



Consultation on The Property  
Factors (Scotland) Act 2011  
Draft Code of Conduct for  
Property Factors.  
An Analysis of Responses

**PROPERTY FACTORS (SCOTLAND) ACT 2011:  
DRAFT CODE OF CONDUCT FOR PROPERTY  
FACTORS  
AN ANALYSIS OF CONSULTATION RESPONSES**

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# **EXECUTIVE SUMMARY**

## **Introduction**

This report provides an analysis of responses to the Scottish Government consultation, 'The Property Factors (Scotland) Act 2011: Draft Code of Conduct for Property Factors'. The Act sets out a new statutory framework to protect homeowners that receive services from residential property factors and land managers in Scotland. It introduces a statutory register for all property factors (including land maintenance companies), a Code of Conduct which sets out minimum standards for all registered factors and a new dispute resolution mechanism where homeowners can take complaints about factors to a Homeowner Housing Panel.

## **Overview of the response**

There were 138 responses to the consultation. Of these, 29 responses were identified as being identical and treated as campaign responses. They were therefore considered as a single response. In two cases, more than one response was identified from the same organisation. Again these were considered as single responses. For analytical purposes, this resulted in 108 responses being considered.

Nearly two-thirds of responses came from private individuals (including two MSPs) or Registered Social Landlords (RSLs) (or their subsidiary organisations). Representative/ membership/ professional bodies were also a significant respondent group.

## **Summary of responses**

- Overall respondents were generally supportive of the Code, although many made detailed comments and suggestions regarding individual standards. A number of respondents suggested that the Code would benefit from further explanation and guidance. Some RSLs suggested that there should be exceptions for particular organisations, or where factoring activities were below an agreed threshold. Others felt that the timescale for introduction was unrealistic.
- 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.
- Some private individuals felt it would be helpful if the Code made clear that property factors act on behalf of homeowners. A number of RSLs felt that the Code would be enhanced by making reference to the obligations and responsibilities of homeowners in relation to the management of common parts of their property.
- In terms of providing a written statement of services, several respondents were concerned about the resource implications, potential complexity and likely increased costs of introducing written statements. Other respondents sought greater clarity about the status, content and need to update and reissue statements of service.

- Respondents were positive about the standards on communication between factors and homeowners. However, a significant number, particularly property factors, raised concerns about the requirement to consult over what may be very small pieces of work or in urgent situations.
- There was general agreement by respondents of the need for transparency in financial arrangements between property factors and homeowners. However, 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 homeowners where a sinking or reserve fund is arranged. They suggested that this could be costly to administer and potentially complex to establish. Some RSLs argued that, as social landlords were regulated in other ways, there was not a danger of clients' funds being lost and the requirement for separate bank accounts should not apply.
- Respondents were generally supportive of the standards relating to debt recovery but a number felt that some of the terminology required further explanation.
- In relation to the provisions on insurance arranged by the property factor, the need for better information and advice for homeowners, up to date property valuations for insurance purposes, and greater transparency in the procurement of insurance was raised by various respondents.
- A significant proportion of respondents were satisfied with the provisions relating to repairs and maintenance and there was particular support for increased openness and transparency. However, there were a number of comments on how the standards would be applied in practice and some concerns that the Code does not recognise the role of the property factor as an 'agent' of the homeowner.
- Many respondents felt that the provisions for dealing with complaints were comprehensive. Some respondents felt that a clear definition of the term "complaint" would be helpful. Others argued that the Code could be more prescriptive on timescales for complaint resolution. There were also a number of comments in relation to dealing with the costs of complaint resolution.
- There were a number of additional comments from respondents. These mainly related to the other elements of the Act, primarily the process for the registration of property factors and the operation of the Homeowner Housing Panel.

# 1. INTRODUCTION

## About this report

- 1.1 This report provides an analysis to the Scottish Government consultation, 'The Property Factors (Scotland) Act 2011: Draft Code of Conduct for Property Factors'. The report provides a detailed analysis of each element of the consultation. It looks in detail at the responses to the consultation questions and provides an analysis of the views of particular groups, highlighting trends and issues where appropriate.

## Background to the consultation

- 1.2 Over one third of Scotland's housing is located in buildings with common parts. The arrangements for managing the maintenance and repair of these properties are crucial if their condition is not to deteriorate.
- 1.3 In February 2009, the Office of Fair Trading (OFT) published the findings of a study it had undertaken into the property management market in Scotland. The report recommended that the Scottish Government take the lead in establishing a self-regulatory scheme with a robust complaints and redress system, backed up with better information and advice for consumers. The report also recommended that the Scottish Government should consider statutory regulation, if voluntary self-regulation proved to be ineffective.
- 1.4 In 2010, the Scottish Government undertook a consultation on proposed standards for a voluntary accreditation scheme for property managers. However, this was overtaken by the introduction of a Member's Bill which led to The Property Factors (Scotland) Act 2011 being passed in March 2011, and receiving Royal Assent in April 2011. The Act will come into force by 1 October 2012.
- 1.5 The primary objective of the Act is to create a statutory framework which will protect Scottish homeowners to whom property factors provide services. 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 abide by; 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 (PRHP).
- 1.6 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).

- 1.7 Section 14 of the Act sets out how the Scottish Government must go about establishing the Code of Conduct. It must be published in draft, consulted upon, and then must be approved by affirmative parliamentary procedure. The Code will set out the minimum standards of practice for registered property factors.
- 1.8 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 by Scottish Ministers.
- 1.9 This consultation sets out, and seeks views on, the draft Code of Conduct for residential property managers and land maintenance companies in Scotland.
- 1.10 The draft Code builds on the standards that were developed for the voluntary accreditation scheme which had been proposed earlier. The Code is organised into eight sections:
  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.
- 1.11 Some of the standards (for example those relating to the provision of insurance) will not be relevant to all property factors.

### **About the consultation**

- 1.12 The consultation included 10 questions, relating to the proposed Code. Respondents were able to provide either an open response or complete the consultation questionnaire, offering systematic responses to each of the consultation questions.
- 1.13 The analysis was undertaken using a response matrix. Respondents were categorised into stakeholder groups and responses were fed into the matrix in accordance with the answer to the consultation question. General and additional points that did not relate to the questions were fed into a separate section of the matrix and analysed manually.
- 1.14 Twenty-four respondents chose not to answer the consultation questionnaire. These responses were read thoroughly and where the respondent directly answered any of the questions, the comments were fed into the appropriate place on the matrix. Other substantive comments were treated separately as with other responses.

- 1.15 The analysis drew out the themes emerging within each of the questions posed and the range of views being expressed. It also highlighted any specific trends among stakeholder groups.
- 1.16 Eleven consultative events were also organised as part of the consultation during October and November 2011. Ten of these were arranged by the Scottish Government and one by the Scottish Housing Regulator. The events were targeted at different sections of the property management industry and their customers including:
- private sector property managers;
  - local authority and RSL (or their subsidiaries) property managers;
  - land maintenance companies;
  - customers of property managers; and
  - customers of land maintenance companies.
- 1.17 The consultative events were held in Glasgow, Edinburgh and Aberdeen. The events were structured to provide an overview of the Act, and allow an opportunity for participants to discuss and provide feedback on the standards included in the proposed Code of Conduct.
- 1.18 A record of each of the consultation events was kept, and the views expressed have been considered as part of this report.

## 2. OVERVIEW OF RESPONSES

### Introduction

2.1 This section provides an overview of the responses received to the consultation. It considers who the responses came from, who was not represented in the response, and provides general comments on the responses.

### Who replied to the consultation?

2.2 The consultation was publicised to a broad range of consultees with an interest in the issues on 26 September 2011, allowing a 12 week period for written responses. Consultees included organisations providing property management services, public bodies, and professional and representative bodies.

2.3 A total of 138 consultation responses were received by the Scottish Government. Of these, 29 responses were identified as being identical and treated as campaign responses. They were therefore considered as a single response. In two cases, more than one response was identified from the same organisation. Again these were considered as single responses. For analytical purposes, this resulted in 108 responses being considered.

	<b>No.</b>	<b>%</b>
<b>Private individual</b>	32	30%
<b>RSL or subsidiary organisation</b>	31	29%
<b>Representative / membership / professional body</b>	14	13%
<b>Resident group</b>	10	9%
<b>Private sector property manager</b>	8	7%
<b>Local authority</b>	7	6%
<b>Land maintenance company</b>	3	3%
<b>Equality / consumer rights organisation</b>	3	3%
<b>Total</b>	<b>108</b>	<b>100</b>

2.4 As Table 2.1 shows, nearly two-thirds of responses came from private individuals including two MSPs, or RSLs or their subsidiary organisations. Representative/ membership/ professional bodies included a number of organisations representing property factors in the public, voluntary and private sectors. In terms of the organisations categorised as land management companies, we are aware that two of them also provide some property related services.

2.5 Seven respondents indicated that they did not want their response to be made public, or did not provide a Respondent Information Form (RIF). The content of these responses have been considered as part of the analysis but the respondents have not been identified in this report.

## **Who was not represented in the responses?**

- 2.6 Responses came from a wide cross-section of organisations and individuals with an interest in the proposals. However, the number of property factors responding was generally low. In some cases this may be as a result of a response coming from their representative organisations.

## **The interpretation of quantitative and qualitative information**

- 2.7 This report is primarily based on a qualitative analysis. Whilst we undertook a quantitative analysis to identify the extent of commonality among stakeholder groups in their responses to each question, there were generally no discernible trends. We found in a number of cases respondents indicating their support or disagreement to a proposed standard making similar comments about it. For this reason we have not included a tabular analysis of the response to each question.
- 2.8 The main focus of the analysis has therefore been based on the qualitative content of the responses. The report focuses on the key issues respondents have raised and, where apparent, any conflicting views. Specific proposals for drafting changes have not been included in the report.

### 3. RESPONSES TO THE CONSULTATION EXERCISE

#### Introduction

- 3.1 This section considers the responses to the questions posed in the consultation document.

#### Section 1 – General Obligations

**Question 1: Does Section 1 cover all of the over-arching obligations required of the statutory Code? If your answer is no, please explain what additional information you would require to explain the obligations more fully.**

- 3.2 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. The Institute of Residential Property Managers (IRPM) suggested that the proposed standards fell far short of the statutory obligations already placed on property managers in England and Wales.
- 3.3 Some representative bodies and private individuals (including both MSPs who responded) raised concerns about the implications of Title Deeds or contractual agreements between property factors and homeowners taking precedence over the Code of Conduct. Some drew attention to the fact that Title Deeds may have been drafted a long time ago in a different context and were not always relevant to present day circumstances. Similarly, some felt that contractual agreements between owners and factors may have been drawn up without sufficient consultation with homeowners. These respondents were concerned that some homeowners would potentially not benefit from the Code and the improvements in factoring standards it was intended to create.

*“...owners may look to the Code and/ or the Homeowners Housing Panel for assistance in dealing with issues only to find that intervention is not possible resulting in the overall aims of the Code being thwarted and its credibility being undermined.”*

(ALACHO)

*“I find it difficult to accept that a document such as the Deeds, written in the days of the feudal system and Superiors should still be an issue.”*

(Private individual)

- 3.4 One private individual suggested that where Title Deeds were vague or referred to impractical means of arbitration, homeowners should have recourse to the Homeowners Housing Panel to act as arbiters in the interpretation of any conditions. Others argued that the Code should always prevail or Title Deeds be updated to reflect adherence to the Code. Concern was expressed by some private individuals about Title Deeds specifically identifying obligations to a named land maintenance company.

- 3.5 However, a private sector property factor drew attention to the fact that Title Deed conditions are a matter for the proprietors of a property and not the factor. If Title Deeds conflict with the Code, they argued that it is a matter for the homeowners to ensure compliance with the Title Deeds.

*“The property factor is bound only by the terms of his engagement with the co-proprietors and not be the property Title Deeds. This is an essential legal point and cannot be overlooked.”*

(Hacking and Paterson)

- 3.6 Some private individuals highlighted the situation of homeowners living in developments under construction where they were “contracted to the developer, whilst being serviced but not contracted to a property factor”. They felt that this situation required to be clarified in the Code.
- 3.7 Homes for Scotland suggested that there should be an additional obligation to account for the relationship between house builders and factors in new developments, requiring factors to inform house builders of their registration and the implications of the Code for their customers.
- 3.8 Many organisations providing a factoring service and some of their representative bodies felt that greater clarification was required of the standard relating to record keeping. They suggested that, as currently worded, the statement in relation to keeping ‘clear and full records’ was ambiguous and open to interpretation. Some suggested that the standard should clearly state a timescale for retaining records. A private individual felt that this standard should be strengthened to incorporate a specific requirement to include written records of all meetings and telephone calls.
- 3.9 Some private property factors queried the requirement of the Code for all staff and contractors to be familiar with the Code. Some also argued that property factors employ a wide range of contractors on behalf of homeowners including energy companies, insurers, cleaning and gardening contractors that had no reason to be aware of the Code.
- 3.10 However, two equalities organisations (and some private individuals) felt that this standard needed to go further and address staff training, including legislative requirements with regard to equalities. They argued that well trained staff were key to driving standards up.
- 3.11 Some private individuals felt it would be helpful if the Code made clear the employer/ employee relationship between a property factor and homeowners, and that property factors acted on behalf of homeowners. Some suggested that copies of the Code should be made available to homeowners on request and referred to in any property factors’ manuals or guides.
- 3.12 A number of RSL respondents felt that the Code would be enhanced by making reference to the obligations and responsibilities of homeowners in relation to the management of common parts of their property.

*“There should be a general recognition that the obligations of the Code assume and are dependent upon the principle of mutuality of obligations i.e. that the homeowner continues to fulfil the homeowner’s obligations in terms of the Title Deeds and make payment of the sums due to the property factor for the services provided.”*

(Glasgow Housing Association/ YourPlace Property Management)

- 3.13 A number of representative bodies suggested that there was a need for an additional standard in relation to legislative obligations and best practice regarding building standards and related matters.
- 3.14 One local authority suggested that the Code should give greater recognition to the factor’s responsibility for health and safety issues.

**Key Issues**

- There was generally broad support for the overarching obligations of the Code.
- A number of respondents were concerned that Title Deeds and agreements between property factors and homeowners would take precedence over the Code.
- Some respondents suggested that the Code should cover the relationship between house builders, property factors and homeowners living in developments under construction.
- Many property factors would welcome greater clarification of the standard relating to record keeping.
- Others suggested that the Code should refer to legislative requirements.

**Section 2 – Written statement of services**

**Question 2: Does Section 2 cover the key information that should be provided in the written statement of services?**

- 3.15 A substantial number of respondents expressed the view that Section 2 covered the key information that should be provided in the written statement of services. However, some made suggestions for improvements or raised specific concerns. Others felt it was too prescriptive and should be more flexible.
- 3.16 Several respondents, including land maintenance companies, two local authorities and a number of Registered Social Landlords (RSLs) were concerned about the resource implications, administrative burden, potential complexity and likely increased costs of introducing written statements. In particular, there was concern among local authority and RSL respondents about the timescales for introduction, the need to regularly update the written statement, and (for RSLs in particular) the proportionality of the requirements.

*“Whilst it is agreed that any “Statement of Services” document should cover all of the important and relevant points there are concerns about the limited timescales that is available for Factors to consult, draft and finalise documentation which will need to take into account a broad range of varying title deed, differences between geographic areas and historical practices that exist.”*

(South Lanarkshire Council)

*“This is far too onerous for many of the properties we factor, where the annual bills are less than £30. . . . Such information should only be required where the annual factoring bill exceeds £250 per year.”*

(Loreburn Group)

- 3.17 Some respondents called for the Code to provide greater detail about the circumstances in which and how often written statements should be updated. Some also questioned the level of information and detail which would be required. For example, respondents asked whether a property factor would be expected to provide a detailed breakdown of liabilities to every homeowner within a development where only some homeowners had a liability. Others queried whether a change in ownership within a development would require a new written statement to be issued to all owners; or whether information on arrangements with tenants would need to be included within written statements in mixed tenure blocks. Respondents asked for clearer timescales and better guidance for producing and updating written statements.
- 3.18 A range of respondents were concerned that the Code requires property factors to provide the written statement of services at the change of ownership stage – as often they do not know when this happens. One land maintenance company highlighted that, in cases where a development takes place over a number of years, land management ownership can be “fluid”. Some respondents drew attention to the fact that property factors were not always timeously notified of a change of ownership by a solicitor. One respondent felt that the Scottish Government should develop standards in this area for solicitors. Several respondents suggested the Code should be reworded to require property factors to provide a written statement of services when they are first made aware of a change in ownership.
- 3.19 A private property manager and a private individual emphasised the need for homeowners to be made aware of their responsibilities and suggested solicitors should be required to explain these. One respondent also suggested that the written statement of services could be included in the Home Report.
- 3.20 There was some concern that property factors would need to review and, to some extent, interpret Title Deeds. Several respondents highlighted that Title Deeds might not be available and could be time consuming and difficult to review. One private property manager suggested that such a role would require legal opinion for each group of homeowners as it is the responsibility of homeowners and their solicitors to interpret their own Title Deeds – rather than a property factor.

- 3.21 Several respondents, including a few private individuals, questioned why the Code specifies that the written statement is not legally binding. A private property manager felt that this was inconsistent as the statement of services would be used by the Homeowner Housing Panel in considering whether a property factor had met their duties under the Act.
- 3.22 There was significant concern that the Code prescribed very detailed timescales for dealing with enquiries and complaints. A number of respondents, including property factors and representative organisations, felt that the five day timescale for providing a written response to enquiries and complaints was too short, and often at odds with their wider organisational policies on dealing with correspondence. Several respondents suggested that 10 days may be a more appropriate timescale. The SFHA suggested that timescales should be agreed with homeowners.
- 3.23 Several respondents asked for the language to be clearer within this section. A few respondents drew attention to the varied terms used to refer to homeowners, or groups of homeowners. In particular, one private property manager suggested that the varied use of terms such as ‘the group of homeowners’, ‘the group’, ‘homeowner’, ‘each owner’ and ‘co-owners’ in this section of the Code lacked continuity and certainty. They also argued that the term ‘homeowner’ in the Act and the Code seems to refer to a group of co-proprietors, rather than single person. Therefore, to refer to a ‘group of homeowners’ may be confusing. Several respondents asked for more information on what might be included as ‘core’ and ‘other’ services, or for more consistent language about works and services. Two MSPs asked for definitions of ‘routine’ and ‘emergency’ repairs.
- 3.24 Equalities organisations highlighted the importance of accessibility. In particular, they felt that the written statement of services should be available in alternative formats, and the Code should refer to a wider range of mechanisms homeowners might use to contact their factor.
- 3.25 Several respondents suggested this section should be more specific about what might be considered a ‘financial or other interest’. These included the SFHA, a land maintenance company and private sector property managers. Several private individuals also highlighted the importance of ensuring factors explained any wider interests – for example as a landlord – within a development. One private property manager felt that there should be a requirement for the written statement to identify commissions and rebates which may be received by the property factor and explain how these would be dealt with.
- 3.26 Several respondents asked that the Code require property factors to provide further information in the written statement about financial transparency. This included two MSPs who suggested written statements should explain the purpose of any floats paid, and explain what happens to charges made as part of debt recovery. The Law Society of Scotland asked that the written statement explain that money will be held in an interest bearing account, and that this interest will be provided to homeowners.

- 3.27 A few private individuals and residents groups asked that the written statement set out how factors will communicate and consult with homeowners, and that it commits factors to deal with issues constructively.
- 3.28 Some respondents were unclear about the relationship between the written statement and other documents which may be used to communicate services to homeowners, such as owners' handbooks, factoring agreements, statements of service or service level agreements. For example, a respondent asked the Code to clarify whether a factoring agreement could be adapted and used as a written statement.
- 3.29 A number of property managers were concerned about the requirement to express management fees and charges for common works as a percentage. Some suggested that the wording of the Code in relation to common works might be changed to allow both percentages and fractions. Others highlighted that this requirement did not take account of the way they calculate management fees, often as a flat rate for each homeowner.
- 3.30 One private property manager felt that the Code should recognise that services expected of a property factor in this section were predicated on funds being available.
- 3.31 Representatives from land maintenance companies attending the consultation events highlighted some of the challenges for them in demonstrating transparency in relation to charges for open space land. They suggested that owners might find it difficult to understand the basis for some charges set out in Title Deeds covering provisions for long term maintenance of items such as drainage facilities and play areas.
- 3.32 Some event attendees suggested it would be helpful for the Scottish Government to provide a template for the written statement of services.

**Key Issues**

- Many felt that this section of the Code covered the key information required.
- There was concern about the complexity and resource implications of developing and regularly updating written statements.
- There was concern that the timescales proposed for initially responding to enquiries and complaints were too short.
- There needs to be greater clarity about when written statements need to be updated, how they relate to other documents, and the level of detail required in the statements.
- There was some support for the Code to require factors to outline more detailed information on financial issues and their interests.

## Section 3 – Communication and consultation

### Question 3: Does Section 3 cover the key matters relating to communications between the property factor and homeowner?

If your answer is no, please explain what you think needs to be expanded.

- 3.33 Many respondents felt this section covered the key matters relating to communications and consultation. Just over half of respondents made suggestions for improvements.
- 3.34 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 highlighted that addressing health and safety issues sometimes required work to be carried out very quickly. Others were concerned that consulting on small pieces of work may lead to a disproportionate amount of consultation, resulting in an increase in management fees.

*“ALACHO agrees that good communication and consultation are the essence of positive customer relations .... however... establishing this relationship based on the criteria at Section 3, could for some councils entail significant resources in time and money.”*

(ALACHO)

- 3.35 One private property manager and a resident group suggested a value limit should be agreed with homeowners under which factors would not need to consult.
- 3.36 Some respondents called for greater definition and clarity about the provision of an out of hours service within the Code. The Royal Institution of Chartered Surveyors (RICS) Scotland questioned whether it was the intention of the Code to compel property managers to provide an out of hours emergency service.
- 3.37 Several private individuals and resident groups highlighted the importance of property factors making information accessible and clear. This related to both requests for information and factors providing regular updates on their activities.
- 3.38 Building on the Code’s requirement to provide a route for feedback, a range of respondents called for the Code to require property factors to respond to feedback – with action and an explanation of what action was taken. They asked for an obligation to be placed on factors to meet with homeowners when requested, or on a cyclical basis. The Chartered Institute of Housing (CIH) Scotland suggested a template model pro forma should be developed which would help factors to communicate planned activities.
- 3.39 Several local authorities and RSLs, the Scottish Federation of Housing Associations (SFHA) and the Glasgow and West of Scotland Forum of

Housing Associations (GWSF) felt that there was a need to emphasise the responsibilities of homeowners within this section of the Code – given that communication is a two way process.

*“We are concerned that there appears to be an imbalance in the Code in that it emphasises the obligations and duties required of Factors and remains silent on homeowners’ responsibilities. We suggest that since this relationship is a ‘two-way street’ which requires certain standards and behaviours from both parties this should be reflected in the Code.”*

(GWSF)

- 3.40 Others asked that this section mention the need for property factors to encourage and support communication between homeowners, communicate with house builders and land managers. Some resident groups asked that factors support the development of residents’ groups or committees. This view was also put forward by a group of customers in one of the consultation events who felt that owners’ associations had a key role to play in effective communication. This group felt that the Code should include a requirement that factors must, if requested, facilitate the establishment of an owners’ association.
- 3.41 Several respondents asked for greater clarity and detail about how factors should consult with owners, and what proportion of homeowners would need to be engaged.
- 3.42 Equalities organisations and some others highlighted that communication methods need to be accessible for all, and this should be reflected in the Code. Factors should ensure homeowners have a range of alternative means of contacting them.

*“...CFS requested that the standards on communication should encourage accessibility for a wide range of consumers, including those who may require alternative formats, translation or interpreting services. We are keen to ensure that these standards remain in the Code and that further advice on accessibility is incorporated into any guidance for homeowners.”*

(Consumer Focus Scotland)

- 3.43 Several property factors raised concerns or sought clarification about the requirement for them to direct homeowners to money advice services.

**Key Issues**

- Some respondents suggested that further consideration should be given to the circumstances in which property managers are required to consult with homeowners, and the basis on which this consultation is undertaken.
- Other respondents suggested that standards on communication and accessibility of information should be incorporated into the Code.

## Section 4 – Financial Obligations

**Question 4: Does Section 4 cover the main matters in the financial relationship between the property factor and homeowner? If your answer is no, please explain what you would like to see expanded.**

- 3.44 There was general agreement by respondents of the need for transparency in financial arrangements between property factors and homeowners. However, a number of detailed issues were raised in relation to the proposed standards.
- 3.45 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.

*“What is required is separate accounting, not separate accounts, which could become unmanageable...”*

(Greenbelt Group)

- 3.46 The potential cost of establishing and administering separate client trust accounts was raised by a number of respondents.

*“The requirement to hold funds in client trust accounts may result in additional management fees being charged because of the work involved in setting these up and then maintaining the accounts.”*

(Dennistoun Owners Steering Group)

- 3.47 However, the Institute of Residential Property Managers (IRPM), one private property factor and some private individuals felt that the proposals did not go far enough. They argued that the standards did not make clear that funds belonging to one group of homeowners should never be used to finance work on behalf of another group of homeowners. Some of these respondents suggested that there should be a requirement for separate reconciled accounts to be provided to co-proprietors. One drew attention to best practice guidance in ‘Accounting for Service Charges Guidance’ prepared by the Association of Residential Managing Agents (ARMA) and others which they felt should be reflected in the standards.

*“The truth is that factors just have to give statements of expenditure, with no reconciliation or balance sheet...”*

(Peverel Scotland)

- 3.48 At the consultation events one representative from the retirement housing sector suggested that the financial obligations could go further by requiring an annual independent audit of accounts. Others noted that the Code was not intended to establish an inspection process.

- 3.49 Some RSLs argued that, as social landlords were regulated in other ways, there was not a danger of clients' funds being lost and the requirement for separate bank accounts (and consequential increases in costs) should not apply to them so long as proper accounting procedures were put in place.
- 3.50 The issue of interest bearing accounts for sinking or reserve funds was highlighted by some property factors. One suggested that many Title Deeds exclude the refund of sinking funds which are passed on to the new owner. Others highlighted that bank charges may currently exceed any interest earned and questioned whether this should then be a chargeable item to homeowners.
- 3.51 The SFHA and some RSLs suggested that the administrative costs of any refund could outweigh the amount of interest accrued by a homeowner. They made a number of proposals for using any interest received, including reducing management fees.
- 3.52 Some property factors drew attention to the requirement for property factors to provide a final statement of account "no later than the settlement of any funds due" where there was a change of property ownership or termination of factoring arrangement. A number of respondents felt that the term was not clear and required clarification. Others interpreted it as the date of settlement of a property sales transaction. This latter group argued that the timescale could be unrealistic for a number of reasons. These included solicitors not advising the property factor of a change in ownership, work instructed still being undertaken, and invoices still outstanding at this date. They suggested that a more realistic timescale should be considered.
- 3.53 One property factor drew attention to the fact that, in identifying and returning any funds due to a homeowner, consideration had to be given not only to the individual's account but also to any communal debts that the homeowner could become liable for.
- 3.54 Some local authority and RSL property factors raised concerns about the requirement to provide invoices for inspection or copying, which they felt could be problematic. They drew attention to the fact that some contractors may charge for works under a competitively tendered Schedule of Rates which may be commercially sensitive or incapable of being disaggregated to individual items of work. Others indicated that they operated IT systems which were not capable of generating paper copy invoices. Some argued that if they were forced to move to procurement arrangements that resulted in individual invoices being issued, this would have an adverse impact on the cost of undertaking maintenance works.
- 3.55 Conversely, a number of private individuals highlighted the importance to them of having access to contractors' invoices and other supporting documentation.

*“Proper printed invoices from contractors require to be the gold standard. Contractors should have nothing to hide and nothing to fear. Invoices need to include details such as date, unit cost, labour cost etc. That is good practice.”*

(Private individual)

- 3.56 However, one private individual felt that consideration needed to be given to any cost implications and it was appropriate to allow a reasonable charge to be made for copying costs. And one RSL suggested that there should be a test of reasonableness to ensure requests for further clarification were “justifiable and proportionate”.
- 3.57 A number of private individuals welcomed the requirement for property factors to have to provide a ‘detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for’.
- 3.58 However, some private individuals and a number of RSLs suggested that it would be helpful to provide an example of what is meant by ‘detailed’.

*“...one person’s idea of ‘detailed’ is different to another’s. Our experience is that the land management company gives what they believe to be detailed information but we consider it to be very sketchy.....I would like to see a worked example in this section of just how much detail they are obliged to give.”*

(Private individual)

*“...more guidance on what should be included in a “detailed financial breakdown” would be helpful.”*

(Bield Housing Association)

- 3.59 One private individual felt that, as part of the reporting process, any increase in management charges should be fully explained.
- 3.60 The SFHA and a number of RSL property factors suggested that the proposed financial obligations would prevent social landlords from front funding repair works and allowing homeowners to pay their bills over a period of time. However, they did not expand on their reasons for reaching this view.
- 3.61 The Scottish Property Federation felt that the standards relating to financial obligations were unclear for new developments where a developer may hold an interest until such time as the development is complete and all the properties disposed of.

#### **Key Issues**

- Many respondents sought further consideration on banking and accounting arrangements for property factor’s client funds where a sinking or reserve fund was arranged, and the treatment of any interest accrued`.
- Some respondents sought clarification of the timescales in which property factors should be required to provide a final statement of

account and return funds to a homeowner, following a change in property ownership or property factor.

- Others felt that further consideration is required of the information that homeowners should be able to access from property factors in relation to work undertaken by contractors.
- Further clarification would be helpful on the level of detail property factors should provide in relation to financial charges.

**Question 5: (for local authorities and RSLs only) Can you suggest an alternative arrangement to client trust accounts which would allow local authorities and housing associations to ensure that there is a clear separation of funds belonging to homeowners?**

3.62 Many RSLs and some local authorities reiterated their view that a requirement to establish separate client trust accounts was disproportionate to their circumstances. Some argued that, given their status, the regulatory environment in which they operate and their accounting requirements, such a move would offer no greater protection to homeowners but would lead to an increase in management costs.

3.63 Some felt that there was no need to hold homeowners' funds within separate bank accounts. GWSF suggested that any homeowners' funds held by an RSL should be identified separately within their accounts, and included and accounted for in the annual return to the Scottish Housing Regulator. One RSL proposed that a reconciliation of owners' funds could be part of the audit process.

*"It is accepted that the financial regulation of housing associations is robust and we would ask that as long as homeowner funds can be easily identified (using coding structures) there is no requirement for separate bank accounts to be held (unless this is a requirement of the deeds)."*

(Grampian Housing Association)

3.64 Another RSL indicated that it had sought to establish a client's account structure similar to a solicitor and been "rebuffed by the banking community". It was of a view that such a facility was only available to solicitors.

3.65 However, other RSLs suggested that holding client funds in a separate single account was possible and a sensible way to proceed.

*"Where we provide a management service to owners, the funds are held in separate interest-bearing bank accounts. The account holder is Bield Housing Association in trust for the owners at the particular development. This arrangement has been in place for over 10 years and owners are satisfied with it."*

(Bield Housing Association)

- 3.66 A further suggestion put forward by one RSL was for a bond to be taken out by a social housing factor to cover a reasonable level of homeowners' funds held.

#### **Key Issues**

- Many local authorities and RSLs suggested that client funds could be accounted for separately in their accounts. Others proposed holding client funds in a separate account.

### **Section 5 – Debt Recovery**

**Question 6: Does Section 5 cover the key matters relating to debt recovery? If your answer is no, please explain which elements you would like to see expanded upon.**

- 3.67 A significant proportion of respondents highlighted that, in general, they felt this section was acceptable. Comments and suggestions were varied between and within each respondent group.
- 3.68 Several private individuals expressed concern that homeowners meeting their obligations to pay for the upkeep of their property may be charged for the debts of non-paying homeowners. Some called for further detail within the Code about the role of factors in pursuing outstanding debts. A few private individuals suggested that owners' associations should have a role in working with factors to recover debts. However, one private individual warned against this given that owners' associations are "unregistered and unaccountable". Another private individual asked that the Code specify that late payment charges should not be made while an account is clearly in dispute.
- 3.69 A number of participants queried the use of the term 'reasonable' throughout this section. Some property managers and participants in the consultation events sought clarification of what would constitute 'reasonable' action to recover debts prior to legal action. Some felt that the Code should be clearer on this. Consumer Focus Scotland called for more clarity about what was meant by 'unreasonable' and 'excessive' charges as they felt this was quite subjective.
- 3.70 Two property factors argued they should be able to apply compound interest on late payments. However, they acknowledged that it should not be excessive or punitive and the basis of calculation should be stated in factoring agreements. The issue was also raised by land maintenance companies at a consultative event.
- 3.71 The SFHA and one RSL suggested that keeping homeowners informed should not be limited to situations where there was joint liability for any debts. They argued homeowners should be informed when services were restricted or withdrawn because owners had not paid their bills.
- 3.72 One RSL suggested a level of debt should be set, above which the factor was obliged to notify other homeowners who were jointly liable for the debts of

other homeowners, of debt recovery problems and the implications for them. However, some resident groups suggested that homeowners should be told about non-payment issues as early as possible.

- 3.73 The IRPM highlighted that any fees or charges received and retained by the factor should be explicitly included in the fees and charges section of the statement of services, which should be clear about whether charges were retained by the property factor or credited to the homeowners collectively.
- 3.74 Several respondents emphasised the cost of court action, and suggested that property factors do not always exhaust other mechanisms before resorting to legal action. A private individual and a representative body suggested that mediation or alternative dispute resolution should be mentioned in this section of the Code.
- 3.75 Consumer Focus Scotland and some private individuals felt that the Code should make clear that debt recovery procedures should not be instigated or continued while an invoice was in dispute or a complaint was being handled by the Homeowner Housing Panel.

#### **Key Issues**

- Further explanation of some of the terminology used in this section would be helpful.
- Some consultees questioned why compound interest could not be charged on late payments.
- Others felt that consideration should be given to the standard on debt recovery procedures being expanded.

## **Section 6 – Insurance**

**Question 7: Does Section 6 cover the key matters in situations where insurance is arranged by the property factor? If the answer is no, please explain which elements you would like to see expanded upon.**

- 3.76 A significant number of respondents said they felt that this section was acceptable, or covered the broad areas required. However, many respondents made additional suggestions or raised specific concerns about this section or factors' role in insurance more generally. Many issues were shared across respondent groups.
- 3.77 Most comments related to how the Code deals with buildings and contents insurance. A number of private individuals raised concerns about a lack of transparency around insurance. In particular, there was concern about property factors not always securing the best value for their customers, the risk of insurance being invalidated because of inaccurate information being provided by a factor; and factors receiving benefits or income as a result of arranging insurance with a particular provider. These respondents wanted factors to provide them with better information about insurance options.

- 3.78 There was concern among a range of respondent groups (in particular, private individuals, resident groups and several RSLs) that, while the Code as drafted should ensure better information on insurance policies and processes provided to homeowners, it did not go far enough to ensure transparency about value for money. Consumer Focus Scotland expressed their belief that the requirements to provide customers with better information about insurance and associated commissions would address important concerns. However, they felt that more needed to be done to overcome concerns about a lack of value for money. Others agreed with this. Several respondents asked that the Code require property factors to secure different quotes, consult with owners on these and retender regularly. They also felt that factors should make available supporting paperwork relating to insurance policies and premiums when requested.
- 3.79 Several respondents, mainly private individuals and private property factors, felt that the standard in relation to property factors declaring any “financial or other interests” should be strengthened to ensure that all possible commissions, fees, rebates or income received as a result of buying insurance were declared to homeowners.
- 3.80 Having accurate and up-to-date valuations was an issue highlighted by a number of respondent groups and was raised repeatedly at the consultation events. Respondents suggested that the Code should emphasise the need to secure accurate valuations.

*“Underinsurance is a huge issue in Scotland. Audits by Peverel Scotland have revealed that residents are often dangerously under-insured, or in some instances over-insured, and overpaying. Many have “never” been “independently” or regularly re-valued.”*

(Peverel Scotland)

- 3.81 A number of RSLs and their representative bodies felt 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. There was concern among RSLs about the practicalities and significant costs of providing detailed information to homeowners. Several also asked for clarity about how excesses should be dealt with.

*“We feel that this is the weakest section of the Code of Conduct and does not appear to reflect the role of Housing Associations in relation to insurance issues.”*

(GWSF)

- 3.82 GWSF and one RSL asked for clarification as to why RSLs were required to obtain professional indemnity insurance for factoring services.
- 3.83 One private property manager highlighted that this section of the Code should cover all insurance arranged by factors – which may be wider than buildings

and contents. Because the amount of information on insurance might be significant, they also suggested providing owners with a “summary of cover” – with further information available on request that could be charged for. However, some private individuals and others felt it was important there was absolute transparency in terms of the quotations received and cover provided.

- 3.84 One land maintenance company queried whether there would be a requirement to provide homeowners with details of the cost of public liability insurance if this was included within their administrative fee.
- 3.85 The same land maintenance company suggested that the Code should be clearer about the position of homeowners who had not paid their annual management charges benefiting from insurance cover arranged and paid for by an LMC.
- 3.86 Several respondents suggested that the standard relating to procedures for submitting insurance claims should be revised to acknowledge that claims may be made by owners directly.

#### **Key Issues**

- Some respondents suggested that consideration should be given to expanding the Code to include issues relating to the procurement of insurance and achieving value for money.
- Other respondents would welcome greater clarity around property factors declaring a benefit in the procurement of insurance.
- A number of respondents felt that the maintenance of up to date property valuations should be a requirement of the Code.
- The position of RSLs in relation to insurance issues is perceived to be an issue by some.

### **Section 7 – Carrying Out Repairs and Maintenance**

**Question 8: Does Section 7 cover the key matters relating to repairs and maintenance? If your answer is no, please explain what information you would like to see expanded upon.**

- 3.87 A significant proportion of respondents were satisfied with the content of Section 7 and there was particular support for increased openness and transparency about repairs and maintenance.

*“We particularly welcome the requirement for property factors to show how and why they appoint contractors, and that documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection.”*

(Consumer Focus Scotland)

- 3.88 However, there were a number of comments on how the standards could be applied in practice and some concerns about the general tone of the section.

- 3.89 Some respondents, including private sector property factors and representative bodies, felt that the section did not adequately recognise the role of the factor as ‘agent’ of the homeowners and that repairs were instructed by the factor on behalf of homeowners. Some suggested that the introductory paragraph to the section needed to be reworded to reflect this. One homeowner felt that the Code should explicitly recognise that homeowners can instruct works through majority agreement or as stipulated in the Title Deeds, and not assume that decision-making is the responsibility of the property factor.
- 3.90 Some homeowners felt that the section should refer to situations where homeowners had independently received a quote for a piece of work, and whether they should be able to influence which contractor is appointed by the factor.
- 3.91 Several respondents, particularly homeowners, argued that the Code should be more prescriptive on the timescales for carrying out work and provide guidance on reasonable costs for repairs.

*“The Code should set out maximum allowable time limits for the performance of various types of essential maintenance.”*

(Private individual)

*“It would be really helpful if annual guide-costs are published by the government for standard maintenance tasks and that there is a cap on what can be charged for core costs.”*

(Private individual)

- 3.92 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. Property factors were concerned that the requirement to inform homeowners of the progress of works should only apply to major repairs and maintenance.

*“A definition of what constitutes a repair that requires regular updates by the factor to the owner is required – this could perhaps be over a certain threshold of total cost but cannot be applicable to all repairs due to the potential administration involved.”*

(New Horizons Property Services)

*“Could clearer guidance be issued on the information we are required to provide and how this should be made available...”*

(East Renfrewshire Council)

- 3.93 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.

- 3.94 One resident group indicated that they had an agreement with their factor that they would be consulted if repairs were anticipated to exceed an agreed threshold. They suggested that the Code should include a similar process as standard practice.
- 3.95 The IRPM identified that the Association of Retirement Housing Manager's Scottish Code of Practice did not require managers to consult homeowners on works being funded out of reserves and suggested that the Property Managers Code should adopt a similar practice.
- 3.96 Some respondents including GWSF, the Institute of Historic Building Conservation (IHBC) and the Royal Town Planning Institute in Scotland (RTPI Scotland) felt that there should be greater emphasis on encouraging factors to undertake preventative maintenance programmes as part of the core services which they provide.

*“There must be a planned, preventative, programme of cyclical maintenance set within a property Management Plan.”*

(RTPI Scotland)

- 3.97 Many respondents argued that despite the requirement for disclosure, the practice of property factors receiving commission from contractors should not be allowed. Several argued that to ensure greater transparency, competitive tendering should be normal practice for works above a certain amount, and some felt that the Code should set out requirements for competitive tendering.
- 3.98 Several RSLs felt that the standard in relation to the appointment of contractors needed further clarification. They argued that RSLs have robust commissioning practices in place aimed at achieving best value for money.

*“We currently expect these practices to be adhered to regardless of tenure (unless Title Deeds dictate this) and would caution against any deviation as they are aimed at gaining competitive costs without binding officers’ in red tape.”*

(Grampian Housing Association)

- 3.99 RSL respondents also sought greater clarity on the procedure for remedying defective work and argued that there needs to be guidance on when a collateral warranty should be used.

#### **Key Issues**

- Some respondents suggested that this section should be more explicit about the contractual relationship between a property factor and homeowners.
- Greater clarity is sought by some on the timing and extent of communication, and the level of information that should be provided by property factors to homeowners relating to repairs and maintenance.
- The position of RSLs in relation to procuring repairs and maintenance is considered to be an issue by some.

## Section 8 – Complaints Resolution

**Question 9: Does Section 8 cover the key aspects of dealing with complaints? If your answer is no, please explain what information you would like to see expanded upon.**

3.100 Many respondents felt that the provisions set out in Section 8 were comprehensive and covered the key aspects of dealing with complaints.

3.101 Some respondents, primarily organisations providing factoring services, felt that the section would benefit from a clear definition of “complaint”.

*“Is there to be a definition of a complaint? Is this different from a communication as detailed in the communication section? When does a communication become a complaint?”*

(Greenbelt Group)

3.102 Some respondents, notably GWSF and some RSLs felt that there needed to be a clearer definition and guidance on ‘written records’ of complaints. They were unclear whether the standard referred to all communication in relation to a complaint or a separate written account detailing the history of the complaint. They also suggested that the period for keeping written records should be consistent with forthcoming guidance from the Scottish Public Services Ombudsman (SPSO) on dealing with complaints.

3.103 There were comments from across respondent groups on complaints procedures. In particular respondents felt that there could be greater clarity on what constitutes “reasonable timescales” and some argued that the Code could be more prescriptive on timescales for complaint resolution. Consumer Focus Scotland supported the requirement for timescales for acknowledging a complaint but felt that there should be clear target timescales for responding to the complaint.

*“We have some concerns that this may lead to problems with the operation of this section of the Code, and may be particularly problematic in the context of homeowners taking complaints to the Homeowner Housing Panel where the property factor has ‘unreasonably delayed’ attempting to resolve the complaint. Again, there is no indication given as to what would constitute an ‘unreasonable delay.’”*

(Consumer Focus Scotland)

3.104 RTPi Scotland also felt that the Homeowner Housing Panel should provide its decisions within a fixed timescale. Some respondents went further and advocated the inclusion of a model complaints procedure to ensure consistency.

*“RSLs are currently expected to have fully transparent complaints policies in place which would appear to adequately comply with what is contained in the Code of Conduct. For consistency across*

*all property factors, it might be useful to adopt within the Code a standardised complaints procedure along these lines.”*

(SFHA)

*“CIH Scotland would suggest that the Code of Conduct could mirror the model complaints procedure currently being developed by the Scottish Public Services Ombudsman (SPSO) which will require all comments and complaints coming into local authority and housing association landlords to be resolved, where possible, by front line staff within 5 working days. More complex high level cases will, however, be given a timescale of 20 working days...”*

(CIH Scotland)

- 3.105 There were a number of comments in relation to charging for handling complaints (which is prohibited by the Code unless provided for in the property titles or other legal documents). Some property factors felt that they should be able to charge for any ‘unreasonable’ or malicious complaints.

*“We agree all ‘reasonable’ complaints should be processed free of charge. However any unreasonable, unusual or extraordinary costs should be chargeable. This is as we do receive a lot of time wasters, people maliciously annoying the company and asking for unreasonable, costly and resource sapping information and work sometimes. Any additional work, but appropriate and genuine, such as fees or consultancy, required to provide information ‘must’ also be chargeable.”*

(Peverel Scotland)

- 3.106 Homes for Scotland proposed using the model of the Consumer Code for Home Builder’s Dispute Resolution Service where a processing fee is paid by both the complainant and the home builder to meet the cost of independent resolution.

*“It is felt that taking a small fee from the complainant reduces the number of vexatious or ‘spoiling’ effect claims. Where the dispute is resolved in favour of the customer the fee is refunded along with any agreed compensation...”*

(Homes for Scotland)

- 3.107 Several RSLs noted that the cost of complaint resolution would ultimately be passed on to homeowners in factoring management fees.

**Key Issues**

- A number of respondents felt that some of the terminology used in this section required greater clarification.
- The inclusion of a model complaints procedure would be welcomed by some respondents.
- A few respondents suggested that there is a case for charging for handling complaints.

**Question 10: Overall, is the Code clear, understandable and easy enough to interpret?**

3.108 Around 80 per cent of respondents answered this question, of which nearly two-thirds responded positively.

*“Overall the Code is well founded and the correct principles addressed.”*

(Scottish Property Federation)

*“Overall the Code of Conduct is clear, understandable and easy to interpret.”*

(GWSF)

3.109 A number of these respondents across all respondent groupings suggested that the Code would benefit from further explanation through the development of guidance and training events, to ensure that it was implemented as intended. One respondent suggested that the inclusion of a Glossary of Terms would be helpful, another that a website with advice and information on the Code should be developed.

3.110 Others (including some of those attending consultation events) suggested that, following the publication of the Code, it required to be promoted widely to raise awareness among homeowners of the standards they should expect when dealing with a property factor.

*“It is unclear from the consultation whether guidance for homeowners will be drafted to accompany the Code. We believe the provision of clear guidance written in straightforward plain language would be a useful tool for homeowners so that they know what to expect from their property manager once the Code comes into effect . . . [and] tell homeowners what they can do if their property manager is not meeting the Code’s requirements.”*

(Consumer Focus Scotland)

3.111 Some respondents suggested that complementary advice should be prepared on the responsibilities of homeowners. Some felt there was an imbalance between the responsibilities of homeowners and factors within the Code.

3.112 A number of respondents suggested that the Code would benefit from clarification as to the circumstances in which it applies. Examples cited included the coordination of one off major communal repairs, properties managed on a ‘voluntary’ basis by a homeowner and other informal arrangements such as a social landlord organising work where no factor had been appointed.

3.113 Some private individuals suggested that the Code was too vaguely worded which would create ambiguity. They felt that it should be more prescriptive and not allow room for interpretation.

- 3.114 Several respondents drew attention to wider codes, standards or frameworks to improve quality or handle complaints that the Code should make stronger links with.
- 3.115 RSLs, local authorities and some private property factors highlighted the potential financial implications of implementing the Code, potentially leading to increases in management fees. Examples cited included checking Title Deeds, developing written materials, communicating with and consulting with homeowners, and financial accounting.
- 3.116 Some RSLs suggested that there should be exemptions from the Code. Proposals included situations where a social landlord accounted for more than half of the co-proprietors, or where annual charges were lower than an agreed amount and therefore considered to be de minimis. Some suggested that the Code should make a greater distinction between commercial and not for profit organisations in terms of the standards proposed.
- 3.117 One respondent noted that the Code was only applicable to homeowners and therefore discriminated against co-proprietors of commercial properties.
- 3.118 At the consultation events it was noted that some owners will have a choice of different routes for dispute resolution. For example, the factor may be a member of RICS or there may be a specific provision relating to disputes resolution in the Title Deeds. Some representatives from private sector factors were concerned that the Code will result in a higher volume of complaints, increasing their administrative burden.

### **Additional Comments**

- 3.119 A number of wider issues relating to the introduction of the Property Factors (Scotland) Act 2011, not specifically covered by the consultation, were raised by some respondents in their written responses and at the consultation events. This section outlines the main issues that emerged which may be relevant to the development and introduction of the Code of Conduct.
- 3.120 A number of consultees wanted further information on proposed processes and charges in relation to the registration of property factors.
- 3.121 Some consultees wanted to know more about the establishment and operation of the Homeowner Housing Panel, including the opportunity for further consultations. Key issues raised included the make-up and skills set of the Panel members; the powers that the Panel will have (including, for example, whether Panel decisions will have precedence in relation to court proceedings); the costs of administering the Panel; and procedures for dealing with complaints, including timescales for Panel decisions. There was also some concern from factors that there appears to be no right of appeal against a judgement of the Panel (except on a legal point).
- 3.122 Some RSLs also sought clarity on the link between the Homeowner Housing Panel, the Scottish Housing Regulator (SHR) and the SPSO.

*“As present our sector is working with the SPSO to develop a new model complaints handling procedure. At the same time the SHR will be introducing their powers for investigating “significant performance failures” raised with them.*

*We believe that the Code should clearly set out the role of each regarding complaints handling to ensure that a homeowner does not move on to raise the same complaint again if they are dissatisfied with a final decision reached by another regulator.”*

(Paragon Housing Association)

- 3.123 There was significant concern about the timescales for introduction of the Code of Conduct among some consultees, particularly RSLs and local authorities. Many of these felt that the timescales were unrealistic, given the level of work they felt was involved in checking Title Deeds and establishing new policies to comply with the Code. Some asked for further guidance and consultation to help them begin preparations.

*“The implementation date is currently advised as being 1<sup>st</sup> October 2012, however, it is likely that local authorities have a lot of work to do to comply with the legislation on 1<sup>st</sup> October 2012, simply by the sheer volume of properties and owners with whom we will require to engage, check Title Deeds etc.”*

(Aberdeen City Council)

- 3.124 RTPI Scotland suggested that there should be a commitment to review the operation of the Code within an agreed timescale of, say, five years.
- 3.125 CIH Scotland noted the difficulty social landlords face in mixed tenure blocks, particularly where owners are unwilling or unable to contribute to maintenance and repair costs. They called for the introduction of Building Reserve Funds as compulsory in all new flatted accommodation in Scotland, to ensure that necessary funds are in place.
- 3.126 Attendees at some consultation events raised concerns about what would happen if a property factor was deregistered. They wanted to know what the process would be for identifying and transferring to a new property factor and who would have responsibility for the process. Clarification was specifically sought as to what would happen if a land maintenance company or a property manager identified in Title Deeds was deregistered.

#### **Key Issues**

- The draft Code was generally felt to be clear and understandable.
- A number of respondents suggested that the Code would benefit from guidance materials and training events.
- Wider promotion of the Code and the development of complementary advice on the responsibilities of homeowners would be welcomed by many.
- Some property factors suggested that the timescale for implementing the Code would be challenging.

- Some consultees sought more information on what would happen if a property factor was deregistered.
- A commitment to reviewing the Code within an agreed timescale would be welcomed.

## **ANNEX ONE – CONSULTATION RECIPIENTS**

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The following organisations were specifically invited to respond to the consultation:

### **RSLs or Subsidiary Organisations**

Abbeyfield Scotland  
Aberdeen Soroptimist Housing Society  
Aberdeenshire Housing Partnership  
Abertay Housing Association  
Abronhill Housing Association  
Albyn Housing Society  
Almond Housing Association  
ANCHO  
Angus Housing Association  
Antonine Housing Association  
Ardenglen Housing Association  
Argyll Community Housing Association  
Ark Housing Association  
Arklet Housing Association  
Atrium Homes  
Ayrshire Housing  
Barony Housing Association  
Barrhead Housing Association  
Bellsmyre Housing Association  
Berwickshire Housing Association  
Bield Housing Association  
Blairtummock Housing Association  
Blochairn Housing Association  
Blue Triangle (Glasgow) Housing Association  
Bridgewater Housing Association  
Broomhouse Housing Association (1986)  
BT Loch Aillse agus an Eilein Sgitheanaich – Lochalsh & Skye  
Cadder Housing Association  
Cairn Housing Association  
Calvay Housing Association  
Cassiltoun Housing Association  
Castle Rock Edinvar Housing Association  
Castlehill Housing Association  
Cathcart & District Housing Association  
Cernach Housing Association  
Charing Cross Housing Association  
Cloch Housing Association  
Clyde Valley Housing Association  
Clydebank Housing Association  
Clydesdale Housing Association  
Copperworks Housing Co-operative  
Cordale Housing Association  
Craigdale Housing Association  
Cube Housing Association  
Cumbernauld Housing Partnership  
Cunninghame Housing Association  
Dalmuir Park Housing Association  
Drumchapel Housing Co-operative

Dumfries and Galloway Housing Partnership  
Dunbritton Housing Association  
Dunedin Canmore Housing Association  
East Kilbride and District Housing Association  
East Lothian Housing Association  
Easthall Park Housing Co-operative  
Eildon Housing Association  
Elderpark Housing Association  
Faifley Housing Association  
Fairfield Housing Co-operative  
Ferguslie Park Housing Association  
Fife Housing Association  
Forgewood Housing Co-operative  
Forth Housing Association  
Fyne Homes  
Gardeen Housing Association  
Garrion Peoples Housing Co-operative  
Glasgow Housing Association  
Glasgow West Housing Association  
Glen Housing Association  
Glen Oaks Housing Association  
Govan Housing Association  
Govanhill Housing Association  
Grampian Housing Association  
Hanover (Scotland) Housing Association  
Hawthorn Housing Co-operative  
Hebridean Housing Partnership  
Hillcrest Housing Association  
Hillhead Housing Association 2000  
Hjaltland Housing Association  
Home in Scotland  
Homes for Life Housing Partnership  
Horizon Housing Association  
Hunters Hall Housing Co-operative  
Irvine Housing Association  
Kendoon Housing Association  
Key Housing Association  
Kincardine Housing Co-operative  
Kingdom Housing Association  
Kingsridge Cleddans Housing Association  
Knowes Housing Association  
Lanarkshire Housing Association  
Langstane Housing Association  
Larkfield Housing Association  
Link Group  
Linstone Housing Association  
Linthouse Housing Association  
Lister Housing Co-operative  
Lochaber Housing Association  
Lochfield Park Housing Association  
Loreburn Housing Association  
Loretto Housing Association  
Manor Estates Housing Association  
Margaret Blackwood Housing Association  
Maryhill Housing Association

Melville Housing Association  
Milnbank Housing Association  
Molendinar Park Housing Association  
The Moray Housing Partnership  
Muirhouse Housing Association  
New Gorbals Housing Association  
Next Step Homes  
North Glasgow Housing Association  
North View Housing Association  
Oak Tree Housing Association  
Ochil View Housing Association  
Ore Valley Housing Association  
Orkney Housing Association  
Paisley South Housing Association  
Paragon Housing Association  
Parkhead Housing Association  
Partick Housing Association  
Pentland Housing Association  
Perthshire Housing Association  
Pineview Housing Association  
Port of Leith Housing Association  
Prospect Community Housing  
Provanhall Housing Association  
Queens Cross Housing Association  
Reidvale Housing Association  
River Clyde Homes  
Rosehill Housing Co-operative  
Ruchazie Housing Association  
Rural Stirling Housing Association  
Rutherglen and Cambuslang Housing Association  
Sanctuary (Scotland) Housing Association  
Sanctuary Housing  
Scottish Borders Housing Association  
Scottish Veterans Housing Association  
Servite Housing Association  
Shettleston Housing Association  
Shire Housing Association  
Southside Housing Association  
Spire View Housing Association  
Strathclyde (Camphill) Housing Society  
Tenants First Housing Co-operative  
Thenew Housing Association  
Thistle Housing Association  
Tollcross Housing Association  
Trafalgar Housing Association  
Trust Housing Association  
Viewpoint Housing Association  
Waverley Housing  
Wellhouse Housing Association  
Weslo Housing Management  
West Granton Housing Co-operative  
West Highland Housing Association  
West Lothian Housing Partnership  
West of Scotland Housing Association  
West Whitlawburn Housing Co-operative

Whiteinch and Scotstoun Housing Association  
Williamsburgh Housing Association  
Wishaw and District Housing Association  
Yoker Housing Association  
Yorkhill Housing Association

**Local Authorities**

Aberdeen City Council  
Aberdeenshire Council  
Angus Council  
Argyll and Bute Council  
Clackmannanshire Council  
Comhairle Nan Eilean Siar - Western Isles Council  
Dumfries and Galloway Council  
Dundee City Council  
East Ayrshire Council  
East Dunbartonshire Council  
East Lothian Council  
East Renfrewshire Council  
Edinburgh City Council  
Falkirk Council  
Fife Council  
Glasgow City Council  
Highland Council  
Midlothian Council  
Moray Council  
North Ayrshire Council  
North Lanarkshire Council  
Orkney Council  
Perth and Kinross Council  
Renfrewshire Council  
Scottish Borders Council  
Shetland Council  
South Ayrshire Council  
South Lanarkshire Council  
Stirling Council  
West Lothian Council  
West Dunbartonshire Council

**Representative/ Membership/ Professional Bodies**

Asset Skills Scotland  
Association of Residential Letting Agents  
Association of Retirement Housing Managers  
British Association of Landscape Industries  
Built Environment Forum Scotland  
Coalition of Care and Support Providers Scotland  
Chartered Institute of Housing  
Convention of Scottish Local Authorities  
Federation of Master Builders  
Homes for Scotland  
Institute of Residential Property Management  
Landlord Accreditation Scotland  
Law Society of Scotland  
Property Managers Association Scotland  
Royal Institution of Chartered Surveyors in Scotland

Scottish Federation of Housing Associations  
Scottish Housing Best Value Network  
Scottish Land and Estates  
Sheriffs Association

**Public Agencies / Government Bodies**

Financial Services Authority  
Health and Safety Executive  
Leasehold Advisory Service  
Office of Fair Trading  
Private Rented Housing Panel  
Scottish Housing Regulator  
Scottish Parliament Information Centre  
Scottish Public Services Ombudsman

**Property Managers**

A &K Property Management Services  
Edinburgh Stair Partnership  
Grant and Wilson Property Management  
Hacking and Paterson Property Management  
McCarthy and Stone Property Management  
Morison Walker Property Management  
Orchard Shipman Property Management  
Peverel Property Management  
Redpath Bruce Property Management  
Ross and Liddell  
Ryden Letting Property Management  
Trinity Property Factors

**Land Maintenance Companies**

Ethical Maintenance  
Greenbelt Group  
Meadfleet - Communal area management  
Scottish Woodlands

**Equality and consumer rights organisations**

Age Scotland  
Citizens Advice Scotland  
Consumer Focus Scotland  
Equalities and Human Rights Commission Scotland  
Positive Action in Housing

**Residents Groups**

Friends of Glasgow West Conservation Trust  
Greenbelt Group Action  
Kingston Quay Residents Association  
Leddach Grange Residents Association  
Scottish Tenements Association  
Weshill and Elrick Community Council

**MSPs, MEPs and Private Individuals**

All Scottish MEPs  
A number of MSPs  
A number of private individuals

**Others**

BUPA  
Govan Law Centre

**Libraries**

British Library  
Cambridge University  
National Library of Scotland  
National Library of Wales  
Scottish Government  
Trinity College Dublin  
University of Oxford

## **ANNEX TWO – CONSULTATION RESPONDENTS**

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The following organisations and individuals responded to the consultation:

### **Land Maintenance Companies (3)**

Ethical Maintenance  
Greenbelt Group  
Scottish Woodlands

### **Local Authorities (7)**

Aberdeen City Council  
Aberdeenshire Council  
Angus Council  
City of Edinburgh Council  
East Renfrewshire Council  
South Lanarkshire Council  
West Dunbartonshire Council

### **Equality/ consumer rights organisations (3)**

Age Scotland  
Consumer Focus Scotland  
Scottish Council on Deafness

### **Private Sector Property Managers (8)**

A & K Property Management Services  
Hacking and Paterson  
Life Property Management  
Morison and Walker Property Management  
Peverel Scotland  
Property Management Company (Aberdeen)  
Redpath and Bruce Property Management  
Ross and Liddell

### **Representative/ Membership/ Professional Bodies (14)**

Asset Skills Scotland  
Association of Local Authority Chief Housing Officers (ALACHO)  
Built Environment Forum Scotland  
Chartered Institute of Housing in Scotland (CIH Scotland)  
Glasgow and West of Scotland Forum of Housing Associations  
Homes for Scotland  
Institute of Asian Professionals Scotland  
Institute of Historic Building Conservation  
Institute of Residential Property Management  
Law Society of Scotland  
Royal Institution of Chartered Surveyors Scotland (RICS Scotland)  
Royal Town Planning Institute in Scotland  
Scottish Property Federation  
Scottish Federation of Housing Associations (SFHA)

### **Resident Groups (10)**

2,4,6,8, Dublin Street Residents Association Edinburgh  
Cardengrove Residents Association  
Committee of New Cut Rigg Owners' Association

Dennistoun Owners Steering Group  
Friends of Glasgow West  
Greenbelt Group Action  
Larchfield Neuk Residents Association  
Registered Factored Owners Association - Cumbernauld  
The Bridge Residents Association  
One other residents group

**RSL or Subsidiary Organisation (31)**

Argyll Community Housing Association  
Barrhead Housing Association  
Bield Housing Association  
Bridgewater Housing Association  
Cernach Housing Association  
Clyde Valley Property Services Limited  
Cunninghame Enterprises Limited  
Dunbritton Housing Association  
Elderpark Housing Association  
Glasgow Housing Association/Your Place Property Management  
Govanhill Housing Association  
Grampian Housing Association  
Hanover Scotland  
Link Group  
Loreburn Group  
Lothian Homes Limited  
Manor Estates Housing Association  
Milnbank Housing Association  
Molendinar Park Housing Association  
New Horizons Property Services (Part of the Dunedin Canmore Group)  
Paisley South Property Services  
Paragon Housing Association  
Partick Housing Association  
Port of Leith Housing Association  
Prospect Community Housing  
Reidvale Housing Association  
Sanctuary Cumbernauld  
Shire Housing Association  
Southside Factoring and Related Services Limited (Southside Housing Association)  
Tollcross Housing Association  
Whiteinch and Scotstoun Housing Association

**Private Individuals (32)**

30 private individuals and 2 MSPs also responded

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