General note

YourPlace, as factoring agent for Glasgow Housing Association (GHA), has 24,000 owner customers; 9,000 in wholly owned blocks and the remainder sharing properties with 28,000 of our GHA tenants. GHA has a further tenants in wholly-tenanted blocks, with some also in terraced properties. We have the advantage of mostly thorough title deeds, with associated Deeds of Condition for the factored properties we deal with.

1. Section 53 of the 2003 Act allows enforcement rights in relation to real burdens to be created by implication where properties are “related”. Are there problems with the way this section operates in practice?

A1. We have no direct experience, but as a there is a general lack of clarity on definitions and intent, we believe revision or guidance documentation would be of benefit.

2. Section 63 of the 2003 Act controls the duration of “manager burdens” (the ability of a developer to appoint a property factor). Do the timescales contained in section 63 strike the right balance between the interests of homeowners and the interests of developers?

A2. The 3/5 year burdens strike a reasonable balance, but we believe the manager burden should not necessarily be dependent upon the final sale of a property within a development, since re-trenchment due to economic climate could result in many years between a first and final build within a development, or in a very protracted period before a final sale in a completed development. In practice, this prevents owners in a private development from changing factor, and can result in complacency from the factor, who does not need to fear loss of business. The option for unhappy factored owners would be through the factors complaints process and potentially the Homeowner Housing Panel and the impact of this has yet to become clear. Our view would be that the period should be related to the sale of the first property in a development, and that 5 years, or even 10 years is a more reasonable expectation.

Note: A more pressing problem for homeowners in new developments can be caused by developers, perhaps caught in an economic downturn, not completing developments. The requirements to complete greenspace development, roads, etc are governed by the Planning and Building Control regulation of the development and it has become clear to GHA, through recent acquisition of new-build properties, that there is a need for a minimum standard that developers should use as the basis for new-build properties. Council planning departments and elected representatives probably spend a great deal of time involved in the problems faced by owners within
unfinished developments. These arguments inhibit the progression to normal factoring arrangements.

A minimum requirement could be that developers finish common parts within an agreed timescale and, if they are unable to complete a development within this, they should be required to complete some common parts (tree planting/landscaping, pavements and road completion for example nearest to any mostly sold elements of the development) and to put a ‘holding’ finish on others. This could include upgrading of certain access roads and grassing of unbuilt-on land, with a maintenance/grass-cutting requirement.

3. Local authorities and housing associations can impose a manager burden which lasts up to 30 years on properties purchased under “right to buy” legislation. Is it necessary to tie homeowners into an arrangement for such a long period of time?

A3. The 30 year manager burden is timing itself out, due to the vast majority of Deeds of Conditions for RTB sales having been registered in the 1980s and 1990s, so the issue may not merit significant effort to effect a change at this time. Local authorities and housing associations fear the potential of ‘self-factoring’ that can arise if there is no manager burden in properties where they remain an owner with a social tenant. Self-factoring, often a resort to save management costs, can result in blocks falling into disrepair if there is no robust factoring arrangement in place to ensure required repairs are progressed and individual owners are enabled, through inactivity or lack of contact (landlord situations for example) to block essential repair work. This is a significant concern for LA/HAs who have legal obligations to their tenants under ‘Right to Repair’ legislation. We believe it to be a fairly common experience that HA/LAs who do not have factoring responsibility find themselves in the position of paying entirely for common repairs or spending considerable resource on attempting to get progress on common repair works.

4. “Right to buy” homeowners can vote to replace a property factor with a two-thirds majority despite a manager burden being in place. Are there any examples of situations where this right has been exercised? Is a two thirds majority achievable in mixed tenure developments?

A4. A two thirds majority is very achievable in smaller blocks - we have many 4 in block properties and 8 unit tenemental blocks (mostly with a simple majority requirement, but the challenge of achievability is probably not significantly altered by this difference) and, provided there is reasonable owner interest, majority voting is very possible. We achieved many such votes through our second stage transfer (SST) process:

Example: Between March 2009 and June 2011, 19,000 dwellings transferred from GHA into the ownership of a range of community-based Registered Social Landlords. This also impacted on 5,120 associated mixed tenure owners living in 1,848 blocks. 456 proprietors meetings were convened and 3,561 owners transferred from GHA to the SST landlords (their new factors). Of the 5,120 total owners, 3,398 lived in blocks with either a majority of individual owners, or 50/50 GHA/SST landlord owned and, by our simple majority deeds rules, the 1,015 blocks involved could have voted to remain with GHA as factor, or to switch. 423 blocks
voted to remain or had non-quorate meetings that resulted in no vote being possible. 592 blocks switched. In all of the 592 blocks which switched, a majority attendance was achieved. Often the attendance (or mandated voting which was the alternative to physical personal attendance) was two thirds or more. The smaller number of units in these blocks compared to many private developments is significant to the ability to achieve this (see q.6).

Another notable element of this process was that we found a great deal of apathy, or perhaps simple lack of interest, in changing factor, despite every possible encouragement - brochures, letters, detailed explanations of how to achieve a change of factor, meetings with representation mandates to encourage owners to vote whether they wanted to attend a meeting or not and, finally, second meetings if a first meeting was not quorate. It is notable that the entire process was extremely resource-hungry and GHA was providing advice, encouragement and support for owners to enable them to switch. We had to conclude that, rather than lack of knowledge about how to change factor (which the OFT market study in 2009 suggested caused low levels of switching manager), our experience suggests that 43% of owners (1,469 owners living in 423 blocks) did not actually wish to change. It was also apparent that a significant proportion of the 592 blocks which did switch, did so by achieving quorate meetings where the new landlord was the majority owner, and therefore had the majority vote. The conclusion may be that, given a choice between being factored by one RSL and another, many owners had no preference. However, it was made clear to these owners that they had more than two factoring choices - they could have voted to self-factor, or to vote for a commercial/alternative factor. No blocks chose to self-factor or to go to an alternative/commercial factor as a result of this process.

5. A local authority/housing association may own units in a development and provide the factoring service. Should the local authority/housing association’s voting rights be modified to make it more difficult for them to block a vote to dismiss them as property factor?

A5. A two thirds majority may be unreasonable. A vote for each property within a block is a fair and reasonable approach to factoring decisions, with a majority decision effecting a change.

Our experience is that owners in blocks which are majority HA owned will occasionally approach about a change of factor – they perceive that they may ‘save money’ and could use a change of factor to help block required improvements and repairs to the property by voting for a self-factoring arrangement, rather than moving to an alternative factor and increasing competition.

Our experience of blocks which are already self-factoring, and in which we own tenanted properties, is that it can be difficult to arrange for common repairs to be done with all owners paying their share. (see q3)

With the HOHP now in existence as a body to whom dis-satisfied factored owners can complain, there is sufficient recourse for complaints to be resolved and it should be in the interests of factors to behave appropriately. Changing the voting rights of LA/HA owner-factors to a simple majority would be unlikely to create much change in
factoring arrangements, but could be part of a wider move towards a simple majority rule covering various situations. A mediated process for settlement of issues may be helpful.

6. **Section 28 of the 2003 Act allows owners to dismiss a property factor by a simple majority vote where the title deeds are silent on the issue. Section 64 provides that, regardless of what is stated in any real burden, a property factor can be dismissed with a two-thirds majority vote. Are these provisions workable in practice? The Committee would be interested in any experiences of homeowners/residents’ associations in using the legislation in this way.**

A6. Relates to q4. In smaller blocks, majority votes are very achievable and our Second Stage Transfer experience was that many owners exercised their voting rights.

Larger developments do not have the same potential for two thirds voting. In our experience, it is very difficult to get even half of the owners in a large development to agree to a proposal or to attend a meeting. However, a simple majority of meeting attendees/voters, with a majority of these attendees/voters creating the decision, would be a more reasonable expectation than two thirds. It is important to remember that any vote is only binding until a further vote on the same subject, so if a vote is unpopular, it should then generate the necessary support to enable it to be changed at a future meeting (based on the presumption of initial apathy being the problem about achieving high voting rates).

7. **Under a “land-owning maintenance company” model, an organisation owns green space around a development (which may encompass landscaped areas, drainage systems, play parks etc.). The land-owning maintenance company is required under real burdens affecting the land to maintain it and homeowners are required to pay for this service.**

   (a) **Are the current options available to homeowners who are unhappy with the service provided by such a company effective?**
   
   (b) **Are there options for reform which balance the interests of homeowners and land-owning maintenance companies? (Note that the Scottish Government has consulted on this issue[1]).**

A7. (a) The current options are not effective as homeowners, where they are unhappy with the services of their land-owning maintenance company, find it difficult to get land-owning maintenance companies to adequately maintain land around developments to a suitable standard at a reasonable price.

   (b) The options discussed in the consultation include the potential to dismiss a land-owning maintenance company. This was based on a two-thirds majority, which might not be achievable. It is important that land-owning maintenance companies can be dismissed, to help ensure they are incentivised to perform their maintenance function to a good standard and reasonable cost. Apathy amongst owners, some of whom will likely be landlords and not resident in the property, is a problem that is not easily overcome by the involved and interested owners within a development. The solution would be to have a lower percentage, perhaps a simple majority.
8. It is possible to vary or remove real burdens under sections 33 and 34 of the 2003 Act. However, if one owner objects, the variation will not be effective for the whole development. Do these provisions set the right balance between the interests of separate homeowners? The Committee would be interested in the experiences of homeowners/residents’ associations in using this aspect of the legislation.

A8. We have not used this aspect of the legislation.

9. It is also possible to vary or remove “community burdens” (a form of burden affecting a number of units in a development) under sections 90 and 91 of the 2003 Act by application to the Lands Tribunal. A sum may require to be paid in compensation to any homeowner negatively affected. Do these provisions set the right balance between the interests of separate homeowners? The Committee would be interested in the experiences of homeowners/residents’ associations in using this aspect of the legislation.

A9. We have no experience of application to the Lands Tribunal.

10. An application to the Lands Tribunal may require the interested party to instruct a solicitor. The losing party may also be liable to pay the legal expenses of the winner. Note also that legal aid is available where the applicant meets the qualifying criteria. Is this form of procedure appropriate to the issues at stake? Does it inhibit homeowners from bringing applications under the 2003 Act? Is it appropriate/desirable to create an alternative procedure?

A10. Any threat of incurring cost will inhibit homeowners from bringing applications. The fear of cost is a major reason for homeowners, many of whom are in an 'equity rich/cash poor' situation, not proceeding with any activity involving a solicitor. Instead, they will seek free of charge advice routes. An alternative procedure involving a housing panel or a mediated route, would be more supportive of owners and be more likely to achieve progress in many situations (whilst helping minimise 'frivolous' applications).

YourPlace Property Management
4 March 2013