COMMON PROPERTY AND OPEN SPACES: MANAGEMENT, REPAIR AND MAINTENANCE

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There has been a number of significant policy developments recently in relation to common property management and the management of open spaces. These include the announcement, in July 2008, by the Scottish Government of plans to establish a Property Managers Accreditation Scheme (2008a).

This briefing describes the current legal framework surrounding common property management and the management of open spaces, including the appointment, function and dismissal of property managers (factors). It also examines issues surrounding the repair and maintenance of common property and open spaces, including decision making and payment for repairs and maintenance as well as the current framework for raising complaints against property managers and managers of the open spaces surrounding new build property developments.

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BACKGROUND
In Scotland, property management agents (more commonly known as factors) are often employed to manage common and shared property - for example roofs, staircases, entrances and gardens. The range of services offered by factors includes:

- undertaking regular maintenance checks on properties
- hiring, supervising and paying day-to-day maintenance employees, such as caretakers, cleaners or gardeners
- arranging for repairs to be carried out, including getting quotes, hiring contractors and supervising their work
- taking charge of a joint maintenance bank account and collecting payments
- organising building insurance

For the purposes of this briefing, it is important to draw a distinction between the provision of residential property management services to home owners (i.e. common property management) and land maintenance arrangements where the service provider owns the land (i.e. management of open spaces). A number of different issues and potential remedies apply and these are considered in greater detail below.

There are a range of standards, guidelines and codes of practice in place (including the Property Managers Association Scotland code of practice), however, there is at present no commonly accepted quality framework which consumers can refer to when appointing or assessing the performance of property managers. Even where local authorities retain an interest in the maintenance of common property, evidence shows serious problems in the way they deal with owners of former council housing (Scottish Consumer Council 1999).

COMMON PROPERTY MANAGEMENT
Property management services can be delivered by organisations within the private and public sectors, including by Registered Social Landlords (RSLs). Although there are no exact figures for the size of the market at present, the Office of Fair Trading (OFT 2008a) estimates that there are some 330,000 owner-occupied flats in Scotland and a further 85,000 rented from private landlords, of which it considers the majority of residents are likely to be in a relationship with a property management company. Evidence suggests, however, that factors are more common in some areas than in others. In Edinburgh, for example, many tenements have no factor.

The OFT estimates average administration charges paid to property managers to be in the region of £100 per flat per year. Administration charges paid to property managers do not necessarily cover all maintenance, repair and improvement costs and property managers may, therefore, make additional charges to meet such costs. Depending on the nature of the work, these charges can sometimes be substantial (e.g. major roof repairs). Some assistance for repair and improvement work may be available to owner-occupiers from local authorities in certain circumstances.

In tenements or other developments with common facilities, the title deeds of the individual properties often provide for maintenance and management of these facilities through a legal mechanism called a ‘title condition’. Title conditions survive changes of ownership and are typically enforceable by property owners against each other by way of an ordinary civil court action. In some cases, title conditions make provision for the appointment of a manager or factor, and sometimes also provide a mechanism by which that individual can be dismissed (e.g. by a majority vote of the affected owners). More basic title deeds do not include such

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provisions and the lack of a recognised mechanism by which managers or factors can be dismissed has created problems for some property owners.

Instead of, or in addition to, general provisions for a manager or factor in the title deeds, each property owner sometimes signs a standard contract prepared by the manager or factor which makes provision as to the rights and obligations of the parties to the contract in relation to factoring services. The normal rules of contract law then apply to that contract (see further below). When an obligation is solely contractual, as opposed to being contained in a title condition, it does not survive changes of ownership and each new owner must sign a contract with the manager or factor.

MANAGEMENT OF OPEN SPACES

The maintenance arrangements for open spaces (including landscaping, drainage systems etc) surrounding new property developments is currently an area of particular controversy. In many cases, the open spaces are owned by land management companies who are entitled, under the title conditions of the various individual properties in the development, to charge owners for the maintenance of that land. Concerns have been expressed by some residents at the quality of service provided and at the absence of appropriate mechanisms for making alternative arrangements. In many cases, it appears that ownership of the land has been transferred from the developers to a land management company without the residents being made fully aware of the implications of this arrangement. In a parliamentary debate in September 2007, Fergus Ewing, the Minister with responsibility for this area, indicated his intention to establish whether it would be possible to change the law to prevent the transfer of communal areas in a housing development to a third party (Scottish Parliament 2007).

It would also appear that areas of open space previously owned and maintained by local authorities are being transferred into the ownership of private land maintenance companies who then charge local residents for any maintenance costs (e.g. there is evidence that such activity is taking place in North Ayrshire). This potentially raises important issues of principle about land ownership and democratic accountability, as well as practical considerations such as how major capital expenditure in relation to complex public assets (e.g. drainage systems, river banks and public woodlands) is to be funded and by whom.

Although the planning system exerts limited control over the management and maintenance of open spaces (beyond planning considerations), Planning Advice Note 65 (Scottish Government 2008b) provides that maintenance issues must be considered during assessment of development proposals, particularly during pre-application discussions. Planning Advice Note 65 (PAN65) suggests that, for areas of common open space within new housing developments, long-term arrangements should be agreed before consent is issued and should set out clearly the responsibilities of the property owners and any factor or other parties involved. In addition, PAN65 provides that councils should work with developers and other bodies to seek the best mechanisms and funding for the long-term maintenance of new open spaces and suggests the following options:

- setting up a residents’ association with factoring arrangements
- developers/owners handing over the title to new areas of open space to the local authority, usually with a sum of money with which the local authority can fund future maintenance
• councils or developers making arrangements with a suitable third party\textsuperscript{1} for long-term maintenance

LOCAL AUTHORITY ADOPTION WITH COMMITTED SUM

Adoption by the relevant local authority for a committed sum has been the traditional mechanism for providing management of open spaces in new property developments. Local authority adoption for a committed sum is still a common approach within the property development industry but local authorities may also ask developers to look to alternative mechanisms.

SINGLE OWNERSHIP MODEL

In the 1980s, as new housing increased and the complexity and diversity of open space design under sustainable development guidance became more evident, the former Scottish regional councils took the view that local authorities may not want to adopt such areas. The single ownership model was developed as an alternative model for the management of open spaces. This mechanism is intended to ensure that local residents contribute equally and fairly to the management of the new open spaces and that the long term management of the space is secure. In early 1990’s, Strathclyde Regional Council, Scottish Natural Heritage and Scottish Enterprise collaborated to set up the Strathclyde Greenbelt Company (Operations) Limited to provide this alternative option for the development industry. Since this time, the company has departed from its public sector origins and expanded its area of operation.

Open spaces may include traditional landscapes but also sustainable drainage systems, designated woodlands, heritage, wildlife, environmental features and play areas which require long-term protection and management expertise. Local authorities may be reluctant to adopt such sites on a committed sum basis and the single ownership model may provide greater long-term stability where traditional common ownership models are at risk of breaking down.

ADVICE GIVEN TO HOMEBUYERS AT THE POINT OF PURCHASE

Where a conveyancing solicitor has not properly advised a house-buying client of the implications of factor provisions in their title deeds, the client may have grounds for raising a grievance against the solicitor. The system for making complaints against solicitors changed with the opening of the Scottish Legal Complaints Commission on 1 October 2008. From that date, all complaints should be sent to the Commission in the first instance. It decides whether the Commission or the Law Society of Scotland or both should investigate the matter.

The OFT Market Study, Homebuilding in the UK (2008b), received some direct representations from homebuyers about maintenance fees payable by residents of new homes who, at the time of purchase, had been unaware of the level of fees to be paid, what mechanism was used to review those levels and how maintenance contracts could be sold on. Homebuyers also told the OFT about examples where maintenance fees had suddenly increased by a large amount.

In a mystery shop conducted by the OFT, nine per cent of sales people for new build property developments did not know whether maintenance fees were payable. Where they were payable, the majority of shoppers (90 per cent) were provided with cost details although in 63 per cent of these cases, shoppers had to prompt for this. Fees ranged from a few hundred

\textsuperscript{1} In a previous version of PAN65, Greenbelt Group Ltd was specifically mentioned as such a suitable third party providing research and information services to the Scottish Parliament
pounds to £2-3,000 per annum with an average of £940 a year. Only 26 per cent of shoppers were told the fees were subject to review and 12 per cent of sales people said that the homebuilder could sell on the maintenance contract to a maintenance company or managing agent (page 145).

The OFT recommended that an industry code of conduct should include a requirement that homebuilders ensure that the homebuyer is provided with accurate and full information about any maintenance fees (page 162). It is understood that Greenbelt provides a homeowners pack to all new home buyers within its estates which provides relevant information on the service provided by Greenbelt as owners of the open spaces.

RECENT LEGISLATION

Both the Title Conditions (Scotland) Act 2003 (‘the 2003 Act’) and the Tenements (Scotland) Act 2004 (‘the 2004 Act’) contain provisions relating to property management services designed to strengthen the position of owners in relation to managers or factors. In particular, the 2004 Act introduced a statutory management scheme called the Tenement Management Scheme which acts as a default scheme for all tenements in Scotland. It provides a structure for the maintenance and management of tenements where this is not provided for in the title deeds. Where the title deeds are silent on matters of decision making, the Scheme will allow the owners in a tenement to make decisions by majority vote. The 2003 Act and the 2004 Act also strengthen the powers of owners to appoint and dismiss a manager. The relevant provisions are summarised below.

TITLE CONDITIONS (SCOTLAND) ACT 2003

Section 3 – prohibition of a long-term monopoly

The 2003 Act includes provisions intended to prohibit a long-term monopoly situation in respect of common property management. This section is complemented by section 63 (see below).

Section 63 - manager burdens

Section 63 of the 2003 Act identifies a category of title condition known as a ‘manager burden’. A manager burden is meant to be used by a developer to appoint a manager in the initial years of a new housing development. A local authority or RSL may also make use of a manager burden where a property is sold under the right to buy. A manager burden stipulates who has the power to appoint or to act as the manager for the scheme and to administer and enforce the title conditions imposed.

The key feature of a manager burden is that the overriding power of individual property owners to dismiss a manager cannot be exercised whilst there is a manager burden in force. However, manager burdens cannot last forever (in contrast to the position prior to the 2003 Act). Section 63 provides that manager burdens come to an end:

- five years from the registration of the manager burden in the property register (this is changed to three years for sheltered or retirement housing and 30 years for properties sold under the 'right to buy' scheme)

2 The legislation defines a ‘tenement’, as a building comprising two or more related flats which are owned or designed to be owned separately and which are divided horizontally. This definition extends beyond that traditionally associated with the term. Thus, a wide variety of residential property, including large houses which have been converted into flats, high rise blocks, modern blocks of flats, as well as the traditional sandstone or granite buildings of three or four storeys, qualify as a ‘tenement’ for the purposes of these provisions.
• 90 days after the individual or body on whom the powers are conferred ceases to be the owner of one of the properties affected by the manager burden
• on any earlier date specified in the title deeds

Sections 28 and 64 – appointment and dismissal of property managers
Section 28 of the 2003 Act provides that, where the title deeds do not make alternative provision (and a ‘manager burden’ is not in force) a simple majority of property owners in a development can dismiss a manager and appoint a new person to be a manager on the terms they specify. There are similar provisions contained in the Tenement Management Scheme of the 2004 Act in relation to appointing and dismissing factors in tenements (in particular rule 3.1(c)).

If the title deeds do impose a higher voting threshold than that provided for in section 28, section 64 restricts that threshold. Section 64 provides that, regardless of what the title deeds say (and as long as there is not a manager burden in force) owners of two thirds of the properties can dismiss a manager and appoint a new person to be a manager.

Section 33 – changing the title deeds to dismiss a property manager
Section 33 of the 2003 Act allows a majority of owners to dismiss a property manager and appoint another by amending the existing title deeds. This requires a solicitor to draw up a new deed which is then signed by the majority of owners. In contrast to the approach in section 28 (see above), the deed must be intimated to those owners who did not agree with the proposed change and these owners are permitted eight weeks to raise any objections with the Lands Tribunal for Scotland (section 34). As an owner with a financial interest in retaining their position, a property manager may object, preventing the title deeds from being amended in this way.

If no objection is raised within the eight week period, the owners may have the deed endorsed by the Lands Tribunal and proceed to register the deed in the property registers which gives effect to the variation or discharge.

Section 91 – applications to the Lands Tribunal
Section 91 of the 2003 Act permits 25% of the houses in an estate to apply to the Lands Tribunal to vary or discharge a title condition.

The cost implications of pursuing a section 91 application through the Lands Tribunal may act as a disincentive, particular as such an application is likely to bear the additional financial costs associated with being the first application of this type.

The Lands Tribunal for Scotland is in effect an independent civil court. It has statutory power to deal with various types of dispute involving land or property. In addition, at the request of parties, it can act as an arbiter to deal with certain types of property dispute. With the passage of the 2003 Act, the Tribunal can now, in some cases, determine questions as to validity, applicability or enforceability of title conditions.

Summary of provisions
The combined effect of the above provisions is that property owners can ultimately dismiss a property manager. However, the legislation is complex and, perhaps as a consequence, there
are few examples of it being used for this purpose.³

Furthermore, it is debatable whether these provisions give property owners the legal right to remove a property manager where the open space being maintained is not common property. The situation might arise where the property being maintained is owned by the land manager, but the title conditions of individual properties in that area make their owners liable for the cost of maintenance.

Greenbelt has, however, indicated that it has developed Consumer Choice Options that enables residents to make their own arrangements to maintain the open spaces in place of Greenbelt.⁴

The most attractive avenue available to property owners wishing to dismiss a property manager may be to apply to the Lands Tribunal to vary the relevant provisions of the title conditions. However, such a legal remedy is likely to be costly and, as with any legal proceedings, the outcome will depend on the specific circumstances of the case in question.

The following example, which describes the experiences of one resident who recently raised concerns with a Member of the Scottish Parliament, is typical of the type of case raised in Parliament and is intended to illustrate how some of the complex legal issues surrounding the management of open spaces may arise in practice.⁵

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I am a resident on a modern housing development in West Lothian. The open spaces around my estate are owned and managed by a private land management company.

About a year after I moved in, I received a bill and a leaflet from the management company informing me that it had taken ownership of the open spaces around my estate and from then on I was to pay them an annual maintenance charge to manage the communal areas near my home. If I had a complaint, I should form a residents’ association – as the management company preferred not to deal with individuals.

I checked my Title Deeds, and realised that a land management clause featuring the management company had been inserted by the property developer. The Title Deeds also contained a detailed specification for the work that was to be carried out. I was slightly concerned by the nature of the clause, but my solicitor hadn’t flagged it as unusual, so I set up a Direct Debit.

It became clear very quickly that the management company was not managing the open spaces around the estate to the specifications in the Title Deeds – and I tried numerous times, by letter, by email and by phone to contact the company. It didn’t respond.

After months of trying to engage with the company, and with the estate a tangled mess of broken glass, builders’ rubble, barren flower beds, litter-strewn woodland and knee-high grass – I informed the management company that I was cancelling my Direct Debit. Soon afterwards I received a threatening invoice, which included a late payment charge.

It felt like being in the grips of an extortion racket – the company’s actions seemed systematic.

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³ Although there has been one Lands Tribunal case where the flat proprietors of a sheltered housing complex exercised the new right under Section 28 of the 2003 Act to replace Sheltered Housing Management Limited with new managers (Sheltered Housing Management Limited v Jack)
⁴ http://www.greenbeltgroup.co.uk/mediaLibrary/images/english/2338.pdf
⁵ The management company in question has been given the opportunity to view this paper prior to publication and disputes the accuracy of the claims made.
and deliberate - I had never experienced anything like it.

Unlike a traditional factoring arrangement, where homeowners jointly-own the open spaces around their estate, and can fire a factor if things go wrong – homeowners on estates owned by this management company have:

- no ability to replace them if they fail to deliver
- no powers to challenge the cost of services (except via a costly and risky private arbitration scheme)
- no say in the work that is carried out

Through the act of buying a modern home we – and tens of thousands of other people like us - have unwittingly entered into a seemingly inescapable monopoly land management arrangement with this company.

As we have seen in Scotland, the problem is virtually impossible to reverse engineer – clauses inserted into Title Deeds are extremely difficult to amend – once contracted, people have little choice but to stay with the management company.

**COMPLAINTS AGAINST PROPERTY MANAGERS**

**HOW RESIDENTS CAN COMPLAIN**

In essence, the 2003 and 2004 Acts provide owners with a legal right to dismiss an existing factor and appoint a new one. However, often an owner will simply wish to take issue with a particular aspect of a manager’s or factor’s work (e.g. the size of the bill for maintenance carried out, maintenance work not done to a satisfactory standard etc).

Any property manager or factor who is a member of the Property Managers Association Scotland should have a formal complaints process in place, to deal with any problems. If a resident is not happy with the service provided by the factor, they can first make a complaint using this process. If they are not satisfied with the outcome of that complaint, they can subsequently complain to the Property Managers Association.

If the manager isn't a member of the Property Managers Association, the resident can write to the manager to make a complaint and, if this has no effect, the owner may seek advice from a solicitor or a local trading standards office. Local trading standards offices have powers under the Unfair Terms in Consumer Contract Regulations 1999 to bring proceedings against a property factor for unfair practices in the sheriff court. The Office of Fair Trading also has such powers.

In relation to the management of open spaces, an action group has been established (Greenbelt Group Action) by a group of homeowners from estates across the UK to tackle the problems they claim to have experienced with a particular property management company and to push for changes in legislation and public policy.
CONTRACTUAL AND OTHER LEGAL RIGHTS

The law of contract is relevant to disputes about property management where: a) relevant title conditions were created prior to 28 November 2004; or b) separate contract(s) between the factor and the property owners were agreed in relation to the maintenance and management of common property. Where title conditions were created after 28 November 2004, the principles of contract law do not apply.

If a property owner considers that the property factor or manager has breached a term of a contract that the factor or manager has with the property owner, there may be a ‘self-help’ remedy available which relates to the ‘principle of mutuality’ in contract law. The principle of mutuality provides that parties’ rights and obligations are interdependent on each other and so the enforceability of a person’s rights is dependent on them having performed their own duties. So, in theory, if the property factor or manager does not perform an obligation to provide a particular service, then, broadly speaking, the property owner is not obliged to perform his or her obligation of paying for that service.

If the factor or manager raises a formal civil court action against a property owner for payment of outstanding sums it may also be possible for the property owner to lodge a defence that the services were not in fact provided. The court will assess the merits of that defence, along with the merits of the arguments presented by the property factor or manager.

The obvious risk with the self-help remedy in practice is that if a court does later rule that there was no breach by the property factor or manager, or the breach was not material enough to justify the non-performance of the property owner’s obligations, the property owner will then be found in breach of contract for his or her earlier actions.

Although the principles of contract law do not apply to title conditions created after 28 November 2004, a self-help remedy equivalent to the one available in contract law may exist in relation to such title conditions. However, the law in this area is much more uncertain than that applying to contractual obligations. Legal advice should be sought from a solicitor on the possible application of the law to individual cases.

If a property owner considers that they have paid more than they should have done for a service provided then, regardless of the nature of the obligation imposed on them (ie contract or title condition), a further legal remedy exists. Such an owner may be able to raise a civil court action under the law of ‘unjustified enrichment’ to recoup the sums from the factor or manager. The law in this area is complex and uncertain. Legal advice should be sought on its potential application to individual cases.

Court actions can be expensive and there is no guarantee of success. Sometimes forms of alternative dispute resolution such as mediation or arbitration can be a better alternative. There is no obligation on parties to go to mediation (or to be bound by any agreement reached) but such an approach can be effective in some cases and may be free at the point of delivery. The Scottish Mediation Network can provide details of local mediation providers. An obligation to refer a dispute to a third party arbiter (and be bound by his or her decision) is sometimes provided for in title deeds relating to particular developments. A charge is usually made for this service. The Shelter website contains some useful advice on how property disputes may be resolved without the necessity for court action.
COMMON REPAIRS

TENEMENT MANAGEMENT SCHEME

The Tenements (Scotland) Act 2004 was intended to improve the process for arranging the repair and maintenance of tenement homes and to close loopholes in existing laws, which often resulted in essential repair work on private properties being postponed for years or in some cases, never being done at all.

The Tenement Management Scheme, provided for in the 2004 Act, applies only if the title deeds are silent on the subject of common repairs. Assuming the Scheme is applicable, the costs of maintaining the structural elements of the building (such as the roof) should be shared equally among all the flat owners in the building (unless the largest flat is more than one and a half times bigger than the smallest flat). Scheme decisions are made through majority voting. Over 50% of the votes need to be in favour of a decision in order for it to be confirmed. Any decisions made are binding and can, ultimately, be enforced through the courts.

Furthermore, if an owner has difficulty persuading a majority of co-owners to carry out a repair which is necessary to maintain ‘support and shelter’, section 8 of the 2004 Act retains an owner’s right to recover costs for works that have been instigated without a majority (subject to the test of whether the work is reasonable given the age and condition of the tenement and the likely cost of the maintenance). In such circumstances, the provisions of the Scheme for recovering costs would also apply.

ASSISTANCE FROM LOCAL AUTHORITIES

The cost of common repair work can be substantial. Even if there is a property manager in place and owners are paying into a “sinking fund” for repairs, it may still not cover the cost of substantial repairs such as roof replacements. In these circumstances, unless they have the available funding, owners may need to extend their current mortgage loan or take out an additional loan from a bank or building society.

Local authorities have powers to provide housing repair and improvement grants for owner-occupiers. The framework is set out in the Housing Scotland Act 1987. However, grant assistance is only available in certain cases, such as where a statutory repair notice is served. Further information is available in the Scottish Government’s guide to Housing Grants (2003).

The Housing (Scotland) Act 2006 reforms the way in which local authorities will be able to provide assistance to owners in the private sector to undertake work to their properties to improve their condition. The changes will mean that local authorities may be able to offer a wider range of support, such as practical information and advice or loans, rather than assistance being limited to grants. Further information on the powers is available in Housing (Scotland) Act 2006: Consultation on Draft Guidance and Regulations (2008c). The relevant provisions in the 2006 Act will come into force in early 2009.

Under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004, almost all private landlords must apply for registration with their local authority. The system will allow tenants and neighbours to identify and contact landlords of private rented property. The Landlord Registration central online system for Scotland provides further details.
In summary, legislation exists which provides tenement owners with certain rights to undertake maintenance and repair work to their common property and to share the costs equally. These rights can ultimately be enforced through the courts.

RECENT DEVELOPMENTS

Other recent developments include the following:

July 2008  **Property Managers Accreditation Scheme**

On 2 July 2008, the Scottish Government announced the establishment of a property managers accreditation scheme. The scheme will be industry led, not a public body, which the Scottish Government will support and work with. The Scottish Government is currently working with stakeholders to develop the detailed proposals. No timescale for implementation is currently available.

The accreditation scheme will only apply where consumers have the power to choose a service provider and not in circumstances where the provider is specified by the title deeds.

Scottish Government officials have indicated that in order to achieve accreditation, property managers will have to meet high standards of service and a robust complaints procedure will be put in place if the service is unacceptable. Among other requirements, property managers will have to produce clear written contracts for every client including an explicit complaints procedure. They will be expected to obtain quotations from a range of contractors and show transparent accounting and billing systems, clearly highlighting all management income being received. Accreditation could be taken away if standards are not met. The industry-led accreditation body will be made up of representatives from a wide spectrum of housing interests, including consumers.

June 2008  **OFT Market Study**

The Office of Fair Trading (OFT) recently commenced a study to determine whether the market for residential property management services is working effectively. In particular, the study will assess the current level of competition in this sector and investigate whether the existing mechanisms through which owners of flats in a block or homes employ property managers give rise to significant consumer detriment.

The deadline for written submissions to the OFT study was 5 September 2008.

March 2008  **All-Party Parliamentary Group on land maintenance**

A UK Parliament All-Party Parliamentary Group on land maintenance has been established to scrutinise the information available to house purchasers, the performance of land maintenance companies, and the role in this matter of the legal profession. The group is currently in the process of putting together an investigative report scrutinising all areas associated with land maintenance and has already taken evidence from land maintenance and factoring companies, and from key developers, the legal profession, local authorities and residents affected personally by this issue. The group intends to use the information to compile a
Oct 2007 Proposed Members’ Bill – Property Factors (Scotland) Bill - Patricia Fergusson

As Gordon Jackson was not returned to Parliament at the elections in May 2007, Patricia Fergusson MSP is now progressing his original proposal for a Bill to require property factors to register and make provision for an accessible form of dispute resolution between homeowners and property factors. Her consultation document was published in October 2007. She is currently awaiting the outcome of the OFT Market Study before proceeding with her legislative proposals in this area.

March 2007 Proposed Members’ Bill – Property Factors (Scotland) Bill - Gordon Jackson

In March 2007 Gordon Jackson MSP published a consultation paper on a possible members’ bill relating to property factoring. The consultation paper observed that, although some factors are members of the Property Managers Association Scotland Limited, property management in Scotland is by and large unregulated. It also observed that it was difficult for property owners to resolve disputes with property factors and that there were inherent problems with taking a property factor to court. He consulted on two possible solutions:

- a property factors register, with failure to register amounting to an offence
- the provision of accessible dispute resolution for parties which would involve a tribunal where legal representation would not be essential

The Bill fell at dissolution (2007).

Dec 2006 SCC Case Study

The Scottish Consumer Council (SCC) commissioned a study to assess consumer experiences of property management (factoring) services in the Dennistoun ward area of Glasgow. The study was undertaken in two parts. Firstly, a survey was carried out of a sample of home owners living in properties with common and shared parts in the area. The purpose of the survey was to map factoring arrangements within the area in terms of identifying the number of property managers providing services. It was also used to gather quantitative information on the services provided and charges levied, together with qualitative feedback on satisfaction with current arrangements and complaints resolution. The survey was supplemented by two public events which provided an opportunity for owners to discuss their experiences of factoring services in more depth.

The SCC Case Study reinforced the findings of work undertaken elsewhere to suggest that, for many owners, the maintenance of property with common and shared parts, is an unsatisfactory experience.

It included an examination of whether owners knew how to appoint or dismiss a factor. Most respondents (88%) indicated that they did not know how to do this. The study found no one who was aware of the legislative changes that have been introduced in recent years to strengthen the framework for managing and maintaining property with common and shared parts (para 7.5).
2000  The Housing Improvement Task Force (HITF)

HITF reported that there is a lack of understanding over the role of property managers. It raised concerns over the quality of service provision and highlighted the lack of any nationally recognised standards for the provision of property management services. It recommended the establishment of a national accreditation scheme for property managers.

1999  SCC Report ‘In a fix’

In 1999, the SCC published its report, In a Fix, which considered the experiences of homeowners whose factor was the local authority. Findings included homeowners being sent large bills unexpectedly for work they did not know anything about; being billed repeatedly to repair faulty workmanship; having no option to shop around for quotes or for insurance; being unable to challenge poor practice by their local authority; and generally being treated like “second-class citizens”.

CONCLUSION

There have been a number of recent policy developments in the areas of common property management, management of open spaces and common repair and maintenance, including the passage of legislation. This legislation is designed, in part, to strengthen the position of residents in relation to property managers or factors. However, the legislation may not be applicable to all disputes between communities and property managers, particularly where the title conditions provide that fees are payable for the maintenance of open spaces to the company that owns that open space.

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