

Housing, Regeneration and Planning

Consultation on the Property Factors (Scotland) Act 2011

Draft Code of Conduct for Property Factors

An Analysis of Responses

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This report summarises the responses to the Scottish Government's consultation document *Property Factors (Scotland) Act 2011: Draft Code of Conduct for Property Factors*. The consultation paper set out, and sought views on a statutory Code of Conduct for residential property managers and land maintenance companies in Scotland. The consultation was structured around 10 questions which invited responses to the proposed standards set out in the draft Code. In addition, the Scottish Government held a number of consultation events across Scotland for property managers, land maintenance companies and service users, and the feedback gathered from these events has informed the consultation analysis.

Main Themes

- Overall respondents generally felt that the content of the Code was appropriate. Some respondents – generally property managers – felt the Code should offer greater flexibility, allowing property managers to agree standards with homeowners. Others – generally but not exclusively homeowners – called for it to be more prescriptive, allowing less opportunity for interpretation.
- Some representative bodies and private individuals raised concerns about the implications of Title Deeds or contractual agreements between property factors and homeowners taking precedence over the Code of Conduct.
- A number of respondents suggested that the Code would benefit from clarification of some of the language used, as well as further explanation and supplementary guidance to support some of the individual standards.
- Many respondents made detailed comments and suggestions regarding individual standards, particularly in relation to the written statement of services and insurance.
- Some respondents were unclear about the status of the written statement of services, its relationship to other documents, and the requirements to update and reissue it to homeowners.
- Many property factors and their representative bodies felt that the requirement for a client trust account to be opened in the name of each separate group of homeowners where a sinking or reserve fund is arranged as part of the service could be potentially complex to establish and costly to administer. Many local authorities and RSLs suggested that individual client accounts were not appropriate to their circumstances and that client funds could either be accounted for separately in their accounts or held in a separate client account.
- Many property managers drew attention to the resources required to implement the Code and the potential implications for management charges. Others, particularly local authorities and RSLs, were concerned about the timescales for implementation.
- A number of respondents sought clarification and further consultation on issues relating to the registration of property factors, and the establishment and operation of the Homeowner Housing Panel.

Background to the consultation

The Property Factors (Scotland) Act 2011 creates a new statutory framework to offer protection to homeowners in Scotland receiving services from a property factor. The Act has three main elements:

- a statutory register of all residential property factors, including land maintenance companies, in Scotland;
- a code of conduct, to be developed by the Scottish Government, which all registered factors must comply with; and
- a new dispute resolution mechanism where homeowners can take complaints about factors to a Homeowner Housing Panel, created by expanding the role of the current Private Rented Housing Panel.

For the purposes of the Act, 'property factors' means property and land managers operating in Scotland, whether they are private businesses, local authorities or Registered Social Landlords (RSLs).

The Act comes into force on 1 October 2012 or 'such earlier date' as Scottish Ministers agree. This means that property factors must have applied for registration by 1 October 2012 and must meet the standards set out in the approved Code of Conduct unless the implementation date is brought forward.

The Act was introduced by a Member's Bill. Prior to this the Scottish Government consulted on proposed standards for a voluntary property factors' accreditation scheme.

The draft Code builds on these standards. It is organised into eight sections which reflect the wide-ranging role of property and land managers:

1. General obligations
2. Written statement of services
3. Communication and consultation
4. Financial obligations
5. Debt recovery
6. Insurance
7. Carrying out repairs and maintenance
8. Complaints resolution.

The consultation set out, and sought views on, the draft Code of Conduct. In addition to seeking written comment, the Scottish Government held a number of consultation events across Scotland and the feedback from these events has informed the consultation analysis.

The response

A total of 138 written responses were received to the consultation. However, there were a number of identical responses received which were treated as campaign responses. In two cases, more than one response was received from the same organisation. This resulted in 108 different responses being considered.

Respondents included private individuals and resident groups, Registered Social Landlords (RSLs) (or their subsidiary organisations), private property managers and land maintenance companies, local authorities and a range of other bodies.

The consultation analysis considered written responses and the views that emerged at the consultation events.

The views of consultees

1. General obligations

Many respondents indicated their broad support for the overarching obligations required by the Code. However, a small number of respondents felt that it was not sufficiently robust.

Some respondents raised concerns about the implications of Title Deeds or contractual agreements between property factors and homeowners taking precedence over the Code of Conduct. They were concerned that some homeowners would potentially not benefit from the Code and the improvements in factoring standards it was intended to bring.

A number of respondents highlighted the situation of homeowners living in developments under construction and felt that this situation required to be clarified in the Code.

Many property factors felt that greater clarification was required of the standard relating to record keeping.

Some private property factors queried the requirement for all staff and contractors to be familiar with the Code. Other respondents felt that the Code should go further in addressing staff training and equalities issues.

Some suggested that the Code should be more explicit about the employer/employee relationship which existed between a property factor and homeowners. Others suggested that the Code should make reference to the obligations and responsibilities of homeowners in relation to the management of common parts of their property.

2. Written statement of services

Several property factors were concerned about the resource implications and costs of introducing written statements.

Some respondents called for the Code to provide greater detail about how and when written statements should be updated. Some also questioned the level of information and detail which would be required. Concerns were also raised about the timescales for providing new homeowners with a written statement.

A number of respondents sought greater clarity about some of the language and terms used in this section of the Code.

Some respondents were unclear about the relationship between the written statement and other documents which may be used to communicate services to homeowners. Others questioned why it will not be a legally binding document.

There was some concern that property factors would need to review and, to some extent, interpret Title Deeds. One suggested that this would require legal opinion and suggested it should be the responsibility of homeowners and their solicitors.

There was significant concern about the proposed timescales for dealing with enquiries and complaints.

3. Communication and consultation

Many respondents felt this section covered the key matters relating to communications and consultation.

A significant number of respondents – particularly property factors – raised concerns about the requirement to consult on what may be very small pieces of work or in urgent situations.

Some respondents called for greater definition and clarity about the Code's requirements relating to out of hours arrangements.

Several private individuals and resident groups highlighted the importance of property factors making information accessible and clear. Some felt the requirement for property factors to provide feedback should be highlighted in the Code.

The importance of communication methods being accessible was identified as an issue for inclusion by others.

4. Financial obligations

Many property factors and their representative bodies queried the requirement for a client trust account to be opened in the name of each separate group of

owners, where a sinking or reserve fund is arranged. They suggested that this could be costly to administer and potentially complex to establish.

Some suggested that a separate client account would be a more appropriate mechanism, in line with the model the Law Society of Scotland requires solicitors to adopt. However, others argued for more transparent and rigorous accounting standards.

Many local authorities and RSLs felt that a requirement to establish separate client trust accounts was disproportionate to their circumstances. Some suggested homeowners' funds could be identified separately within their accounts, others proposed holding funds in a separate single client account.

A number of respondents sought clarification and further consideration of the timescales for providing a final statement of account where there was a change of property ownership or termination of a factoring arrangement.

While a number of private individuals highlighted the importance of having access to contractors' invoices and other supporting documentation, some local authority and RSL factors explained the challenges this posed for them.

Some respondents felt that further clarification was required of expectations in relation to the provision of a 'detailed' breakdown of charges and a description of works.

5. Debt recovery

A number of respondents sought clarification of some of the terminology used in this section.

Some private individuals called for further detail within the Code about the role of factors in pursuing outstanding debts.

A few property factors argued that they should be able to apply compound interest on late payment of invoices.

Some respondents felt that the standard relating to debt recovery procedures should be expanded. Some suggested that it should highlight the use of alternatives to legal action. Others that debt recovery procedures should not be instigated while an invoice is in dispute.

6. Insurance

While many respondents felt that this section covered the broad areas required, there were a significant number of comments. Most concerned how the Code deals with buildings and contents insurance. These

related to the level of information and advice available to homeowners, transparency in the procurement of insurance and achieving value for money.

Several respondents felt that the standard in relation to property factors declaring any interests in the procurement of insurance should be strengthened. Others felt that the maintenance of up to date property valuations should be a requirement of the Code.

There was concern among some that the section did not adequately reflect the position of RSLs. They argued that the way RSLs purchase and manage insurance for factored owners may be quite different to how private property factors operate – although some highlighted that their approach often provided very good value for customers.

7. Carrying out repairs and maintenance

Many respondents were satisfied with the content of this section and there was particular support for increased openness and transparency about repairs and maintenance.

Some respondents felt that the section did not adequately recognise the role of the factor as an ‘agent’ of homeowners.

Many respondents, including property factors, sought greater clarity on the level of information to be provided to homeowners. They felt there could be more guidance on the provision of information to homeowners in relation to repairs and maintenance.

Some respondents from across the respondent groups felt that there should be more emphasis in this section on communicating openly with groups of homeowners. Many private individuals, resident groups and others felt that consultation with homeowners was particularly important for larger works.

Many respondents argued that despite the requirement for disclosure, property factors should not be allowed to receive commission from contractors.

Several RSLs felt that the standard in relation to the appointment of contractors needed further clarification to take account of their procurement arrangements.

8. Complaints resolution

A number of respondents felt that some of the terminology used in this section required greater clarification.

Some private property managers suggested that there should be a charge for handling complaints. One respondent suggested this could be refunded where a dispute was resolved in favour of the homeowner.

Overall clarity of the Code

Most respondents felt that the Code was clear and understandable. However, some of these suggested that the Code would benefit from further explanation through the development of guidance and template documents. They also proposed training events to ensure that the Code is implemented as intended. Others suggested that the Code should be promoted widely to raise awareness among homeowners.

Some respondents suggested that complementary advice should be prepared on the responsibilities of homeowners.

Property factors highlighted the financial implications of implementing the Code, potentially leading to increases in management fees.

There was significant concern about the timescales for introduction of the Code of Conduct among some consultees, particularly RSLs and local authorities.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.