necessary investigations.

The Sheriff considered the submissions. Unfortunately, the Sheriff was not persuaded to sist the action and was minded to close the Record and fix a proof (court date) owing to the length of time this matter has been ongoing. In light of this, TC Young requested that the proof was fixed for a date not sooner than December so that the suggested investigations could be undertaken. Sheriff Taylor was not minded to fix the proof at that time.

We currently await the proof date (court date).

3. Next Stage

- 3.1 TC Young advised after the above decision that it leaves us in a tricky situation as we are not able to carry out the further investigative monitoring works during the colder months as recommended. In simplistic terms, dataloggers can be installed but will provide only a limited view on matters at this time. There's also a risk that nothing of use is recorded if there's no condensation or mould risks during the monitoring period, which is a possibility.

With this in mind TC Young are advising meeting with themselves and Greig Adam's to discuss our options and are advising we may wish to take a view on settling the matter with the tenant. We are in the process of arranging this meeting.

- 3.2 To date we have incurred costs of £4,300 comprising of TC Young and Greig Adams fees. Rosehill staff costs have not been calculated.

- 3.3 We need to look at the pros and cons of defending or settlement;

3.3.1 Defending

Pros	Cons
We could win the case based on our records, actions and the independent surveyors views.	Substantial costs on top of already incurred costs – see 3.2 and anticipated to be in the region of £10,000 excluding staff costs to defend with no guarantee of the outcome – potentially a 3 day proof with TC Young's cost being circa £2,200 to attend along with Greig Adams's cost to attend of potentially £500 / day. TC Young

	will also be required to prepare for the case and if successful we would be liable for court costs as well. Staff would be required to attend the proof.
Court rules in our favour and therefore we would not need to carry out the proposed works or pay any damages.	If defence does not go in our favour, then costs payable to tenant would be £20,000 (or carry the works out likely to be in the region of £90,000 as we would EWI our other property), damages of £12,000 and court expenses to the pursuer which could be similar to our legal fee of £10,000 noted above.
Initial damages advised to Clyde and Co of several hundred pounds not £12,000 as per the citation.	Defence does not go in our favour, and we carry out the works but the tenant still continues to have a condensation and mould issue. This could potentially be made worse by increasing the insulation and air tightness of the building via EWI and new windows.
Insurance should cover the cost of damages but not works or compensation for no works.	Reputation if we lose
Our independent surveyor has confirmed property is wind and watertight and the proposed suggestions by the tenant's expert have been questioned.	We do not have a copy of the signed tenancy agreement. This may lead the tenant's solicitor to attack our record keeping etc.
Protecting our reputation	Bad publicity
Opportunity to present our case	Stress on staff of attending court
Able to highlight the composition of the block in terms of owners and tenants – owners would need to agree to works being done. Potential to only re do EWI to bottom flats but ideally best technical solution to increase thermal properties of complete block.	Unable to get owners to agree to the works. We don't have majority share of block and do not factor the block. Lowther would need to pursue agreement for works to the walls as these are common elements.

3.3.2 Settlement

Pros	Cons
We minimise our financial exposure	Unknown settlement figure but assumed less than requested in the Citation (£20,000 or works and £12,000 damages)
Staff are not involved in preparing for court and attending court.	Potentially sets precedence for other properties of similar stock / any damp cases in Rosehill stock.
Quicker outcome	Reputation
Less stressful on staff	Perception of guilt
Removes the need to get consent for common works.	Negotiation of settlement could become as costly as defence
In control of the outcome	

3.4 This case could possibly lead to a Notifiable Event under Governance and organisational issues relating to any legal proceedings taken against the RSL which may have significant consequences for the RSL in the event of success.

4. Risk

4.1 When considering this case we have identified the main risks under the following risk categories and the measures we could take to mitigate such risks.

Risk Category	Mitigating Measure
<ul style="list-style-type: none"> Financial – cost of defence or settlement Reputation – bad publicity regarding case and outcome Health & Safety – condensation has potential to still to occur if case settled or won 	<p>Early settlement or win case</p> <p>Win case but no guarantee of outcome; settlement may keep the case ‘quieter’</p> <p>Monitor property with data loggers to find route cause(s) of condensation</p>

5. Delivery of our Strategic Objectives

Area	Related Strategic Objective(s)
Defending our position that we have a wind and watertight home	1. Provide high quality affordable homes
The decision to settle or defend	6. Use resources efficiently and effectively

6. Application of our Core Values

Area	Related Core Value(s)
Defending or settling this case	Accountable and Compliant Fair and Approachable Efficient and Responsible

7. Compliance and Assurance

7.1 Discussing our options to either defend or settle details how we meet our Regulatory requirements with reference to the following:

Compliance Source	Details
The Standards of Governance and Financial Management for RSLs Standard 5 - The RSL conducts its affairs with honesty and integrity.	GS5.1 - The RSL conducts its affairs with honesty and integrity and, through the actions of the governing body and staff, upholds the good reputation of the RSL.
The Scottish Social Housing Charter	4. Quality of Housing 5. Repairs, maintenance and improvements 13. Value for Money

7.2 Evidence Bank

Evidence	Assurance Exercise Location
<ul style="list-style-type: none"> Committee Report 	Regulatory Standard 5 – GS 5.1 The Scottish Social Housing Charter

7.2.1 Committee is reminded that our Assurance Exercises are available in the Committee Log-in Area of our website, which Committee can access at any time.

8. Summary

8.1 In summary Committee have been presented with information relating to an ongoing damp and mould case with a view to gaining their views on the potential next steps

8.2 Risk has been considered at Section 4.

8.3 Section 5 shows how dealing with this case contributes to the delivery of our Strategic Objectives.

8.4 Section 6 shows how dealing with this case contributes to the application of our Core Values.

8.5 Section 7 shows how we comply with Regulatory requirements.

8.6 Committee are asked to note the content of the above report and discuss.