

CONSULTATION ON A DRAFT REVISED CODE OF CONDUCT FOR PROPERTY FACTORS – SUMMARY REPORT OF CONSULTATION EVENTS.

Background

In addition to the public consultation which ran between 6 October 2017 and 15 January 2018, events were organised in late November / early December 2017 for interests to 'have their say' on the [proposals in the consultation](#). The events were held in Edinburgh, Glasgow, Aberdeen and Dundee. Over 100 delegates attended these events including factors, representative and advisory bodies and those receiving the services of a factor. At each event, discussion focussed on the various themes of the Code of Conduct (the Code), the proposed revised requirements of the Code as well as seeking views on the impact of the Property Factors (Scotland) Act 2011.

Throughout these discussions, delegates made suggestions for amendments to the draft revised Code. Many of these were of a detailed or technical nature and addressed common themes. The feedback raised at the events has also mirrored in most cases the responses provided to the public consultation. The responses to the public consultation have been [published](#) where permission was given by the respondent. The specific feedback received from these events will however be considered alongside all responses to the public consultation and the [analysis of responses](#). This will be used alongside other available evidence to inform the consideration of whether changes to the Code and any wider legislation affecting property factors are to be taken forward.

As with any public consultation exercise, it is noted that while those participating at the events generally had a particular interest in the subject area, the feedback expressed at the events cannot necessarily be seen as representative of the views of the Scottish Government, all the organisations and individuals attending the events and of wider public opinion. Some examples of feedback raised at the events were as follows:

Section 1: Written Statement of Services

- The WSS should be formatted and standardised up to a point with the flexibility for factors to include bespoke information as appropriate.
- A template WSS should be created which should be available online and be used as best practice.
- Standardising the WSS would have a huge cost, resource and time implication for factors. A standardised version would prevent owners and potential clients differentiating between services.
- The WSS should be simple, user friendly and written in plain language. It should fully explain its purpose and the terms used in the code should not be ambiguous
- Factors should have to evidence that a WSS has been sent.
- Further explanation should be provided in the WSS where a factor is operating on a custom and practice arrangement including the legal basis for that approach.

- The proposed requirements to provide a copy of the WSS to new owners within 4 weeks of the factor being made aware of change of ownership would cause difficulties. Factors sometimes do not receive information from conveyancing solicitors.
- Consideration should be given to preparing guidance for solicitors on informing factors where properties are purchased. Information provided in the WSS should also be included as part of the home report.
- There were arguments for and against the provision of information online. This would depend on client base. In some cases it would suffice to direct owners online however some factors provide services to owners who have no access to computers/internet.
- The provision of WSS to homeowners at least once on an annual basis and as part of any financial statement would have a cost, resource and time implication. The WSS should only be re-issued if changes have been made and only if the changes are significant and substantial.
- Factors should still be able to charge if arranging for documents to be available for inspection and issued electronically to owners. This would be reasonable where significant effort is required to collate such documents.
- The Code should provide specific timescales for factors to undertake the core services they provide to owners and place obligations on factors to explain why specific timescales have not been met in such circumstances.
- Information on a factor's obligations under the 2011 Act, its membership of trade and professional bodies (where applicable) and signposting to where decisions are made about compliance with the Act were not relevant to the WSS.

Section 2: Communication and Consultation

- More information to be provided to owners is a positive step as this may result in reduced complaints to the factor.
- There has to be a purpose in being required to provide additional information to owners and the benefits and cost impacts should be assessed.
- Placing information on a website is a positive step however a checklist or a further section in the Code should be considered to offer guidance to factors on what information needs to be provided to owners.
- The Code should place an obligation on a factor to offer options to clients on how they wish to receive information from their factor. Providing more information may lead to increased requirements on factors to consult with their clients.
- An outgoing factor should provide the incoming factor with information and vice versa where it is reasonable to do so. The Code should also specify what information should be provided. However further consideration should be given to how this can work in practice and how owners can exercise any rights in this area.
- Consideration should be given to require factors to set out any 'unacceptable actions policy' they may have in place and provide this to owners under the Code.

Section 3: Financial Obligation

- The timescales for providing financial information to owners should be re-considered as difficulties can take place in reconciling bills.
- Specific deeds and conditions may impact on a factor's ability to release and retain funds to owners.
- Subsequent banking regulations that have come into force since the Code was introduced may prevent factors from opening interest bearing accounts for groups of homeowners.

Section 4: Debt Recovery

- Consideration should be given on what constitutes 'timely' reminders to inform homeowners of any amounts they owe.
- Consideration should be given to allow factors to put information in their debt recovery procedure which sets out when an owner would be expected to settle any funds due to a factor after they had taken unsuccessful application to the Housing and Property Chamber.

Section 5: Insurance

- Consideration should be given as to whether it is proportionate for factors to annually notify of re-valuations in writing.
- Consideration should be given to situations where a factor uses an insurance broker and how that might apply to the requirements of the Code.

Section 6: Carrying Out Repairs and Maintenance

- Informing clients of the progress of work is sometimes difficult to do in practice. A factor should only be required to inform a homeowner when asked for this information.
- Further clarification is required as to what is deemed as 'commercially sensitive information' what is an 'inspection' and what is a 'financial interest'.

Section 7: Complaints Resolution

- Many factors particularly local authorities and registered social landlords already adopt standardised procedures for their complaints procedure.
- There should be flexibility to allow factors to handle complaints in a way that is appropriate for them.
- Options for alternate dispute resolution should be explored and how this could be used prior to referral to the Housing and Property Chamber.
- The retention period for holding information relating to historical complaints should be considered further and this should reflect recent changes to data protection legislation.

- The information on what factors can share with each other should be included and timescales for this information to be provided should be made clear.
- Further consideration should be given to the proposed requirement for incoming property factors to consider and respond to complaints made to it by an owner regarding any alleged failure to comply on the part of the previous property factor. This proposal was interpreted as also making the incoming factor responsible for dealing with the failings of a previous factor.

Impact of the Property Factors (Scotland) Act 2011

- The Act and the Code protects owners however there are limited protections for factors.
- Consideration should be given to develop a Code of Conduct for homeowners on how they act when liaising with their factor.
- There should more awareness raising of the Code and the Act. Difficulties are still prevalent in engaging homeowners and how informed owners are about their rights and obligations in maintaining common property and land.
- Concerns were expressed about inconsistency in decision making of the Housing and Property Chamber including the process for sifting applications.
- It was suggested that the majority of cases that are heard by the Housing and Property Chamber find in favour of the factor and that this incurred significant additional costs for factors in defending cases that was not necessary. The ability to reject cases which were vexatious was considered to be helpful.
- Factors should be awarded costs where an owner's application is not upheld by the Housing and Property Chamber.
- The Act had a positive impact on regulation and had raised standards. However the Act had also increased costs for factors particularly around the requirements for customer interaction.
- The Act had made some impact on bad practice but there should be tougher enforcement on those factors who fail to comply including those acting whilst unregistered.
- The wording of the Act could benefit from clarification given its ambiguity in certain circumstances.
- The property factor registration system can be problematic to use however it was recognised that work was on-going to make improvements to the register.
- The requirement to complete annual property and land returns on the register had some value however did involve a large amount of administrative effort. The proportionality of the benefit of this requirement in relation to the cost and effort required to undertake this should be considered.

Organisations which participated at the consultation events

Aberdeen City Council	Life Property Management
Abertay Housing Association	Link Housing Association
Addleshaw Goddard	Lomond Property Factors
Apex Property Factor	Maryhill Housing
Atrium Initiatives	McCarthy & Stone Management Services
Bield Housing & Care	Miller Property Management
Bute Factors	Milnbank Housing Association
Cernach Housing Association	Myreside Management
Charles White	New Gorbals Housing Association
Chartered Institute of Housing	ng Homes
City of Edinburgh Council	North Lanarkshire Council
Cloch Housing Association	Paisley Housing Association
Clydebank Housing Association	Parkhead Housing Association
Cullen Property	Partick Works
Dumfries and Galloway Housing Partnership	Port of Leith Housing Association
Dundee City Council	Property Managers Association Scotland
East Ayrshire Council	Queens Cross Factoring
East Renfrewshire Council	Redpath Bruce Property Management
Easthall Park Housing Co-operative	River Clyde Homes
Ethical Maintenance	Rosehill Housing Co-operative
FBR	Ross & Liddell
Fife Council	Sanctuary Scotland Housing Association
Fife Housing Association	Scottish Federation of Housing Associations
FirstPort Property Services Scotland	Scottish Housing Network
Govanhill Housing Association	Scottish Woodlands
Grampian Housing Association	Screenatumn
Greenbelt Group	Shettleston Housing Association
Hacking & Paterson Management Services	Southside Block Maintenance
Home in Scotland	Speirs Gumley Property Management
Hunters Estates	The Element Factors
Indigo Square Property	The Property Management Company (Aberdeen)
Inverclyde Council	Thenue Housing
J Reavley Factoring	Tollcross Housing Association
James Gibb Property Management	Trinity Factors
Kingdom Housing Association	Viewpoint Housing Association
Knowles Housing Association	West Highland Housing Association
Land Trust Residential Services	Williamsburgh Housing Association
Langstane Housing Association	Yorkhill Housing Association
Levern Property Services	Zurich Insurance
Lickley Proctor Lettings	

Six individuals also attended.

Thanks to everyone who participated at the events and to those who also responded to the formal consultation exercise.