



Owners & Maintenance Policy

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Charter Outcome	Number(s)
The Customer/landlord relationship	1. Equalities, 2. Communication, 3. Participation
Housing quality and maintenance	
Neighbourhood and community	6. Estate Management, anti-social behaviour, neighbour nuisance and tenancy disputes

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Department	Asset Management & Corporate

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Notes

Policy drawn up with reference to:-

Property Factors Code of Conduct 2011 effective from 16 August 2021
The Housing (Scotland) Act 2014
General Data Protection Regulations 2018
The Scottish Parliamentary Working Group on Tenement Maintenance
Scottish Housing Quality Standard (SHQS) and the Repairing Standard (RS)
The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017
Title Conditions (Scotland) Act 2003

Policy Development

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Reviewed: April 2017
Reviewed: September 2022

ANGUS HOUSING ASSOCIATION LIMITED

OWNERS AND MAINTENANCE POLICY

1.0 Introduction

- 1.1 The policy of Angus Housing Association is to provide to owner occupiers of former Scottish Homes and Angus Housing Association houses, the service consistent with our role as Landlord, Owner and Factor. The Association may provide factoring services to provide owners as part of recent new build developments. The Association will comply in all respects with the Property Factors (Scotland) Act 2011, and contained within this Act the revised Code of Conduct effective from 16th August 2021
- 1.2 Furthermore, it is the policy of Angus Housing Association to inform owners about works for which they have a liability to contribute, in accordance with the requirements contained in the Titles. In addition all owners should be informed, in sufficient time, of the likely cost of future planned maintenance works over the forthcoming financial year. In some instances the Association will consult with owners where future year's maintenance programmes include large scale, or complex common works. This information should be sent out at the beginning of each financial year.
- 1.3 The Association also aim to recover in full those costs incurred for which owners have a responsibility to pay a share.

2.0 Purpose of this Policy

- 2.1 It is the purpose of this section to define the circumstances in which owners must be informed and the circumstances in which they must be consulted.

3.0 Legal Obligations and Angus Housing Association's Policy

- 3.1. Many of the disputes which arise from work done and for which an owner has a responsibility to contribute, come about because of a lack, or a complete absence, of information about what is proposed, being made available to owner occupiers.
- 3.2. The general principle of the relationship between Angus Housing Association and owner occupiers which must be observed at all times is that **Angus Housing Association does not have an absolute right to incur expenditure on behalf of others without due regard to the rights of those individuals.**
- 3.3 In some instances these rights can be recognised through a compromise. **In other instances these rights can only be preserved through**

effective communication or through consulting owners about their wishes.

- 3.4 It is essential to differentiate between those issues which can be described as Angus Housing Association's Policy and those for which there is a legal obligation.

Note: Acting as factor is often on the basis of self interest as the appointment of an alternative factor by a majority of owner occupiers would result in a loss of control for Angus Housing Association. Where an alternative factor is appointed, Angus Housing Association would have an obligation to pay the share of the cost of the work, agreed by all the relevant owners, in proportion to the number of tenanted properties.

4.0 **Legal Obligations**

- 4.1 The requirements of the NINTH CLAUSE in the Standard Deed of conditions. This states the need to accept a majority decision, in the event that owners are in the majority. **It is implicit in this clause that owners are consulted about proposals before a contract is placed or work instructed).**
- 4.2 No discretion is available in relation to the legal obligations expressed in the Titles.
- 4.3 There is one significant aspect of the general principles identified in this module, which needs to be understood. It relates to Angus Housing Association's statutory (safety) obligations as land owner. These statutory obligations DO NOT apply to owner occupiers.
- 4.4 The first step must always be to inform and consult with the owner occupiers. Where agreement is not possible but where the work is considered **essential** to remove an existing hazard, owner occupiers **must be informed** that, because of our statutory obligations, Angus Housing Association intends to proceed with the remedial work and to recover the relevant share from each owner occupier, including legal action to recover these costs where this is appropriate. **This will apply irrespective of whether owners are in the majority.**
- NB. However, AHA's solicitor must be consulted to obtain his/her advice where owners are in the majority in any ESTATE.
- 4.5 There may be instances where Angus Housing Association contractor(s) require access to land, e.g. owner occupier's garden space, for the erection of scaffolding or to gain access to drains. In such circumstances, while Angus Housing Association has a legal right to such access, prior notification **must** be provided, unless it is an emergency. Even in an emergency, the owner(s) should be informed about what we need to do, preferably before work starts e.g. if someone is at home. Alternatively, a note can be left in the owner

occupied house(s), explaining the reason for the emergency and what works are being done.

5.0 **Emergency or Urgent Reactive Maintenance Works**

- 5.1 Reactive maintenance works of an emergency nature or work requiring urgent attention to **remove an existing safety hazard** to tenants, staff or members of the public must be carried out within the priority category allocated to them, (as per the Repair and Maintenance Policy). In such circumstances it is considered more important to remove the hazard than it is to inform owner occupiers of the intention to do so in advance of instructing the work. **NONETHELESS, irrespective of the value of the work, owner occupiers must be informed as soon as practical after instructing the work**, as they may wish to try and recover all, or a proportion of their share of the cost from their insurers.

6.0 **Non Urgent Reactive Maintenance Work**

- 6.1 If the work is considered essential, it should be instructed and the cost added to the owner's account for recovery at the end of the invoicing period.
- 6.2 If the work is essential but likely to cost more than £250, per property, owners **MUST** be informed before work starts. This will involve justifying to them that the work is essential.
- 6.3 If the work is simply desirable, irrespective of whether it is below the £250 limit, owners **MUST** be consulted before work is instructed. If owners are in the majority, the majority decision must prevail. Majority in this case could be in a block, or in the feuing area. It depends on the nature and location of the proposed work.

7.0 **Communicating Repairs**

- 7.1 It is essential that Angus communicates progress of reactive repairs within common areas to owners. Where a resident has reported, its important the Association forwards a letter to all owners that have an obligation to pay a share of the costs of that repair. Every effort must be made to notify owners before the work is carried out.

8.0 **Planned Maintenance Work**

- 8.1. It is essential that owners are informed and consulted about proposed planned and cyclical maintenance work to common areas. This could be carried out at the same time as tenants are informed but must allow sufficient time to allow owners to respond to the proposed works before a contract is placed.

8.2. As before, Angus Housing Association must be in a position to justify the essential nature of the work. Angus Housing Association should also be prepared to adopt a degree of flexibility, e.g. if owners can arrange to have the work carried out to the same standard and specification, at a lesser cost and within the same timescales, we should be prepared to consider that approach and deduct the work from the proposed contract. We should only do so if the owner has written support from any other owners affected by the works. To maintain a degree of control and consistency, we should only consider such requests in exceptional circumstances.

8.3 It is important where large scale, complex or expensive common maintenance works are planned, signed mandates are obtained from owners participating in the contract. It should be recognised that the Association still holds the authority to proceed and charge for these works where we are in a majority. However the presence of a mandate provides unequivocal evidence that owners are committed to paying their share of costs.

9.0 **Improvement Works**

9.1 Although owners do not have an obligation to contribute to the cost of improvement works, it is nonetheless desirable that they are informed about our proposed works. This is especially relevant where the proposed works affect their environment through noise, dust, vehicular traffic, or by requiring access to property etc. In addition, owners may wish to voluntarily participate in the contract.

10.0 **Scottish Housing Quality Standard**

10.1 The requirements of the SHQS will in many estates involve private owner's participation to deliver, particularly with controlled entry systems and other common parts such as lighting, common entry doors, etc.

10.2 The Association must make every effort to consult and encourage private owners to take part in such contract works. If time and resources permit we may investigate the availability of grant funding.

10.3 The consultation process therefore must be conducted providing sufficient time for the owners to consider and respond. We must provide indicative costs and timescales. As mentioned previously it is important that signed mandates are obtained

10.4 Should owners fail to agree to participate, then:-

a) Where the work is regarded as an improvement, then the Association requires *full agreement of all owners*, even though Angus HA are in the majority. Only then can Angus HA proceed with the work. The

Association must maintain excellent records of its communication. We will however approach owners on at least one further occasion, ideally if there are similar projects planned in later programmes.

- b) Where the work is maintenance or component replacement, then the Association require a *majority* of support to progress with the work. Unless we achieve majority support then we cannot proceed and as above well documented records must be maintained. Again we will approach owners again at a later date as previously mentioned.

Should we fail to carry out the SHQS / EESSH work due to non participation of owners, then this must be recorded and reported to the Scottish Housing Regulator as an exemption.

11.0 Role of Local Authority

In certain circumstances, the local authority has statutory powers to instruct owners of land to carry out works, and it would be useful to discuss with the local authority whether the circumstances are such that they would be willing (or able in the circumstances), to exercise their powers.

12.0 Potential for Injury/Damage

Where Angus Housing Association considers the potential risk (of accidental injury or damage) to members of the public or their possessions, is so great that it, (and the potential risk of third party claims), is unacceptable, the owners should be informed of this assessed risk, and informed that irrespective of owner occupiers being in the majority, Angus Housing Association intends to instruct the remedial work and recover the relevant share of the cost from the owner occupiers, including legal action for recovery of these costs, where this is appropriate.

NB. AHA's solicitor should be consulted before the works are instructed.

13.0 POLICY REVIEW

This Policy will be reviewed on the following basis

- (i) Comprehensive planned reviews will be undertaken after 3 years.
- (ii) An interim review will be undertaken to comply with any new legislation or to address a specific issue.