

**For Decision
CONFIDENTIAL**

Agenda Item 6.1
Date of Meeting:21/05/25

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 update Committee with further information relating to an ongoing damp and mould case which is the subject of legal proceedings and gain the decision of Committee for the next step. At the April 2025 Meeting, Committee was presented with a detailed report relating to this case.

2. T C Young Meeting

2.1 Both myself and the Director met with TC Young and Greig Adams (specialist expert surveyor appointed by TC Young) to further discuss the case. TC Young were represented by Fraser Cowan and Rona MacLeod.

2.2 Initial discussions centred around Greig and his view of the information we have and that of Professor Sharpe. Greig is of the opinion that we cannot prove the source of the condensation without further data. What Professor Sharpe states in some cases may be true but it is not proven/disproven without the data. Professor Sharpe is well known academic and is subject to discussions at training days and his name comes up at first tier tribunals (private rental sector) regularly. Professor Sharpe is a well-read professional, a member of a considerable number of working parties / panels / boards, published many papers and is involved in multiple research programmes. The general view of both Greig and TC Young is that the Sheriff will not understand the need to have the data and defer to the views of Professor Sharpe. Greig says he comes across very well and is held in high regard.

2.3 TC Young advised that a vast number of cases settle rather than go to court and that it does not show weakness to settle. Any settlement would be made without prejudice, and the claimant cannot re-claim for the same period. They could make another claim but only from the date of settlement onwards. If settlement cannot be reached then the case would proceed to trial.

- 2.4 TC Young advised that the difficulty of defending the case is that currently there are no judgements out there for consideration. Ultimately if we decide to defend and we lose, a judgement will be made against Rosehill and we will have a formal court judgement against our name.
- 2.5 Both Greig and TC Young said that they can only advise and we have to make the decision on what to do but on balance they were both in agreement that settlement would be our best option with a guaranteed outcome.

3. GWSF Discussion /Query to Members

- 3.1 I had a lengthy discussion with David Bookbinder, Director GWSF regarding this case. He would have liked to be in a position to help fund a test case but understands why this doesn't work on a practical level and equally why no one has yet taken a test case to court for fear of the outcome and spending tenants rent money to defend something you might not win. He offered to put out an anonymised email to see if other RSLs were in the same position. We agreed to this approach.
- 3.2 We received 7 responses; several related to cases when the respondent knew of a case from other RSLs where they had previously worked. Two offered help in understanding Professor Sharpe's report and one offered the name of their expert surveyor. One case although mould was related to an ill health case. I have reached out to one organisation that currently has a live case but they are unsure if it will go to court or not. No one confirmed that they have had a Professor Sharpe case that they have gone to court with. Several talked about running holes through Professor Sharpe's report which is what we initially tried to do.

4. SHR

- 4.1 The Director contacted our Regulation Manager at SHR on 01/05/25 to update them of the position of this case. Our regulation manager suggested we err on the side of caution and submit a Notifiable Event. This was duly done on 02/05/25 and we have been advised to keep SHR updated.

5. Next Stage

- 5.1 Committee needs to decide whether to defend or attempt to settle, and if the decision is to settle what would that look like.
- 5.2 Included below are the pros and cons of defending or settlement that were set out in the April Committee Report;

5.2.1 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. |
|---|--|

5.2.2 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 | |

5.3 Following our meeting with TC Young we need to add strength to the con 'reputation if we lose' as this will involve a court ruling against Rosehill on a matter we now know is now subject to a Notifiable Event. As this would be a landmark test case it would be subject to increased media coverage.

5.4 The matter is for Committee to decide whether to defend or settle, but after further discussion and ongoing review between the Director and myself following the meeting with TC Young and taking on board both TC Young and our expert surveyor Greig Adam's views, our opinion is that we should seek to settle this case.

5.5 Settlement Package

5.5.1 When we met with TC Young they offered to provide some information on what historic cases have settled for, and these appear to have settled for compensation of approximately £1000 – 1700 / per year of experiencing dampness/ mould plus court/ legal expenses. Generally, some form of works are also carried out like washing down mould/ repairing plasterwork/making good finishes.

- 5.5.2 In terms of court / legal expenses they are currently estimated to be in the region of £6,000 but may vary depending on when any settlement takes place. They are a fixed part of any negotiation and therefore will need to be paid for at actual cost.
- 5.5.3 Ideally any settlement we agree to, would include for the agreement of the tenant to allow data loggers for a substantial period of time to monitor the environment so we can ultimately establish the root cause of any dampness and instruct works/ provide advice as necessary. Refer Section 2.2 and Greig Adam's report tabled with the April 2025 Committee Report. This may involve a joint motion to sist (delay) the case while data loggers are installed and allowed to monitor over the colder months and then a future agreement of the correct works or additional advice. The compensation payment would be paid at the point of agreement.
- 5.5.4 As the citation called for specific work to be carried out e.g. external wall insulation, floor insulation, new windows and radiators moved under the windows we may need to agree to carry out some of these works to reach settlement. We have already factored replacement windows into our 30 year projections in 7 years so these works could be brought forward and used in the settlement process. We could also use the repositioning of the radiators as part of the settlement process as this involves lower cost works to the internal of the property and not any common works to the 4 in a block that would require owner agreement.
- 5.5.5 Due to the timing of any proposed settlement it may be practical for Committee to delegate to The Director to agree the final negotiation offer on its behalf. The negotiations may be complex involving a variety of measures and counteroffers, both the Director and myself will work closely with TC Young. It is proposed that Committee decide an upper limit of settlement to facilitate this process.
- 5.5.6 Following discussions with TC Young the upper limit of settlement for compensation would be £12,000 as stated in the citation along with some form of works and all court/ legal fees. It would be prudent for Committee to set this as its upper limit for settlement to allow the greatest chance of success.
- 5.5.7 Along with the compensation settlement the legal fees would need to be paid and some form of works. In summary, the maximum settlement delegated to the Director would include a compensation payment of £12,000, cleaning mould, re pairing plaster, re doing finishes, new windows, relocated radiators and the installation of data loggers along

with court fees/ legal expenses. TC Young anticipated that settlement could be agreed substantially below these levels.

5.5.8 Part or all of the compensation claim may be payable from our insurers.

6. Risk

6.1 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 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> |

7. 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 |

8. Application of our Core Values

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

9. Compliance and Assurance

9.1 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 |

9.2 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 |

9.2.1 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.

10. Summary

10.1 In summary, Committee has been updated with further information relating to an ongoing damp and mould case which is the subject of legal proceedings and asked for its decision on whether to defend or settle.

10.2 Risk has been considered at Section 6.

10.3 Section 7 shows how dealing with this case contributes to the delivery of our Strategic Objectives.

10.4 Section 8 shows how dealing with this case contributes to the application of our Core Values.

- 10.5 Section 9 shows how we comply with Regulatory requirements.
- 10.6 Committee is asked to consider the content of the above report, discuss and decide whether to defend or attempt to settle the case. If the decision is to settle what is the maximum value / content of the settlement to be delegated to The Director.