

Code of Conduct – Review

Stakeholder Comments – Template

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A copy of the original consultation document is available on the Scottish Government website at:

<https://www.gov.scot/publications/consultation-draft-revised-code-conduct-registered-property-factors/>

A summary of the responses to the consultation are available at:

<https://consult.gov.scot/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors/results/consultationonadraftrevisedcodeofconductforregisteredpropertyfactors-analysisofresponses.pdf>

Code of Conduct (the Code) – Questions

1. **Overarching Standards of Practice:** **Page 8**

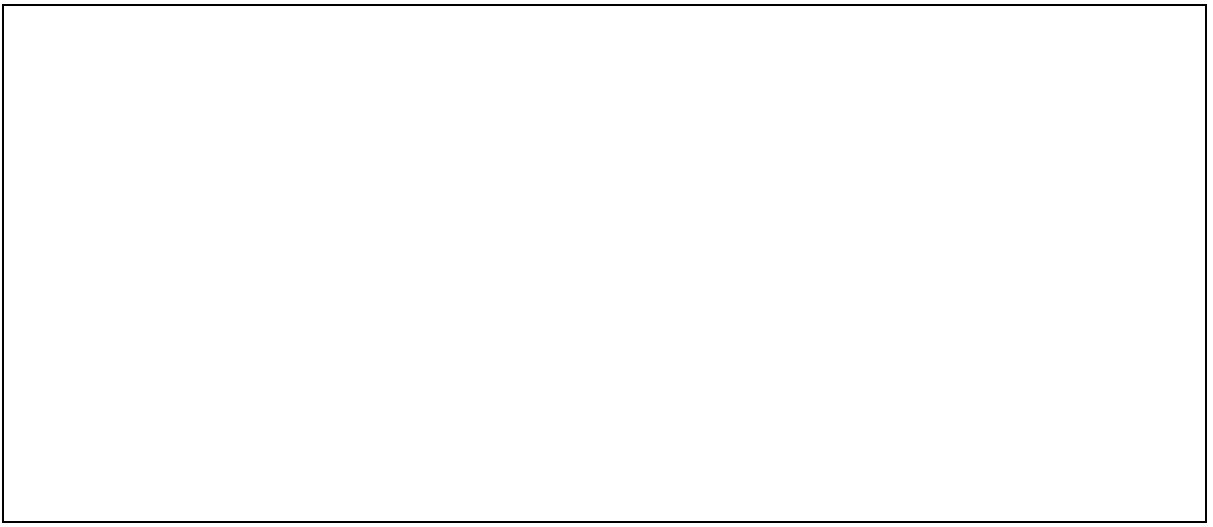
What do you think about the addition of the proposed overarching standards of practice at the start of the code, to set standards at a more principled level? The intention is to avoid having to provide as much detail in each section of the Code.

Comments:

Generally a good proposal. Some specifics should be addressed:

1. Bullet points 2&9 – ‘prospective homeowners’. This is too broad a description; the Property Factor could be responsible to anyone. Suggest removal of word prospective. Once a homeowner is, or has been, a client/customer of a Property Factor, it is reasonable to expect standards to be applicable.
2. Bullet point 5 – ‘policies and procedures consistently and reasonably’ – this could become complex – when does a procedure become a policy, and should a Factor limit their procedures to lack of change (is this how ‘consistently’ will be interpreted)? Suggest limit this to ‘policies’ and allow bullet point 2 about open, transparent and fair dealings to take care of procedural issues.

Liked the summary in bullet points.



2. **Section 1.2**

Written Statement of Services:

In response to Consultation responses, we have revised section 1.2 on issuing the Written Statement of Services. We have removed the requirement for annual issue and aligned the timescales for corrections to be made. What are your views on the revised text?

Comments:

1. Definition of 'in writing' would help – inclusion of wording that electronically / by link, would be appropriate.
2. Bullet point 2 – 'being made aware of actual date of sale of property' is not practical / too detailed – a sale might be notified more than 4 weeks prior to it taking place. Potentially add 'consequent to that sale' to sentence?

3. **Section 1.4 A (1)**

Written Statement of Services: Authority to act:

Custom and Practice

Drawing on consultation responses, we have updated the section on Authority to Act to make it clear that provision for the appointment of a property factor in title deeds should take precedence over custom and practice and that factors may wish to formalise custom and practice arrangements. Are there any concerns about the revised section?

Comments:

'May wish to formalise custom and practice arrangements' is acceptable and allows for situations where this formalisation may not be practical. Alternate wording suggested in draft revised Code – 'should' is, for similar reasons, too strong. If evidence is available that customer and practice arrangement have caused any significant concerns since 2012, this would add weight to suggestion for change – otherwise, is this change for its' own sake?

'a declaration of any financial or other interests which the property factor has in the common parts of property and land to be managed or maintained, for example as a homeowner (including where the company is also acting as a landlord or

undertaking letting agency work¹²). If no interest is declared, then this must be clearly stated. **UPDATED'**

Is this suggesting that Factors must state that there is no interest? Would it be better to simply state where any interest exists?

4. **Section 2.8**
Communication and Consultation:

Release of Information

We would like to simplify this section and streamline references to information which is required to be released under the Code. We propose that information requested by homeowners should be made available unless there is a good reason not to. Are you in favour of this simplification?

Comments:

PMAS is concerned about the generality of this. Volume of requests, or amount of information expected from a single request could lead to significant and unreasonable administrative expectations. It also risks supporting the unreasonable requests of vexatious and persistent complainers.

The word 'website' should be considered. Sometimes online apps, digital storage or other means may apply and 'digital format' might be a better general term.

Digital format should become the preferred information route, both for environmental and administrative cost reasons and this should be encouraged. Homeowners should only be requesting hard copies of certain information where they have no online access and declare that fact. This would help encourage homeowners to assist, where possible, in the communication process.

5. **Section 2.9 Communication and Consultation:**
Section 7.2, 7.5 and 7.6: Complaints Resolution:

Arrangements for Handover Between Property Factors

Consultation responses raised issues about handover between factors – what are the key things that need to be included in the code in connection with a transition between factors.

Comments:

7.2 This issue is the source of contention within the industry. On one hand, the information is the property of the factored homeowners and Factors have only third party relationships with each other. On the other hand, relevant information about

recent repairs, status of commonly owned elements and contact information for owners is essential to good continuing management. A template letter of engagement, or confirming the instruction to transfer all data/documents, to be used as a signed document from a relevant minimum of homeowners, could facilitate release of required information.

If a legally agreed number of homeowners confirm to a Property Factor that all information is to be passed, it is information owned by the development. For example, a report on a roof bought and paid for by owners should be transferred. In terms of transfer of client personal information, this is a transfer of contract and is legally acceptable.

7.6 Complaint resolution passing to new Factor – this may need further clarification. For example, if the complaint was about the share of ownership split, it would be beneficial to continue to resolution (although this could not include any financial adjustment for prior activities). However, it would be unreasonable to expect a new Factor to take any responsibility for a previously incomplete or poorly done repair, beyond arranging a new repair at new cost.

‘A property factor must not communicate (either orally or in writing) with a homeowner in an abusive or intimidating manner.’

Absolutely agree with this, but could there be an addition that there is an expectation that homeowners, similarly, do not communicate in such a manner – it may not be enforceable, but it does send an appropriate message?

6. **Section 3:**

Financial Obligations:

We are taking advice on the detail of this section. In the meantime, what is the difference between public and private sector in managing client funds. Do the same principles apply to both i.e:

- Separation and transparent accounting for funds
- That funds should earn interest if that is achievable

Comments:

There is no fundamental difference known, however there are practical considerations – there is no real risk to homeowners that a public sector body would go out of business and adversely affect client funds. For many private sector Factors, this is also the case, but the general risk is undoubtedly higher.

‘Separation’ could be described - many public sector bodies factor very small blocks – 4 in block properties. This would make ‘per development’ actual separation of funds administratively burdensome and expensive. However, the model solicitors use for separation of client funds might be a practical solution - there are sufficient products in the market place which allow one client account and separation of funds via virtual accounts. This also allows interest to be noted. The negative is the cost to Factors to implement and would result in an on-cost to owners.

Interest repayment to individuals can present a significant administrative challenge and the cost of the arrangement can outweigh any interest earned. Many factors currently absorb the not inconsiderable bank charges incurred in maintain a client account. In many cases, the cost far outweighs the interest earned. Passing interest back to homeowners without any associated charges would be unfair as well as administratively cumbersome. An alternative might be that any interest not offset by costs, is collectively used in some agreed manner to benefit joint homeowners, or perhaps a charitable donation.

3.8a The need to gain collective approval of homeowners to move funds between pre-approved holding methods implies that Factors ought to seek approval from a majority of owners to release funds for settlement of a contractors/supplies account, this would be unworkable and impractical. This proposal should be re-visited.

7. **Section 5.8:**
Insurance:

Re-Valuation Inspections

We have suggested a requirement that these should take place at least every 5 years, subject to agreement of homeowners. What are your views about this?

Comments:

PMAS has no concerns in principle, but is not enforceable on Factors without an obligation on homeowners to match.

In terms of administrative cost, on many occasions to get a 'no' response or not receive a response, to attempts to arrange re-valuations, could 'provide' be in the form of a web site/portal where clients have a unique password to access?

5.9 'usual perils' would need to be quantified. Alternative wording could be ' A Property Factor must confirm to homeowners what the main elements of the buildings insurance covers.'

'Additional standard in situations where a land maintenance company owns the land:

5.9.10 On request, a property factor must provide homeowners with clear details of the costs of public liability insurance, how their share of the cost was calculated, and the terms of the policy and the name of the company providing insurance cover.'

Since POL cover is normally supplied to all units where there is grounds only maintenance, should this not apply to all Property Factors - and not just where the land is owned by a land maintenance company?

8. **Section 6.4:
Repairs and Maintenance:**

Recommendations of the Tenement Maintenance Working Group

Five yearly building condition reports for example. Is there anything that should be included in the code to support property factors to implement the recommendations of the group?

Comments:

Wording about the expectation on homeowners that they help their Factor comply with advice about building condition reports and maintenance would be helpful – it could then be quoted by Factors in correspondence with their clients / referenced during FTT cases, to help support stance that there is actually a need for more than just the Factor to help ensure good maintenance practices.

6.1 Expectation that Factors 'must' arrange repairs in an appropriate timescale should be qualified, to allow for ability of owners to prevent this (either specifically or by inaction).

'6.3 A property factor must have arrangements in place for ensuring that the cost of the repair represents value for money and be able to demonstrate, how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must may be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation).**UPDATED** '

Value for money is very subjective, making this too vague and open to question by many homeowners. Provided the Factor can demonstrate how and why they appointed a contractor (and therefore considered the expected cost and quality of the repair), this should be sufficient, without any subjective statement about 'value'.

9. **Section 7:
Complaints Resolution.**

Based on feedback, we have suggested alternative wording to the consultation copy of the Code. What are your comments on the revised

wording? Would it be helpful if the Code included a common definition of a complaint to support consistency.

Comments:

It would be helpful if more guidance on defining a complaint, specifically in relation to factoring issues and the limits of the Factor, was provided. For example, ongoing discussions, particularly about service issues that are not in the power of the Factor to resolve, are not usefully defined as complaints, such as; where insufficient funds have been provided timeously by homeowners to undertake necessary works, resulting in expressions of frustration by owners who have paid their share. If the supplier, despite the Factor providing an instruction, is the cause of a delay, is this reasonably a complaint about the Factor?

Modification Order – Questions

10. **Extension of the Code of Conduct:**

The order to modify the Property Factors (Scotland) Act 2011 (the Act), which was included in the consultation, proposed amendments in order to improve the First-tier Tribunal for Scotland (Housing and Property Chamber) (First-tier Tribunal) powers to enforce the Code in relation to property factors that have been removed from the register of property factors (the Register) i.e. to extend the definition of 'property factor' to include these property factors for the purpose of determining applications to the First-tier Tribunal under Section 17 of that Act for failure to comply with the property factor code of conduct or the property factor's duties which were initially lodged while the factor was still registered. This would be limited to allowing the First-tier Tribunal to determine such applications and enforcing any resultant property factor enforcement orders. Consultation responses were supportive of this proposal.

We are also considering the implications of extending the full Code to property factors who have been removed from the Register. What are your comments on this proposal?

Comments:

PMAS has no issue with this proposal, however whether there is a realistic expectation of a beneficial outcome for homeowners, of making this change, would be worth further consideration – exploring the practical outcomes to be expected if this change was made.

11. **Definition of a Property Factor:**

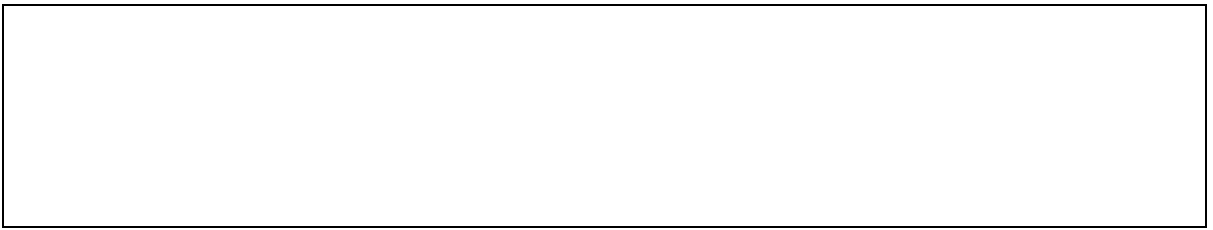
An issue has raised an issue about the definition of a factor as set out in the Act, in relation to common property. They point to title deeds for certain developments in which the areas of common property are not fully mapped. The current position is these homeowners have a valid title to a house plot but do not own a share in the common property. The Act refers to common land as being owned by “two or more other persons” whereas, in these cases, the homeowner may not actually own any part of the common property. The proposal includes an amendment to the definition of a property factor, which can be made by order, to include “or purported to be owned” after the word “owned” in Section 2 of the Act. We are taking advice from colleagues in property law on this but, in the meantime,

- Is the issue in relation to common property significant issue for property factors and owners?
- Would suggested proposal solve the problem/have any unintended consequences?

Comments:

PMAS is not aware of any instances of this issue arising.

The word ‘purported’ could potentially be misused – oversailing / operating over the air space could occupy common ground – who would the Factor approach for for permission. Electric Vehicle charging points might be another concern.



12. **3 Year time limit to apply to the First-tier Tribunal:**

The consultation included a proposal to limit property factors' liability by allowing the Chamber President to reject a homeowner application where it relates to an alleged failure by a property factor which occurred more than three years before the date when the application was initially lodged.

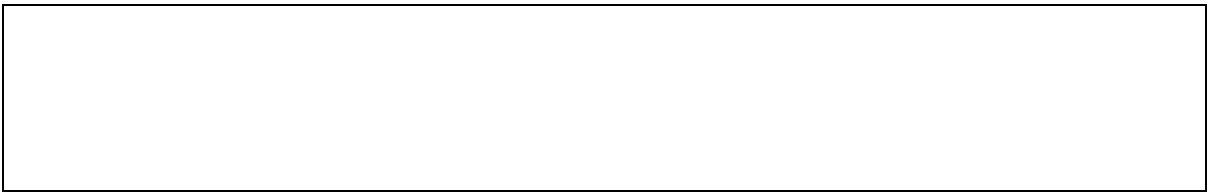
Consultation responses were supportive of a time limit with varying views on the appropriate period. We are in discussion with colleagues Tribunal policy on whether this should be dealt with for the First Tier Tribunal as a whole under the Prescription and Limitation (Scotland) Act. From a policy perspective we would welcome views on:

- Whether there should be provision to make exceptions to this rule if there is good cause?
- If there is a policy choice to be made, what the trigger point for any time limit should be e.g. the first time the alleged failure became apparent or from the date of the first complaint made to the property factor?

Comments:

On the issue of exceptions, it would be helpful to example when an exception might be applied, to enable decision about whether this might ever be needed.

Trigger point could use existing similar situations e.g liabilities claims have 3 years from date of accident / event. It could be 3 years from when 'a situation has become apparent'.



13. Any other comments you would like to make?:

Comments:

The proposal throughout the draft revised Code to change 'procedure' to 'policy' requires consideration on an individual basis as to whether the change will bring any practical benefit. Creation and maintenance of formal policy documentation could be an unreasonable and unnecessary burden on smaller factoring firms.

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