Justice Committee

8th Report, 2013 (Session 4)

Inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003

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# Remit and membership

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Justice Committee

Remit and membership

Remit:

To consider and report on:
a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and
b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Roderick Campbell
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Christine Grahame (Convener)
Colin Keir
Jenny Marra (Deputy Convener)
Alison McInnes
David McLetchie
Graeme Pearson
Sandra White

Committee Clerking Team:

Irene Fleming
Joanne Clinton
Ned Sharratt
Christine Lambourne
SUMMARY OF RECOMMENDATIONS

1. The Committee recognises the value in having in place an effective system to keep the country’s housing stock properly maintained. The Committee acknowledges that evidence taken during the inquiry has demonstrated that some practical difficulties are being experienced in the operation of the relevant provisions in the 2003 Act. The Committee therefore considers that there are some improvements which could be made to the legislation. The Committee has explored these issues during the course of its inquiry and its conclusions are set out below. (paragraph 38)

2. The Committee accepts the rationale that some protection needs to be in place to ensure the maintenance of properties which were previously under the responsibility of local authorities. However, evidence has shown that the provisions may not be working on a practical level. It therefore believes that these provisions warrant review to ensure that they operate in practice. (paragraph 50)

3. The Committee is particularly concerned that, although the majority of properties which must comply with this manager burden are reaching the end of the 30-year period, if a deed of conditions was registered in 1995, the manager burden would still have 12 years to run. It therefore calls on the Scottish Government to give careful consideration to the operation of this provision in the 2003 Act. (paragraph 51)

4. The Committee notes that difficulties appear to have arisen regarding the switching of factors. In particular, the complexity of the legislation may be creating barriers to switching. (paragraph 67)

5. The Committee understands that there are circumstances where a two-thirds majority threshold should be required in order to switch factors. However, it considers that this may be creating a barrier to switching factors. In particular, it is concerned that this may be difficult to achieve
where, for example, data protection measures prevent information relating to owners and landlords being available. It therefore calls on the Scottish Government to give careful consideration to whether the legislation could be amended to remove these types of barriers. (paragraph 68)

6. The evidence received by the Committee demonstrates the complexity of the law in this area, in particular, regarding the enforceability of real burdens where the land-owning maintenance company model is involved. The Committee notes that this lack of clarity can create uncertainty which is unsatisfactory for all parties. The Committee therefore calls on the Scottish Government to consider whether a review of the law in this area would be welcome. The Committee also notes that a test case might help to clarify these issues. (paragraph 95)

7. The Committee is concerned to hear that, as well as often having no choice as to the provider of property maintenance services, homeowners feel they have little recourse where standards of service are not met. It welcomes the provisions of the 2011 Act which introduced the Homeowner Housing Panel which it believes will go some way to addressing this issue. However, the Committee is of the view that a transparent mechanism is needed to address issues around the cost of services. The provision of a mediation service in relation to disputed bills may be one way forward. The market may also warrant further examination by UK Government agencies responsible for competition, such as the Office of Fair Trading. The Committee considers that this should be taken forward as a matter of priority. (paragraph 119)

8. The Committee also notes the land-owning maintenance model comes about when local authorities withdraw from taking on responsibility for maintenance of green space around new developments. However, it considers that there may still be a role for local authorities to take some responsibility for ensuring that the maintenance of these common areas is carried out in a fair and equitable way. In the interim, the Committee calls on local authorities to review all the levers at their disposal – including the planning process and the collection of capital payments from developers – to ensure that sustainable, long-term maintenance arrangements are supported. In the longer-term, the Committee calls on the Minister for Local Government and Planning and local authorities to review the arrangements in place for land maintenance, recognising that green space has a wider benefit to communities and that there is a role for local accountability. (paragraph 120)

9. The Committee is concerned that the Lands Tribunal may not be accessible to individual homeowners. In particular, it is concerned that expenses liability may deter homeowners from using the Lands Tribunal. It welcomes the alternative approaches to expenses suggested by the Lands Tribunal in its written submission, including the suggestion of a cap on expenses, which goes some way to improve the situation, but it would still result in expense for a homeowner defending their right to object to the removal of a burden, and that is fundamentally unfair. The Committee calls
on the Scottish Government to consider these concerns in more detail. (paragraph 131)

10. The Committee accepts the general view that the culture of common maintenance is not prevalent in Scotland. It notes that it is the duty of solicitors and developers to highlight to individuals, during the property purchasing process, their responsibilities with regard to common maintenance. The Committee is encouraged by the submissions suggesting that establishing residents’ associations may help to improve the situation. To enhance this, the Committee calls on the Scottish Government to make provision to raise awareness of homeowner responsibilities more generally. (paragraph 151)

11. The Committee notes that degree of concern expressed about the operation of section 53 of the 2003 Act. It also notes that there is no consensus as to how these issues should be addressed. It therefore agrees that the provisions in section 53 would warrant consideration by the Scottish Law Commission. The Committee calls on the Scottish Government to invite the Scottish Law Commission to take forward a review of section 53 as part of its work programme. (paragraph 166)

BACKGROUND

12. At its meeting on 29 January 2013, the Committee agreed to conduct an inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003 ("the 2003 Act"). In doing so, the Committee agreed that the Act would benefit from some post-legislative scrutiny which would focus on the operation of the provisions which dealt with property factors.

General background to the legislation

13. The Title Conditions (Scotland) Act 2003 was a key part of the Scottish Parliament’s reform agenda in relation to land ownership in Scotland (the other elements being the Abolition of Feudal Tenure (Scotland) Act 2000 and the Tenements (Scotland) Act 2004). The 2003 Act updated the law in relation to obligations (or “title conditions”) which appear in the title deeds which pass ownership to land and buildings. The importance of title conditions is that, as well as binding the original buyer, they bind all future buyers, thus creating a perpetual obligation which runs with the land. A contract is only capable of binding the original buyer and seller.

14. One of the matters dealt with in the 2003 Act is “real burdens”. Real burdens can cover a number of situations, for example, preventing business use of a residential property, requiring all properties in a tenement to contribute to roof repairs or limiting the height of garden buildings and extensions. They can also control how a property factor may be appointed.

Overview of the property factor provisions in the legislation

15. The 2003 Act deals with a complex area of law and its provisions reflect this complexity. There are, however, several key sections which affect how a burden
dealing with the appointment of a property factor can operate and what options homeowners have if they wish to change the burdens which affect their properties.

**Manager burdens**
16. In certain circumstances, an individual or organisation (for example, a developer) has the right to appoint a property factor for a community of properties – this is known as a “manager burden”. Section 63 of the 2003 Act controls the duration of such a right. A manager burden can only exist for as long as the individual or organisation owns a property in the community; it will cease when that property (or the last property) is sold.

17. In addition, there are time limits on how long a manager burden can last, regardless of whether the individual/organisation still owns property in the community. The time limit runs from the date of creation of the burden (which will usually be the date the first property in the community was sold). The time limits are as follows:

- for sheltered housing – three years
- for local authority/housing association properties sold under right to buy – 30 years
- for other housing (ie. most owner-occupied housing) – five years

18. Homeowners cannot change property factors while a manager burden is in force. The only exception is in relation to right-to-buy properties, where it is possible if two-thirds of the residents agree under section 64. The duration of manager burdens is considered from paragraph 38 in this report.

**Appointing and dismissing a factor**
19. Under section 28 of the 2003 Act, the owners of properties in a community may appoint or dismiss a property factor by a majority decision, but only where burdens in title deeds do not make different provision (for those living in flats, similar provisions in the Tenements (Scotland) Act 2004 apply instead). Section 64 provides that, regardless of any burdens in the title deeds (except a “manager burden”), two-thirds of owners can vote to appoint or dismiss a property factor.

**Options for changing burdens in the title deeds**
20. Under sections 33 and 34 of the 2003 Act, a majority of owners in a community can agree to vary or discharge community burdens in the title deeds. The proposed change must be notified to those who have not agreed to the change, who may raise an objection with the Lands Tribunal for Scotland. Under section 91 of the 2003 Act, 25% of the owners in a community can apply to the Lands Tribunal to have a community burden varied or discharged. Section 90 sets out a similar process for, among other things, owners affected by a real burden which is not a community burden.

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1 “Community burdens” are a type of real burden which apply to a group of houses (either in a block of flats or on a housing development). Community burdens are mutually enforceable so that each property is encumbered by the same or similar burdens and each has the right to require their neighbours to also abide by the burdens.
21. It may be necessary to instruct a solicitor in order to bring a case before the Lands Tribunal (although legal aid may be available). In addition, the Lands Tribunal can award expenses against a party (usually the losing party), meaning that they have to pay their opponent’s legal costs in bringing the case as well as their own. The Lands Tribunal can also award compensation to those adversely affected by the variation of real burdens (although it cannot do so without the consent of other parties to the case).

Section 53

22. Section 53 of the 2003 Act, along with section 52, deals with who can enforce real burdens which affect a community of properties (such as a housing development or block of flats). In both cases, the enforcement rights will only apply where the real burdens were registered (for at least one property) prior to feudal abolition in November 2004. In cases arising after November 2004, the title deeds should name any burden which is intended to be mutually enforceable as a “community burden”.

23. Section 52 enables owners whose title deeds refer to a “common scheme” (of real burdens), either expressly or by implication, to enforce real burdens against each other. Section 53 is designed to deal with situations where there is a “common scheme” but it is unclear what properties are affected by it. It is still possible for neighbours to have enforcement rights in relation to each other where there is a “common scheme” and the properties concerned are “related” to one another. The section contains examples of where properties may be related, including where there is common ownership of some parts or where the same “deed of conditions” (detailing the real burdens which apply) covers all the properties.

Interaction with the Property Factors (Scotland) Act 2011

24. The Scottish Parliament passed the Property Factors (Scotland) Act 2011 at the end of its last session. It came into force in October 2012. It has three main strands:

- a requirement for all property factors to appear on a register (and for them to be judged a “fit and proper” person by the Scottish Government);
- the introduction of a Code of Conduct\(^2\) (covering standards of service, communication, billing etc.) by which property factors are required to abide;
- the creation of the Homeowner Housing Panel\(^3\) to deal with disputes between property factors and homeowners.

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\(^3\) Homeowner Housing Panel website. Available at: [http://hohp.scotland.gov.uk/prhp/2156.html](http://hohp.scotland.gov.uk/prhp/2156.html) [Accessed 28 May 2013].
25. The underlying purpose of the 2011 Act is to improve standards within the property management sector. The Code of Conduct provides a basis for a clearer understanding between factors and homeowners of the services being provided, as well as greater transparency in relation to billing and contracting.

26. A number of those who provided evidence to the Committee felt that the 2011 Act would improve relationships between property factors and homeowners. In addition, those who found themselves unable to change property factor (for example, see the “land-owning maintenance model” considered later in this report from paragraph 69) would be in a significantly better position as a result of the dispute resolution services of the Homeowner Housing Panel.

27. David Doran, from property factors Hacking and Paterson, made the following observation in oral evidence:

“The owners have a certain level of power, and the Property Factors (Scotland) Act 2011 will help owners know that they have that power. More than anything, it will offer greater transparency and open the doors for owners and factors to get together and discuss, and to empower themselves.”

28. The 2011 Act does not deal with the appointment or dismissal of factors and does not encompass disputes about the cost of services. This means that homeowners may still need to rely on the provisions of the 2003 Act if they wish to change property factors.

Remit of inquiry

29. In considering the remit of the inquiry, the Committee agreed to seek views on whether the provisions in the 2003 Act create a barrier to switching property factor and whether it offers sufficient recourse for those dissatisfied with the services of land-owning maintenance companies. The Committee also sought views on experiences of the options available under the 2003 Act to vary or remove existing real burdens. Finally, it considered the practical operation of section 53 of the Act which relates to enforcement rights in relation to real burdens.

30. In issuing its call for evidence, the Committee agreed to seek views specifically on the following issues—

- 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?

- 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?

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• 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?

• 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?

• 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?

• 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.

• 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.

  1. Are the current options available to homeowners who are unhappy with the service provided by such a company effective?

  2. 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).

• 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.

• 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

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homeowners? The Committee would be interested in the experiences of homeowners/residents’ associations in using this aspect of the legislation.

- 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?

31. In response to the call for evidence, the Committee received 35 written submissions (including supplementary submissions). In addition, the Committee took oral evidence at its meetings on 5, 12 and 19 March. Details of these evidence sessions and the written evidence received can be found on the Committee’s inquiry web page.

32. The Committee did not receive a wide number of submissions from property owners and groups representing consumers. The Committee therefore recommends that, in taking forward the proposals in the report, the Scottish Government commissions research into the experience of homeowners in this area.

PROPERTY FACTORS

33. The Committee chose to differentiate between traditional property factors, who provide a maintenance service to homeowners and the “land-owning maintenance” model, whereby a provider owns the land which it is responsible for maintaining. The evidence taken by the Committee on the latter model is considered separately from paragraph 69 in the report.

General overview of the provisions of the 2003 Act relating to property factors

34. As already discussed above, the 2003 Act can control who may appoint a property factor by permitting certain types of “manager burden” to appear in the title deeds to properties. In addition, the 2003 Act sets thresholds in relation to participation in the decision to appoint or dismiss a property factor. Homeowners who wish to change the real burdens which affect their properties must use the mechanisms set out in the 2003 Act.

35. The Committee recognises that the relationship between a factor and homeowners can be a difficult one. Factors have the task of maintaining the building and/or common parts such as stairwells or landscaped areas. However, homeowners can be reluctant to pay for such services, especially where they are not directly affected. Professor Rennie from the University of Glasgow noted in his written submission:

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“Few people in tenement properties like the idea that they should contribute to the maintenance of parts of the tenement which do not actually concern them. Lawyers and indeed MSPs will all have had correspondence from top floor proprietors who suffer from leaky roofs but can do nothing about it because the lower floor proprietors will not contribute their share of the cost of repair. This happens whether there is a factor or not but generally speaking the position is worse if there is no factor.”

36. Nevertheless, factors play an important role in maintaining the general condition (and therefore value) of the properties they are involved with. The Committee notes that, without effective factoring relationships, there is a risk that properties may fall into serious disrepair. In their written submission, the Scottish Federation of Housing Associations (SFHA) described what can happen when a factoring relationship breaks down:

“It is generally accepted by most homeowners that there is a benefit of having a property factor. An unmanaged development often results in a decline in the general condition and amenity of a development. This may lead to prospective property managers being unable or unwilling to take on the management task of a development which has been allowed to fall into a very poor state of disrepair. Having had some experience of this, housing associations have been approached on a number of occasions to take over the management of developments or blocks of properties which are currently unmanaged, or a commercial factor has withdrawn or been dismissed by the owners. Initially it was anticipated that the owners within such developments would self-manage. However this often proves to be too challenging and as such some owner occupiers within the development approach a local housing association to factor the development. In one such case, on reviewing the development itself, the housing association found that the common parts of the development were in such a state of disrepair they advised the owners that they would not take management of development unless a sum from each of the owners was lodged with them in order to bring the property up to standard. From discussions with all of the owners only some agreed to payment of this sum and as such management of the property was not taken on by the organisation.”

37. Glasgow Factoring Commission, in describing the transition from owner-occupation to short-term buy-to-let renting in parts of the city, made a grim prediction:

“The very real consequence of these activities is not just the loss of responsible owner occupiers, but a growing problem of ill health especially for children and elderly people as a direct result of poor internal conditions, water ingress and other issues relating to hygiene – in other words, the possibility that the very problem we thought we had eradicated in the 1960s through the slum clearance programme is returning in another form.”

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7 Professor Robert Rennie. Written submission, paragraph 6.
8 Scottish Federation of Housing Associations. Written submission, paragraph 2.
9 Glasgow Factoring Commission. Written submission, paragraph 10.
38. The Committee recognises the value in having in place an effective system to keep the country's housing stock properly maintained. The Committee acknowledges that evidence taken during the inquiry has demonstrated that some practical difficulties are being experienced in the operation of the relevant provisions in the 2003 Act. The Committee therefore considers that there are some improvements which could be made to the legislation. The Committee has explored these issues during the course of its inquiry and its conclusions are set out below.

Duration of manager burdens

39. Under the 2003 Act, the developer of a new building or housing estate is able to appoint a factor for a period of up to five years (or up to three in the case of retirement accommodation). A registered social landlord dealing with an estate where properties have been purchased under “right to buy” legislation is able to appoint a property factor for 30 years, although affected homeowners can vote by a two-thirds majority to replace the factor during the 30-year period.

40. The written submission from Greenbelt Group Ltd explained developers’ interests in appointing a factor:

“It is crucial that house builders have the ability to reserve a degree of control over housing developments which are in the process of being developed. In the initial years of a development it makes good practical sense for the manager to be appointed by the developer. A builder who is still trying to sell houses has an even greater stake than those to whom he has already sold. A badly maintained estate will discourage purchasers and have an adverse effect on prices.”

41. Respondents to the Committee’s inquiry generally felt that the right balance was struck between the interests of developers and homeowners in relation to private sector manager burdens. However, some specific problems were highlighted.

42. Jennifer Russell of YourPlace Property Management noted that the economic downturn was having an impact on developers’ abilities to fully develop sites. This left those who had bought properties without a remedy against delays in providing amenities:

“[...] phase 1 of a development might have been completed but, because of a lack of interest in purchasing the properties, phase 2 gets put on the back burner. That in itself brings complications because, more often than not, we find that the developer continues to take responsibility for maintaining the common areas, rather than appoint a factor. Developers will absolutely do that maintenance, as their interest is in ensuring that the land is in good condition so that they can sell it. However, in developments where building
stops but roads and common areas are not fully developed, the individual
owners are almost in no-man’s land.”

43. The written submission from McCarthy and Stone Retirement Lifestyles Ltd
highlighted what they saw as the perverse position that the period of duration of a
manager burden in relation to retirement accommodation was less than that for a
mainstream development. They argued that those developing and purchasing
retirement accommodation had a greater interest in stable factoring arrangements
than those in mainstream developments. Their written submission states:

“[…] it is possible for a small group of active residents (which could, of
course, be the younger residents with less day to day need for services) to
push through a change in manager for short term financial benefit. Other
residents may find that, within a short period of acquiring their flat, the quality
of management diminishes at a time in their lives where they should not face
having to go through legal steps to preserve the quality of management of
the services which they thought they had purchased when acquiring their
home.”

44. The Office of Fair Trading (OFT) conducted a market study into property
factoring services in 2009. Its response to the Justice Committee was based on
the findings of the market study. In relation to private sector manager burdens, its
written submission noted:

“It is not clear what is the underlying justification for the current three and five
year periods. Our concern is that homeowners should not be tied into a […]
maintenance company that may be providing a poor standard of service for
any longer than is absolutely necessary to discharge the developers’
responsibilities on the site.”

45. The views of respondents to the 30 year manager burden which can apply to
properties purchased under “right to buy” legislation were more mixed. Under the
arrangement, a registered social landlord (RSL) is able to appoint a factor for 30
years. In practice, it is likely that the RSL will provide the service itself, as it is
already set up to carry out repairs and maintenance work for tenants.

46. Unlike the private sector manager burden, two-thirds of homeowners in a
development may vote to replace the factor while an RSL manager burden is still
in place. However, it may be impossible to obtain such a majority, especially
where the RSL providing the service still owns a significant number of houses. The
RSLs which submitted evidence to the Committee were not aware of any
examples of this provision being used in practice.

47. YourPlace Property Management Ltd explained in its written submission why
RSLs believe a 30-year manager burden is necessary.

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12 McCarthy and Stone Retirement Lifestyles Ltd. Written submission, page 3
“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 in-activity or lack of contact (landlord situations for example) to block essential repair work.”\(^{15}\)

48. The SFHA also noted the responsibility RSLs have to maintain the value of public assets:

“In relation to new build properties public money has been utilised to acquire, build and retain assets such as shared ownership properties and it is the duty and responsibility of housing associations and local authorities to ensure that the public’s money is preserved in these assets though appropriate maintenance of the properties and the development of which they form part.”\(^{16}\)

49. It is thought that most title deeds in relation to “right to buy” properties were registered in the 1980s and 1990s. There was a view that the manager burdens which they created will therefore be coming to an end in the not too distant future. The Committee did not receive comprehensive evidence on this point. However, it was the view of those respondents who addressed the issue that there was no point in changing the law at this stage. YourPlace Property Management Ltd stated that:

“The 30 year manager burden is timing itself out, due to the vast majority of deeds of conditions for [“right to buy"] sales having been registered in the 1980s and 1990s, so the issue may not merit significant effort to effect a change at this time.”\(^{17}\)

50. The Committee accepts the rationale that some protection needs to be in place to ensure the maintenance of properties which were previously under the responsibility of local authorities. However, evidence has shown that the provisions may not be working on a practical level. It therefore believes that these provisions warrant review to ensure that they operate in practice.

51. The Committee is particularly concerned that, although the majority of properties which must comply with this manager burden are reaching the end of the 30-year period, if a deed of conditions was registered in 1995, the manager burden would still have 12 years to run. It therefore calls on the Scottish Government to give careful consideration to the operation of this provision in the 2003 Act.

Difficulties experienced with switching factors

\(^{15}\) YourPlace Property Management Ltd. Written submission, paragraph A3.
\(^{16}\) Scottish Federation of Housing Associations. Written submission, paragraph 5.
\(^{17}\) YourPlace Property Management Ltd. Written submission, paragraph A3.
52. The 2003 Act regulates the way that property factors can be appointed and dismissed. Where the title deeds to a property do not deal with the subject, a factor can be dismissed by a simple majority vote. The title deeds to a particular property may impose a higher threshold. However, the 2003 Act states that, regardless of anything written in the title deeds, the decision to appoint or dismiss a factor cannot require a majority greater than two-thirds.

53. Concerns were expressed about the complexity of the legislation and the difficulty homeowners had in understanding how to change property factors. In its written submission, Ethical Maintenance CIC identified three main barriers to homeowners changing their factoring arrangements. These were: the complexity of the 2003 Act; the lack of guidance for communities on how to use the 2003 Act; and the cost of professional advice if a community wanted to change the title conditions which affected their properties.\(^{18}\)

54. In oral evidence to the Committee, Darren Eade (OFT) expanded on the issue of complexity. He stated that:

> “There were also some points about the complexity of the information and the law in this area. We advocated simplification and clearer information for consumers. In particular, the 2003 act is quite a complex piece of legislation that even lawyers have difficulties with. Some exposition for laypeople so that they readily understand the legislation would be good as well.”\(^{19}\)

55. The Glasgow Factoring Commission, in its written evidence, came to a similar conclusion:

> “The legal framework is complex and is too daunting for owners to navigate their way through. What this suggests is that owners, factors, self-factors, property managers and other parties such as private landlords and housing associations may need to take legal counsel in order to interpret these various pieces of legislation.”\(^{20}\)

56. There was a general consensus that it was also difficult to achieve the majority necessary to change factors, especially on larger estates. However, several organisations highlighted that they were aware, or had been involved in, numerous successful switches.\(^{21}\) Some of the practical problems facing those who try to switch factor were outlined by witnesses to the Committee.

57. YourPlace Property Management Ltd gained significant experience of the processes involved in changing factors as a result of the “second stage transfer” of housing stock from Glasgow Housing Association to local housing associations. YourPlace facilitated votes to allow owners to change from their factoring services to those supplied by the housing association that now owned the stock in their block. In its written evidence, YourPlace noted:

\(^{18}\) Ethical Maintenance CIC. Written submission, page 1.
\(^{20}\) Glasgow Factoring Commission. Written submission, paragraphs 13-14.
\(^{21}\) For example: Trinity Factoring Services Ltd. Written submission, page 2. YourPlace Property Management Ltd. Written submission, page 2
“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.”

58. They came to the following conclusion:

“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.”

59. Jean Charsley, chair of the Glasgow Factoring Commission, highlighted an additional problem:

“The main difficulty is when there is a mix of owners and a lot of them are absentees. The law, as stated by factors, does not allow other people access to the contact details of such people.”

60. Where a property is rented out, it can be difficult to contact the landlord. It is often argued that the Data Protection Act 1998 prevents factors from disclosing this information to other homeowners. Witnesses to the Committee discussed other sources of information which can be used to trace absent owners. These included the Landlord Register (which all landlords are required by law to appear on) and the Registers of Scotland (which holds registers detailing who owns property – although up-to-date contact details may not be available).

61. The UK Information Commissioner’s Office provided a submission to the Committee which put forward its view that data protection legislation does not prevent the disclosure of contact details in these circumstances. However, the Commissioner highlighted that, while the law does not prevent disclosure, neither does it require it. Therefore property factors could not be forced to release contact information. The Commissioner noted that the law could be amended to contain such a duty if this was considered desirable.

62. YourPlace Property Management Ltd’s experience in relation to facilitating votes to switch factor is described above. However, YourPlace accepted that it was dealing with smaller communities, on the scale of one block of flats. In relation to larger developments, it noted:

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22 YourPlace Property Management Ltd. Written submission, paragraph A4.
23 YourPlace Property Management Ltd. Written submission, paragraph A4.
27 Information Commissioner’s Office. Written submission, page 1.
“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.”

63. An individual respondent, Elizabeth Smith, noted the same problem in that it was impossible to get all the homeowners in a development to engage with each other:

“In practice it is highly unlikely that the flat owners will ever manage to change the factors given they need the agreement of the house owners as well in order to achieve the required two thirds.”

64. The solution suggested by Ms Smith was to ensure that “communities”, for the purpose of making joint decisions in relation to property factors, were created on a smaller, more manageable scale.

65. While the idea of lowering the threshold which a community must reach to dismiss a factor is an attractive option, other witnesses highlighted problems with this approach. Professor Kenneth Reid from the University of Edinburgh made the following observation in his written evidence:

“[…] the principle of majority rule for subsequent appointment and dismissal seems intuitively fair and democratic. It would be odd, and destabilising, if the threshold was lower, so that a minority could impose on the others a factor whom they did not want; and it would lead to factor ping-pong, for no sooner had one grouping collected the votes necessary to appoint factor A, a second grouping could collect the votes necessary to countermand this and appoint factor B.”

66. While agreeing that it was not easy to reach the threshold necessary to switch, Ethical Maintenance CIC also warned in its written evidence against reducing that threshold:

“It is not easy to get the simple or the two thirds majorities required, but these are useful "hurdles" to ensure sufficient numbers of householders are engaged with the proposals. We are not supportive of the thresholds being reduced. Not only is the longevity of an association in doubt without widespread support, there is always the chance that a small active group may take the community in a direction that the ‘silent’ majority do not support, even though initially they may acquiesce.”

67. The Committee notes that difficulties appear to have arisen regarding the switching of factors. In particular, the complexity of the legislation may be creating barriers to switching.

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28 YourPlace Property Management Ltd. Written submission, paragraph A6.
29 Elizabeth Smith. Written submission, page 2.
30 Professor Kenneth Reid. Written submission, paragraph 3.
31 Ethical Maintenance CIC. Written submission, page 2.
68. The Committee understands that there are circumstances where a two-thirds majority threshold should be required in order to switch factors. However, it considers that this may be creating a barrier to switching factors. In particular, it is concerned that this may be difficult to achieve where, for example, data protection measures prevent information relating to owners and landlords being available. It therefore calls on the Scottish Government to give careful consideration to whether the legislation could be amended to remove these types of barriers.

LAND-OWNING MAINTENANCE COMPANIES

69. The “land-owning maintenance model” differs from the traditional factoring relationship. This model is typically used in more modern estates where there is green space in and/or around the development. It may also cover situations where additional amenities such as play parks or “sustainable urban drainage systems” (“SUDS”), which typically feature ponds and open areas, are included in the development.

70. Under this model, a private maintenance company owns the green space associated with the development. The company is required to maintain the facilities, usually to a specification included in the title deeds to the neighbouring properties. The neighbouring properties are required to pay for this service through a real burden in their title deeds.

71. In the past, local authorities took responsibility for communal space because they understood the wider value to communities of properly maintained green space. However, over the past 20 or so years, they have withdrawn from taking on the responsibility and expense of maintaining green space around new developments. At the same time further pressure has been added through the planning requirement for SUDS. There is a wider community interest in their proper maintenance. Initially, local authorities asked developers to provide a capital payment representing the likely maintenance costs for a number of years. However, alternative models to provide for maintenance arrangements soon developed. Two main models emerged:

- the “land-owning maintenance” model (discussed above whereby a firm owns the land around a development and is responsible for its maintenance); and

- a “common ownership” model where all homeowners in the development have a proportional share in the ownership of the associated space (although real burdens may still require that a property factor is appointed to carry out maintenance).

72. As already noted, this situation is usually experienced in more modern private developments. However, it can also be an issue where local authorities and housing associations require homeowners on mixed-tenure estates, through burdens in their title deeds, to contribute to maintenance costs for the development’s green space. A similar situation can also arise in retirement developments, where group facilities (such as a guest flat, common room or warden’s flat) may remain in the ownership of the developer/factor, although maintenance is paid for by homeowners.
73. Those using the land-owning maintenance model argue that it has advantages. Apathy or poor communication in communal ownership models can mean that maintenance work is not carried out and amenity deteriorates. In larger, more complex developments, homeowners may be reluctant to take on the responsibilities involved in managing the green space. In his oral evidence to the Committee, Kevin Wilkinson of Ethical Maintenance CIC explained the problem:

“Residents are not that keen on looking after the landowner’s interests on the more complicated schemes, where there are big play areas, big sustainable urban drainage systems or big wayleaves that go through the site. With anything that is a bit out of the ordinary, they are not that keen on taking responsibility for the work that is carried out on the site.”

74. Alex Middleton of Greenbelt Group Ltd also highlighted that there were advantages to the land-owning maintenance model in terms of getting things done for residents:

“I will give you an example of the benefits of single ownership. We went to the Lands Tribunal with a case in which we varied a community burden on the basis that, at the point of planning, too many play areas had been designed for the development, which was up in Fife. Two play areas had been implemented and one had not. There were not a great number of young children in the community. We worked with the community, which had an opportunity to say, “Let’s vary this.” We got 96 per cent support in the community and support from the planning authority. The case went through the Lands Tribunal and we varied the community burden. That was the right solution, but it could not have happened if there had been multiple ownership.”

General overview of the law

75. The law covering the relationship between homeowners and land-owning maintenance companies is not clear. The relationship is set out in real burdens, and therefore the provisions of the 2003 Act, are relevant. However, it was generally agreed by respondents to the Committee’s inquiry that land-owning maintenance companies are not “property managers” (factors) in terms of section 28 or 64 of the 2003 Act (although the Property Factors (Scotland) Act 2011 was deliberately worded to ensure that they are covered by its terms). This means that land-owning maintenance companies cannot be dismissed by a majority vote of homeowners in the development.

76. In his oral evidence, Professor Reid clarified the problem:

“That principle [dismissal of a factor by a majority vote] cannot operate with this type of arrangement because the factor or manager is not technically a factor or a manager because they are not managing other people’s property but their own property. Therefore, the provision in the 2003 act simply does
not apply. That is unfortunate. It means that people who are tied into this sort of arrangement cannot get out of it."

77. Some doubt was also expressed in relation to the enforceability of the real burdens which purport to create the land-owning maintenance model. Just as a resident of a tenement may have to pay for their share of the roof repairs, so someone who lives on a development may be required to pay a share of the costs of the land-maintenance company which owns the green space around the houses in question. In both cases, this comes about because of a condition (a “real burden”) which appears in the title deeds (i.e. the deeds passing ownership) to their home.

78. However, in order to create a valid real burden, the properties “burdened” and “benefited” by the real burden must be clearly identified. In complex conveyances, such as those involved in selling off a new housing development, this may not always happen.

79. For example, a developer may transfer ownership of the green space in a development to a land-owning maintenance company after it has sold off the houses. However, if the developer no longer owns any of the houses, it cannot in law create a valid real burden (for example, to pay for maintenance of the green space) in relation to them. Professor Rennie describes the technical difficulties in more detail in his written submission.35

80. In addition, there must be an interest which runs with the land (rather than an obligation which is personal to the owner of the land). So, for example, it is not possible to make someone do something for their neighbour through a real burden just because they happen to live nearby. Such an obligation would be personal rather than related to the land. It would be possible to require them to erect a fence around their garden, however. That would have a clear link to their ownership of the land and, therefore, form the basis of a valid real burden. In the words of section 3(2) of the 2003 Act: “The relationship may be direct or indirect but shall not merely be that the obligated person is the owner of the burdened property”.

81. Professor Rennie argued that, in the case of the land-owning maintenance model, this meant that homeowners who are burdened with a requirement to pay for maintenance must also have some sort of property right in the land to be maintained (such as common ownership or a right to access the land). He made the following point in oral evidence:

“I cannot see how it [a real burden] could have been validly created if the maintenance company owns the green area. The burden has to relate to a benefited property. The owners of a benefited property have no connection with the green area; they have no rights over it. They and their children might be allowed to wander over it, but they have no legal relationship with it and, generally speaking, that negates a real burden.”36

35 Professor Robert Rennie. Written submission, paragraph 8.
82. Professor Reid was less convinced that the situation was clear cut. He noted that there had been no court case in which these issues had been addressed, so the law remained uncertain. He stated:

“I am not quite as clear as [Professor Rennie] is that the burdens are unenforceable. There is certainly a difficulty of the kind that he mentions, but there are arguments that could be put the other way and we are still waiting for a test case. When we get a test case I would not be surprised if it decides that the burdens are simply unenforceable, but I would not like to say that they are clearly and definitely unenforceable.”

83. It is possible to argue that, where requirements in the title deeds fail to create valid real burdens, they may still create personal contractual obligations. Thus, the first buyer of a new-build property may still be obliged to pay for maintenance work, but not a second or subsequent buyer.

84. For example, Ms A purchases a house from the developer. The title deeds to her property contain a requirement to pay a land-owning maintenance company but, for one of the reasons discussed above, this does not create a valid real burden. Ms A may still have a contractual obligation to pay the land-owning maintenance company.

85. However, contracts are only binding on those who sign them. Liability cannot be transferred to a third party without their consent. Therefore, if Ms A sells her house to Mr B, the contractual relationship is broken and Mr B is under no obligation to pay for maintenance. The only way to make an obligation binding on future purchasers of the house is to have a valid real burden in place.

86. Professor Rennie described the position as follows:

“There might be a possibility of the company suing on the basis of an implied personal contract if an owner paid the company the previous time, but the prospect of suing based on a real burden or, indeed, suing the second owner goes out the window, because the second owner would not be bound by an implied contract.”

87. In addition, a contractual relationship can be terminated relatively easily, unlike an obligation to pay a land-owning maintenance company created as a real burden. Nevertheless, as discussed below, the problem remains that the land-owning maintenance company owns the land it maintains. Therefore, while it may be possible to terminate a contractual relationship with relative ease, it will not necessarily be possible to appoint someone else to carry out the maintenance work as they will have no right to access the land.

88. Put simply, the position appears to be that land-owning maintenance companies may not be able to make homeowners pay for their services through conditions ("real burdens") in the deeds passing ownership to their house. However, the law on this matter is not clear cut. Even if conditions in the deeds

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passing ownership to a house are not valid, it is possible that the homeowner may be in a contract with the land-owning maintenance company. This can be the case with the first purchaser of a new-build property, but second or subsequent owners cannot be in a contractual relationship with the land-owning maintenance company without giving their consent.

89. This means there is a clear difference between the legal position of a first purchaser and that of subsequent purchasers.

90. Greenbelt Group Ltd was keen to point out that residents on the estates it managed did have rights to use the land it owned. As Wendy Quinn noted:

"In the wording of the Greenbelt deed of conditions, our residents have a servitude right to use the ground for access, egress and recreational purposes. In our wording, the residents have a right to use the land."

91. However, this addresses only one of the several concerns around enforceability highlighted above.

92. Alison Brynes, representing the SFHA, noted that the validity of real burdens in this respect was an issue for housing associations too:

"That is a big difficulty for my clients, who now routinely carry out open space maintenance and recharge for it, because that is all that they can do. [...] If the 2003 act does not contain the necessary provision to enforce the provision in the titles, should it simply stop doing that work? If it did so, communities would fall into disrepair; if it carries on with the work and then discovers that it should not have done so because it cannot recharge, it will be left £400,000 adrift. It is a difficult balance to strike."

93. The 2003 Act contains provisions which allow communities to alter real burdens. Under sections 33 and 34, a majority of houses in a development can grant a deed varying a real burden. However, if any of the other owners object, the matter must go to the Lands Tribunal for consideration. Under sections 90 (real burdens generally) and section 91 (specific option for community burdens), property owners can apply to the Lands Tribunal to have a real burden amended or discharged. It remains unclear, however, whether these provisions can be used to dismiss a land-owning maintenance company. A number of the issues relating to this are discussed below.

94. In addition, the Committee also considered the role of the Lands Tribunal in the process. The evidence received is discussed in more detail later in the report from paragraph 121. It is worth noting that taking a case to the Lands Tribunal is likely to require the services of a solicitor. In addition, the homeowner may be found liable for the other party’s legal costs if they lose the case. This increases the risk of taking action.

95. The evidence received by the Committee demonstrates the complexity of the law in this area, in particular, regarding the enforceability of real

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burdens where the land-owning maintenance company model is involved. The Committee notes that this lack of clarity can create uncertainty which is unsatisfactory for all parties. The Committee therefore calls on the Scottish Government to consider whether a review of the law in this area would be welcome. The Committee also notes that a test case might help to clarify these issues.

Difficulties affecting the land-owning maintenance model

Choice of provider

96. Evidence to the Committee suggested that homeowners rarely had a choice as to the provider of services in the land-owning maintenance model. It was normal practice for developers to decide on the arrangements for maintenance and to appoint a company to provide the service. Alex Middleton of Greenbelt Group Ltd summarised the key role of developers in his oral evidence:

“Developers can choose the maintenance company and include that in the title deeds, or they can say nothing in the title deeds and still appoint their favourite maintenance company.”

97. Kyla Brand of the OFT explained why the role of developers, coupled with the fact that there was one dominant supplier, acted against the interests of competition:

“Another relationship, which we tried to expose in our report, is the one between the developer and the initial land maintenance arrangement. There certainly seemed to be a clear preference for those who are known—that is, people who have a track record—over those who are not known. In the market that we are considering, we see a single, dominant supplier and then some others who supply services and indeed own land—that tends to apply to smaller estates and smaller numbers. What we do not see, apart from one or two examples of which I am aware, is other suppliers coming into the arena and providing the sort of competition that we would expect to have a constraining effect on the price and the price premium to which you referred.”

98. Wendy Quinn of Greenbelt Group Ltd stressed that that company did not have an improper relationship with developers. She confirmed that the company may be named in initial documents drawn up by a developer, but not to the extent that other providers were prevented from competing for business:

“As far as the wording is concerned, Greenbelt Group will be referred to in the deed of conditions on many occasions, but the reference will be to Greenbelt Group or any other body that may be appointed to take over the ownership, management and maintenance of the open space. I cannot recall an example of a developer being willing to have only Greenbelt Group in the wording of the deed of conditions, because at that point it might well not have

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signed a contract with us to take over the estate. The developer will still be looking for flexibility.  

99. As already discussed, developers can also decide to convey the green space land to the homeowners in the community under the “communal ownership” model. Mike Marriott of Greenbelt Group Action was of the clear view that this would improve the situation:

“If land was given over to the community by developers, rather than being put into private hands, half of the problems would not exist. We can compare the arrangements for blocks of flats in which the community owns the open spaces. In such cases, there is a common interest, but where there is a landowner, all the control is with them and no one else has any.”

100. Homes for Scotland’s written submission highlighted that even developers’ freedom in this regard may be curtailed by local authority preferences or the preference of a lead developer:

“Our members’ preference is often for the land to be held in common, but sometimes there is no choice, if this solution is driven by Local Authority Planning Requirements or the Phase of the site is part of a bigger development, especially where a lead developer is in place.”

101. Kevin Wilkinson of Ethical Maintenance CIC highlighted that there were weaknesses in communal ownership model too:

“The local authority wants to be sure that the long-term management of the landscaping is looked after. It asks the builder, “How are you going to convince us that you will do that?” Both the builder and the local authority know that giving the land to the residents does not necessarily guarantee the long-term maintenance of the site, whereas the land-owning maintenance model does.”

102. In the past, it fell to local authorities to maintain green space around a development. Oral evidence from Kyla Brand of the OFT suggested that local authorities were now very resistant to taking on this role and managed their relationships with developers to minimise this possibility:

“When we carried out our investigation, we found that local authorities were quite nervous about the responsibilities that would come back to them. Therefore, the whole issue of how they set the commuted sum and how they ensure that responsibility is transferred effectively and does not come back to them was quite a strong driver for many of them. [...] That was at the heart of their inhibition from being too demanding in terms of those relationships. I suspect that that will not have changed.”

45 Homes for Scotland. Written submission, paragraph 7.
Standards of service

103. Evidence received highlighted that a key source of friction between home owners and land-owning maintenance companies is in relation to the standards of service provided. Committee members were keen to understand how the maintenance requirements of estates affected by the land-owning maintenance model were set. Kevin Wilkinson of Ethical Maintenance CIC described the process thus:

“That is set by the builder in agreement with the local authority. We are largely talking about landscape maintenance, but it also applies elsewhere. Well, I do not know whether local authorities set the cleaning of common areas in flats but, as far as we are concerned, the local authority says, “The grass will be cut twice a month during the growing season and the shrubs will be looked after,” and the builder says, “This is what you’ve got to do.” We then say, “To do that, we are going to charge the residents this amount.” That is how we go about it.”

104. Mike Marriott of Greenbelt Group Action noted the importance in his case of the specification contained in the title deeds to properties in the community.

“Councils have a hand in the maintenance specifications. In our deeds, the specifications are quite clear and exact.”

105. The Property Factors (Scotland) Act 2011 requires (among other things) property factors to follow a Code of Conduct. This, in turn, sets out that factors, including land-owning maintenance companies, must supply customers with a document explaining the standards of service the firm is committed to deliver. Where there is a disagreement over whether standards of service are being met, the Homeowner Housing Panel provides a dispute resolution process. Several respondents to the Committee’s call for evidence noted that this should improve the position in relation to disputes between land-owning maintenance companies and homeowners.

106. However, as the SFHA pointed out in its written evidence, the 2011 Act does not provide a mechanism for dealing with disputes about price:

“The new legislation and the Homeowner Housing Panel established by this new legislation are quite clear in that they have no locus in reviewing the charges imposed by property factors and land management companies. As such, we would suggest that whilst the options which are open to homeowners in relation to service delivery have been improved by the introduction of the Property Factors (Scotland) Act it still does not address the issue of the homeowner’s ability to query the cost of such a service.”

51 Scottish Federation of Housing Associations. Written submission, page 4.
Switching of provider

107. The Committee considered that subscribers to a service who were unhappy with its cost might usually be expected to change suppliers. However, it noted that this poses particular difficulties in the land-owning maintenance model. As discussed above, land-owning maintenance companies are not thought to be “property managers” (factors) in terms of sections 28 or 64 of the 2003 Act, so they cannot be dismissed by a majority vote.

108. The Committee notes that it is possible to use the 2003 Act to vary or discharge real burdens which appear in the title deeds to houses. Notionally, this could provide a route for homeowners who are unhappy with the arrangements in place in relation to a land-owning maintenance company to have them changed.

109. However, the law in this area is uncertain and untested. The OFT carried out a market study\(^{52}\) into property management in Scotland in 2009. One of its recommendations was that Consumer Focus Scotland should support a group of homeowners to take a test case. No test case has been taken so far, and Consumer Focus Scotland no longer has responsibility for this area of consumer policy so it cannot support a case in the future.

110. The matter has also moved on since the OFT report. The Scottish Government consulted\(^{53}\) on the issue of land-owning maintenance companies in 2011. The consultation recognised that, if homeowners were to be given clearer rights to dismiss and replace a land-owning maintenance company, there must also be provision for the land-owning maintenance company to sell their interest in the land. Professor Reid summarised the situation in his written evidence:

“[…] even if dismissal turned out to be possible, the factor would continue to own the recreational ground and could use it for whatever purpose it fancied. The replacement factor would thus have no ground to manage.”\(^{54}\)

111. Committee members explored with witnesses the idea of a variant of the “community right to buy” which would enable homeowners to purchase green space land around their development should they be unhappy with the services of the incumbent land-owning maintenance company. Mike Marriott of Greenbelt Group Action highlighted transient populations as one problem with this option:

“Especially on big estates such as ours, the difficulty would be getting everyone to agree to fund such a move. Communities are more transient nowadays. People have moved into our estate and been gone—they have sold on—two years later. There is a big shift of people.”\(^{55}\)

112. Kyla Brand of the OFT also raised concerns about use of common facilities such as play parks if ownership was in the hands of private homeowners:

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\(^{54}\) Professor Kenneth Reid. Written submission, page 2.

“If it was the group of home owners on the estate and the matter concerned facilities such as play parks, there would be a public interest in the wider public being able to access those facilities [...]. There is a balance of interests that needs to be sorted.”⁵⁶

113. When asked whether he thought homeowners would take up such an opportunity to buy the land, Professor Rennie offered the following view⁵⁷:

“In the current economic climate, I cannot see it being high on their list of financial priorities. However, if people grouse all the time about the fact that the private maintenance company does not properly maintain the land that it owns and costs a lot of money, they will have to put their money where their mouths are.”

114. Greenbelt Group Ltd, the main supplier of services under the land-owning maintenance model, offers communities the opportunity to buy green space land under their “customer choice” policy⁵⁸. In order to exercise the option, homeowners have to meet the following requirements:

- the planning authority (part of the local authority) must be satisfied with the arrangement;
- the developer has no objections to the transfer;
- two-thirds of homeowners have no objections;
- a residents association or some other “properly constituted body” must be in place to take ownership of the land;
- Greenbelt Group Ltd sees evidence from homeowners that appropriate insurance covering occupiers’ liability and public liability is in place.

115. In addition, it is likely that Greenbelt Group Ltd would require residents to buy the land which was to be transferred.

116. No transfers of ownership have happened under the “customer choice” policy. Alex Middleton of Greenbelt Group Ltd put this down to the reluctance of homeowners to take on the responsibility of land management:

“However, in every case, when we have got to the point of asking who the land should be transferred to—when we have said, “We are quite happy to go through the legal process and transfer the land; just let me know who will be signing”—we have found that there are not many people who are willing to take ownership of the land and take on the associated liabilities, whether it is

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the grass, the SUDS, the play areas or whatever. That is a crucial issue that you have to get around.”

117. Mike Marriott of Greenbelt Group Action highlighted a further barrier:

“[the “customer choice” policy] states that before residents can take up that option, all past debt must be paid. When people withhold payment because services have not been delivered, the maintenance company calls that ‘debt’. In that situation Greenbelt turns round and says, ‘We can’t activate [the “customer choice policy”].’”

118. It is also worth noting that the SFHA, in considering the transfer of green space land currently maintained by a housing association to a group of homeowners, was clear that there would be costs involved and stated the following in its written submission:

“[property owners] must also be mindful that any change in the ownership of such open space would involve an element of conveyancing and thus a cost which the owners of the properties within the effected development would require to bear. In the event that a local authority agree to take over the area of ground for maintenance purposes and adopt same the local authority will require a payment of around 10 to 15 years of the cost of such maintenance to be paid as a lump sum. Again, the costs of this adoption would be passed to the owners within the development.”

119. The Committee is concerned to hear that, as well as often having no choice as to the provider of property maintenance services, homeowners feel they have little recourse where standards of service are not met. It welcomes the provisions of the 2011 Act which introduced the Homeowner Housing Panel which it believes will go some way to addressing this issue. However, the Committee is of the view that a transparent mechanism is needed to address issues around the cost of services. The provision of a mediation service in relation to disputed bills may be one way forward. The market may also warrant further examination by UK Government agencies responsible for competition, such as the Office of Fair Trading. The Committee considers that this should be taken forward as a matter of priority.

120. The Committee also notes the land-owning maintenance model comes about when local authorities withdraw from taking on responsibility for maintenance of green space around new developments. However, it considers that there may still be a role for local authorities to take some responsibility for ensuring that the maintenance of these common areas is carried out in a fair and equitable way. In the interim, the Committee calls on local authorities to review all the levers at their disposal – including the planning process and the collection of capital payments from developers – to ensure that sustainable, long-term maintenance arrangements are

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61 Scottish Federation of Housing Associations. Written submission, page 4.
supported. In the longer-term, the Committee calls on the Minister for Local Government and Planning and local authorities to review the arrangements in place for land maintenance, recognising that green space has a wider benefit to communities and that there is a role for local accountability.

ACCESSIBILITY OF LANDS TRIBUNAL FOR SCOTLAND TO INDIVIDUALS

121. The 2003 Act contains provisions which allow homeowners to apply to vary or discharge real burdens which apply to their home or development. This provides an opportunity to change burdens which are not working – for example, to alter requirements in relation to the dismissal of a property factor or to replace a land-owning maintenance company. The Committee has highlighted some of the practical problems with this earlier in the report and reiterates its concern that the Lands Tribunal’s ability to award expenses against a party would mean that they have to pay their opponent’s legal costs in bringing the case as well as their own could be a disincentive to cases being brought forward.

122. In order to change a real burden, a homeowner will have to obtain the agreement of their neighbours or approach the Lands Tribunal for Scotland. In some circumstances, an individual or community group wishing to bring a case to the Lands Tribunal would have to engage a solicitor (although legal aid might be available to cover the costs of this). In addition, section 103 of the 2003 Act enables the Lands Tribunal to hold the losing party liable to pay the winning party’s legal expenses.

123. Section 103 of the 2003 Act directs the Lands Tribunal to have regard “in particular” to the extent to which a party is successful, the practical consequences of which are that, in most cases, someone who is unsuccessful in changing a real burden – or objecting to a change – can expect to have to pay the winner’s legal expenses. The Lands Tribunal’s written submission suggests that total expenses (covering both parties’ legal fees) might easily be in excess of £10,000. The Lands Tribunal’s written submission also explains the Tribunal’s position and discretion in relation to expense awards in more detail.

**Lands Tribunal procedure**

124. One of the issues the Committee considered was whether Lands Tribunal procedure, in particular the provisions in the 2003 Act in relation to expenses, prevented homeowners from making applications. The Lands Tribunal provided information about the number of applications it receives under the 2003 Act and also provided a further submission detailing its role in relation to the awarding of expenses.

125. Other respondents to the call for written evidence also expressed a view on the expenses issue. Generally, those responding supported the 2003 Act’s provisions in relation to expenses as a way to discourage frivolous applications. Professor Rennie explained the disadvantages of the previous system in his written evidence:

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62 Lands Tribunal for Scotland: Supplementary written submission, page 4.
“Under the previous provisions someone could apply for a variation of discharge only to be met with a four line objection from somebody who really had no interest in the matter other than to hold it up. Moreover all applications, even unopposed ones, had to be heard. At the hearing the Tribunal had to listen to the arguments which might be cast aside easily. Indeed in such cases, the party making the objection might not turn up.”

126. In its written submission, Pinsent Masons LLP offered the following view:

“The Lands Tribunal has a relatively informal process which is less intimidating for homeowners than an application to Court. We think it sensible that the Lands Tribunal has a wide discretion when it comes to awarding costs. This allows the Tribunal to take into account a variety of factors which may have led to the action.”

127. However, some respondents raised concerns about the way the current system operates. Greenbelt Group Action argued that the current requirements excluded many individuals and communities:

“It would be unrealistic to expect any single individual or community to raise the necessary funds to pursue a test case on land maintenance burdens through the Land Tribunal.”

128. Professor Reid outlined some concerns with the way the system currently operates:

“There are certainly arguments against it. For example, it is not clear that a rule which applies to ordinary litigation is appropriate for Tribunal applications: in the first case the person initiating the proceedings is enforcing a right; in the second he is seeking to be relieved of an obligation. Further, it is easy to envisage situations where the expenses rule might operate unfairly. For example, where a person, who cannot himself afford legal representation, opposes an application by a large commercial developer who employs lawyers, it may seem unfair that, in the event of the opposition being unsuccessful, the person must pay the legal bills of the developer.”

129. Professor Reid expanded on his position further in oral evidence:

“I have been in exactly the same situation as Professor Rennie a number of times—of advising people and saying to neighbours that they cannot sensibly oppose a case unless they have a lot of money. The consequence of not opposing a development next door that one does not like is that, under the legislation, the Lands Tribunal must grant it without further inquiry. In other words, if nobody opposes, the developer—if it is a developer—simply wins. The only way that somebody can get to court to have the Lands Tribunal decide on the merits of a development and whether it should go ahead is if

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63 Written submission, Professor Robert Rennie, paragraph 9.1.
64 Written submission. Pinsent Masons LLP, page 2.
66 Written submission. Professor Kenneth Reid, paragraph 20.
they are willing to take the risk that, if they lose, they will be landed with having to pay a lot of money. I find that troublesome.\textsuperscript{67}

130. The written submission from the Lands Tribunal sets out alternative options for dealing with expenses as follows:

“Alternative approaches might be to substitute a broad test of reasonableness instead of express reference to success. Another might be to have a cap on expenses. This might be a statutory figure or statutory authority to the tribunal to fix a figure at the outset either at its own hand or on request by either party. This would get over the problem of an objector saving expense by acting on his own behalf and then being faced with a claim for the expense of solicitors and counsel. If parties disputing over a proposed conservatory knew that the recoverable expenses were fixed at, say, £1000, they could decide whether the issue was worth it. If they thought it was, they could decide to spend more on their own behalf, if they wished, knowing they would not get it back but also knowing the risk of payment to the other side was limited. If the issue was a major development, the tribunal could fix a much larger figure.”\textsuperscript{68}

131. The Committee is concerned that the Lands Tribunal may not be accessible to individual homeowners. In particular, it is concerned that expenses liability may deter homeowners from using the Lands Tribunal. It welcomes the alternative approaches to expenses suggested by the Lands Tribunal in its written submission, including the suggestion of a cap on expenses, which goes some way to improve the situation, but it would still result in expense for a homeowner defending their right to object to the removal of a burden, and that is fundamentally unfair. The Committee calls on the Scottish Government to consider these concerns in more detail.

INDIVIDUAL HOMEOWNERS’ RESPONSIBILITIES

132. A number of those responding to, or appearing before, the Committee highlighted problems with people’s attitude to home maintenance as a significant barrier to property maintenance in Scotland. It was felt that people did not take their responsibility for maintaining their building, and/or their collective responsibility to maintain common facilities, seriously. The general conclusion was that the focus of people’s thoughts was whether a repair would benefit them personally and what it would cost, not on whether there was a collective benefit to carrying out the work.

133. Professor Rennie described the problem in his oral evidence:

“[…] it comes on the back of a failure to be interested in maintaining the common area. In Scotland, we do not have a culture of common maintenance. You see that in tenements and elsewhere. I get endless


\textsuperscript{68} Written submission. Lands Tribunal for Scotland, page 4.
opinions to do concerning people in top flats whose roof is leaking and who cannot get the other owners to contribute the amounts that are needed.**69**

134. The Property Law Committee of the Law Society of Scotland also highlighted the problem in its written evidence:

“The very often a homeowner is dissatisfied with the factor not because of the factor but because they are having to pay for something for which they have no direct benefit. [...] There is also a perception that whereas owners within a tenement building have a vague idea that they are responsible for common repairs, owners within a housing development do not perceive themselves as being responsible for the grass cutting and the shrub maintenance furth of their properties.”**70**

135. Alison Brynes, representing the SFHA, noted another aspect to the issue:

“The difficulty in trying to engage owners is that, more often than not, they are apathetic, do not want to pay or cannot pay. Through the right-to-buy process, a lot of people have purchased properties at a heavy discount and have not really thought about the future ownership of the properties and the obligations that go with that.”**71**

136. Those giving evidence to the Committee highlighted the importance of education to tackle the underlying issue of homeowner apathy. David Doran of Hacking and Paterson Management Services stated in oral evidence:

“There is a distinct lack of understanding or education among home owners about what they are buying into, what their obligations are and the fact that buildings cost more to maintain as they age. There is a need for more education and understanding rather than for legislation.”**72**

137. Mr Doran saw a clear role for Government in this education process:

“In our opinion, we need a Government-based approach. We have had the Tenements (Scotland) Act 2004 and the Property Factors (Scotland) Act 2011, which are all about enforcing duties on property factors, but we need something that gets owners on board as well, so that the owners who do not pay or refuse to pay start to understand the effects of that on them in the long term.”**73**

138. The key role that solicitors play in explaining the obligations that a homeowner is signing up to when they purchase a property was recognised. Lionel Most, of the Property Law Committee of the Law Society of Scotland, was very clear that solicitors did have a duty to inform clients of the obligations in their title deeds. He stated:


**70** Lionel Most on behalf of the Property Law Committee of the Law Society of Scotland. Written submission, page 1.


“Every solicitor has a duty to tell the client what the burdens in the title are. [...] The solicitors will say it. The people are usually too interested in getting the house to listen.”

139. The situation was also more complicated for new-build houses, where purchasers usually buy direct from the developer. In this regard, Mr Most commented:

“The issue of duties on a selling solicitor [in a new-build situation] is slightly more difficult, because they are a bit more removed from the process—they will probably not get involved until an offer has been put in. They are rarely involved at the marketing stage; they are not usually involved until the selling stage. That is a bit more difficult.”

140. The Committee received evidence to suggest that developers should now provide information about maintenance arrangements to prospective buyers. Homes for Scotland (representing major developers) stated in its written evidence:

“It is likely that new build title deeds will contain clearer information on factoring and that customers will be better informed due to the obligations of the Consumer Code for Home Builders.”

141. The Consumer Code for Home Builders is an industry initiative (resulting from the OFT’s report into homebuilding in the UK, discussed below) which commits the major developers to certain standards. These include the requirement to provide pre-sales information which includes “a description of any management services and organisations to which the Home Buyer will be committed and an estimate of their cost”.

142. Nevertheless, other evidence heard by the Committee would suggest that homeowners are not always well informed of their legal obligations on the purchase of a home. In answer to a question from the Convener regarding whether he had been informed of his obligations to Greenbelt Group Ltd, Mike Marriot of Greenbelt Group Action replied:

“Never. In the sales office, we were told that there was a one-off up-front fee of £150 for the maintenance of the landscaping. I received a copy of the missives and there was nothing whatsoever about the agreement in them. When it came to moving into the house, my solicitor did not contact me at all with any such information. I went back to the law firm that did the conveyancing for me and was told that it was a standard arrangement, but the firm did not get a copy of the title deeds until two weeks before I moved in.”

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76 Written submission. Homes for Scotland, paragraph 6.
143. Alex Middleton of Greenbelt Group Ltd also highlighted that there was sometimes a lack of information in relation to new-build houses:

“The committee should also bear it in mind that the house-building industry has to take on some responsibility for informing people when they are making the biggest purchase in their life. We have battered that point into the system. In certain cases, we did not take on developments because the residents had not been properly informed”79

144. Witnesses from the OFT referred to research that the organisation had carried out into homebuilding in the UK80 in 2008. Kyla Brand from the OFT stated:

“In that study, we found that as many as 12 per cent of salespeople did not discuss maintenance fees that were payable, even after prompting. There is a history of that kind of information not being provided.”81

145. Darren Eade, also from the OFT, added:

“In the study to which Kyla Brand referred, we found that the property itself and its location were much more important drivers of consumer choice”82

146. The Committee notes that the Code of Conduct created under the Property Factors (Scotland) Act 2011 contains a requirement for factors to provide further information about their relationship with homeowners, including a written statement of services. It was thought that this would reinforce the role of the property factor in the minds of homeowners. Alison Brynes, representing the SFHA, stated:

“Under the Property Factors (Scotland) Act 2011, people should get a written statement, and they should get a welcome pack from their factor. That is a matter of educating owners. They will have heard about the factoring once through their solicitor; they should hear it again from the factor.”83

147. Jean Charsley of the Glasgow Factoring Commission suggested that, in terms of information provision, the net could be cast even wider:

“[This] echoes some of what has come before the factoring commission—the importance of people understanding their rights and responsibilities before they purchase a property, which should be reinforced at the point of sale. It has been suggested that sales agents and mortgage lenders, for example, should have some input as well as solicitors, before the decision to buy the property is made.”84

148. Jennifer Russell of YourPlace Property Management Ltd noted an initiative her organisation was involved in, in order to increase homeowner engagement:

“We recently created a common repair team. Our factoring officers go out, have those conversations and get consents on doorsteps rather than by letter. However, there is a cost to that approach, which is more resource intensive than letters. We are piloting that approach, but we have to balance how much people are able and willing to pay for a service against the level of communication that we are engaged in.”

149. The Committee also heard evidence that the formation of a residents’ association could help homeowners deal more effectively with their maintenance responsibilities. Kyla Brand of the OFT stated:

“Our research showed that, where there is some kind of residents association or a collective group, people are far more effective in their management of the relationship with the factor or in dealing with a situation in which they have chosen not to have a factor and to manage any contracts for maintenance and so on themselves.”

150. However, there was some debate as to the powers a residents’ association might have where some owners remained apathetic. David Doran of Hacking and Paterson argued that modern property title deeds could enable a formal committee to make decisions on behalf of other owners. On the other hand, Jennifer Russell’s (YourPlace Property Management Ltd) experience was that residents’ associations did not have separate decision-making powers:

“One issue that we have come across is that, although active residents associations might lobby and have ambition and a hunger to do something, when it comes to voting, there is apathy and not everyone sees the issue as a priority. Such associations do not have decision-making powers. If private developments had a committee with those powers, that would at least make the debates and discussions easier.”

151. The Committee accepts the general view that the culture of common maintenance is not prevalent in Scotland. It notes that it is the duty of solicitors and developers to highlight to individuals, during the property purchasing process, their responsibilities with regard to common maintenance. The Committee is encouraged by the submissions suggesting that establishing residents’ associations may help to improve the situation. To enhance this, the Committee calls on the Scottish Government to make provision to raise awareness of homeowner responsibilities more generally.

SECTION 53 OF THE 2003 ACT

152. Section 53 of the 2003 Act gives neighbours the right to enforce real burdens against each other where there is a “common scheme” and the properties are “related”. The term “common scheme” describes a shared requirement to observe real burdens in the title deeds, but it is not defined further. The term “related” is
illustrated using some non-exclusive examples – such as being flats in the same tenement or sharing responsibilities for the maintenance of common facilities.

153. Section 53 extends the enforcement rights contained in section 52, which was designed to mirror the position before the abolition of feudal tenure. Several respondents to the Committee’s call for evidence pointed out that section 53 did not appear in the original draft Bill. Instead, it came about as a result of an amendment as the Bill was making its passage through the Scottish Parliament. Professor Rennie describes the situation thus in his written submission:

“Section 53 was not part of the Scottish Law Commission draft Bill but was inserted during the parliamentary process following lobbying by housing authorities who had a concern that they would not be able to enforce title conditions after feudal abolition. Some housing estates were partly owned by right to buy purchasers and party tenanted. The notion of related properties was introduced in Section 53 and the effect of that section was to give enforcement rights to parties (not necessarily housing authorities) who were in a common scheme and the properties were set to be ‘related’.”

154. The SFHA elaborated further in its written submission:

“Many housing organisations within Scotland rely on this provision when enforcing provisions contained in Deeds of Conditions which, although referred to in title deeds, do not include a title plan or sufficient detail to allow a reader to identify the extent of the development or estate which purports to be affected by the conditions. This is the case in many Scottish Homes’ transfer areas where the Scottish Homes Deeds of Conditions are referred to in the titles to many properties purchased through right to buy, but where the extent of the area which is covered by the deed is not identifiable either from the deed or the title plan.”

155. The evidence presented to the Committee suggests that section 53 was introduced as a means to ensure that housing associations could continue to enforce real burdens (particularly in relation to maintenance and common property) against owners, even where the extent of the estate or development which the burdens covered was not particularly clear.

156. However, as Professor Rennie noted, enforcement rights are not limited to housing associations. It is therefore now possible for any owner who shares similar real burdens with their neighbour to argue that their properties are “related” in terms of section 53 and they have enforcement rights. One important qualification to this is that the real burdens must be contained in a title deed registered, in relation to at least one affected property, prior to feudal abolition in November 2004.

157. Indeed, part of the problem with section 53 appears to be that – unlike section 52 – it does not depend in any way on the intention of the parties creating

89 Professor Robert Rennie. Written submission, paragraph 4.
90 Scottish Federation of Housing Associations. Written submission, page 1.
the burdens. Therefore, enforcement rights can be found to exist where no one intended them to. David Edwards gives this view in his written submission:

“For section 53, the intentions of the original parties are irrelevant. It does not matter that the originator of the burdens had no intention to benefit and burden a community of interests. It is also of no relevance that at the time the fundamental real burden or burdens was or were created there was only one property interest and therefore no possibility of a community of interests. If a community of interests has since arisen, for example by sub-division of a larger property with a clear relationship among those properties, the subdivided properties could become subject to the burdens.‖

158. Professor Rennie highlighted that the effect of section 53 could be to create rights where none had existed before feudal abolition:

“In effect, what section 53 may have done is give people enforcement rights in pre-2004 title conditions that they did not have before the legislation. That must mean that other people who were not subject to those conditions before 2004 suddenly, without their consent, became subject to burdens.”

159. The Committee also heard evidence that section 53 causes uncertainty and makes it difficult for solicitors to advise owners effectively. The practical problems are outlined in the written submission from David Edwards:

“In such cases we have to consider whether there is anything which raises the inference that the properties are related, and our starting point will probably be the commonality of features, facilities and ownerships. This may involve review of title deeds for neighbouring properties to establish common ownership rights, or even a site visit to see what the reality is on the ground. There are problems with this, including trying to work out what is meant by “common feature”, and every case will turn on its own facts and circumstances. Questions may need to be asked of agents, or site visits carried out.”

160. However, the key concern of respondents was that, despite all the additional work that solicitors might carry out, it is often still not possible to give useful advice to clients. DWF Biggart Baillie describes the problem in its written submission:

“However, in many cases much time can be spent trying to ascertain whether there is a benefited property with enforcement rights, often involving a time consuming examination of neighbouring titles, only to come to the unsatisfactory conclusion ‘there might be’. For most clients this is a frustrating, and costly, conclusion. For example, in the case of an individual, should they take the risk of extending their house where there ‘might be’ someone who can enforce a burden prohibiting alterations? Should a developer risk building a nursing home somewhere where there ‘might be’

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91 David Edwards. Written submission, page 2.
someone who can enforce a burden which restricts use of the property to residential?\textsuperscript{94}

161. Respondents also highlighted that this created risks and costs for those who wished to develop land, with knock-on effects for their decision as to whether or not to proceed. Brodies LLP notes in its written submission\textsuperscript{95}:

“This uncertainty has led to increased costs and delay for clients as we have to carry out far wider investigations on their behalf, obtaining and examining title deeds for surrounding properties, in some instances we have to seek expert opinion and in others insurance against the possibility that Section 53 may be used against them.”

162. Pinsent Masons makes a similar point\textsuperscript{96}:

“A developer seeking to develop a piece of land does not like this uncertainty. We cannot ascertain whether anyone has title to enforce a real burden and moreover cannot seek to vary or discharge a real burden to permit a development as we cannot determine who has the right to grant a variation or discharge. This reflects badly on our legal system. The uncertainty may cause the developer to choose not to proceed with the development.”

163. McCarthy and Stone Retirement Lifestyles Ltd is a developer of retirement accommodation. It concluded that the additional uncertainty and costs associated with section 53 make Scotland a less attractive place to invest than other parts of the UK\textsuperscript{97}. It also noted\textsuperscript{98}:

“If development is prevented then not only is there the loss of new residential accommodation (or new commercial space), there is also the loss to the Scottish economy of construction spend and (through the planning process) contributions to the cost of providing affordable housing and meeting other social needs.”

164. Respondents had a number of suggestions about action to take to improve section 53, including further defining key phrases and setting a geographical limit on properties which could be considered to be related. It was acknowledged by some that there may be problems attached to repealing section 53 as it has created rights which people may now wish to rely on. Professor Reid noted:

“There are difficulties with simply abolishing section 53. Human rights issues are an obvious difficulty, because the effect of section 53 is to confer enforcement rights on a lot of people. If section 53 were simply deleted, those enforcement rights would be extinguished, and that would affect human rights.”\textsuperscript{99}

\textsuperscript{94} DWF Biggart Baillie. Written submission, page 3.
\textsuperscript{95} Brodies LLP. Written submission, page 4.
\textsuperscript{96} Pinsent Masons. Written submission, page 1.
\textsuperscript{97} McCarthy and Stone Retirement Lifestyles Ltd. Written submission, page 2.
\textsuperscript{98} McCarthy and Stone Retirement Lifestyles Ltd. Written submission, page 3.
165. However, several key witnesses agreed that a practical way forward would be to refer the matter to the Scottish Law Commission, which could carry out an investigation of the surrounding issues.\textsuperscript{100}

166. The Committee notes that degree of concern expressed about the operation of section 53 of the 2003 Act. It also notes that there is no consensus as to how these issues should be addressed. It therefore agrees that the provisions in section 53 would warrant consideration by the Scottish Law Commission. The Committee calls on the Scottish Government to invite the Scottish Law Commission to take forward a review of section 53 as part of its work programme.

ANNEXE A: EXTRACTS FROM THE MINUTES

3rd Meeting, 2013 (Session 4) Tuesday 29 January 2013

Work programme (in private): The Committee considered its work programme and agreed to conduct a short inquiry into the operation of the real burdens provisions in the Title Conditions (Scotland) Act 2003.

7th Meeting, 2013 (Session 4) Tuesday 5 March 2013

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003: The Committee took evidence from—
   Alex Middleton, Chief Executive Officer, Greenbelt Holdings Ltd
   Wendy Quinn, Solicitor, Greenbelt Group Ltd
   Kevin Wilkinson, Director, Ethical Maintenance
   Alison Brynes, Scottish Federation of Housing Associations
   David Doran, Director, Hacking and Paterson Management Services
   Jennifer Russell, Managing Director, Your Place Property Management

Sandra White declared an interest as a recipient of factoring services provided by Hacking and Paterson Management Services.

8th Meeting, 2013 (Session 4) Tuesday 12 March 2013

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003: The Committee took evidence from—
   Jean Charsley, Chair, Glasgow Factoring Commission
   Mike Marriott, Greenbelt Group Action
   Kyla Brand, and Darren Eade, Office of Fair Trading

Christine Grahame and John Lamont indicated that they were formerly solicitors.

9th Meeting, 2013 (Session 4) Tuesday 19 March 2013

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003: The Committee took evidence from—
   Professor Kenneth Reid, University of Edinburgh
   Professor Robert Rennie, University of Glasgow
   Lionel Most, Property Law Committee, Law Society of Scotland

Christine Grahame indicated that she was a former student of Professor Reid. John Lamont indicated that he was a former student of Professor Rennie.

10th Meeting, 2013 (Session 4) Tuesday 26 March 2013

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003: The Committee considered the evidence received and agreed to report to the Parliament on the inquiry.
15th Meeting, 2013 (Session 4) Tuesday 14 May 2013

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003: The Committee considered a draft report. Various changes were agreed to and the Committee agreed to consider a revised draft report at its next meeting.

16th Meeting, 2013 (Session 4) Tuesday 21 May 2013

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003 (in private): The Committee deferred consideration of a revised draft report to a future meeting.

17th Meeting, 2013 (Session 4) Tuesday 28 May 2013

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003 (in private): The Committee considered and agreed its report to the Parliament.
ANNEXE B: INDEX OF ORAL EVIDENCE

7th Meeting, 2013 (Session 4) Tuesday 5 March 2013

Alex Middleton, Chief Executive Officer, Greenbelt Holdings Ltd
Wendy Quinn, Solicitor, Greenbelt Group Ltd
Kevin Wilkinson, Director, Ethical Maintenance
Alison Brynes, Scottish Federation of Housing Associations
David Doran, Director, Hacking and Paterson Management Services
Jennifer Russell, Managing Director, Your Place Property Management

8th Meeting, 2013 (Session 4) Tuesday 12 March 2013

Jean Charsley, Chair, Glasgow Factoring Commission
Mike Marriott, Greenbelt Group Action
Kyla Brand, and Darren Eade, Office of Fair Trading

9th Meeting, 2013 (Session 4) Tuesday 19 March 2013

Professor Kenneth Reid, University of Edinburgh
Professor Robert Rennie, University of Glasgow
Lionel Most, Property Law Committee, Law Society of Scotland
ANNEXE C: INDEX OF WRITTEN EVIDENCE

Evidence received in alphabetical order

Brodies LLP (85KB pdf)
bto solicitors (9KB pdf)
DWF Biggart Baillie (98KB pdf)
East Ayrshire Council (120KB pdf)
Edwards, David (103KB pdf)
Ethical Maintenance CIC (86KB pdf)
Ethical Maintenance CIC (supplementary submission) (11KB pdf)
Greenbelt Group Ltd (421KB pdf)
Greenbelt Group Ltd (supplementary submission) (824KB pdf)
Greenbelt Group Ltd (further supplementary submission) (258KB pdf)
Greenbelt Group Action (222KB pdf)
Hacking and Paterson Management Services (160KB pdf)
Homeowner Housing Panel (6KB pdf)
Homes for Scotland (127KB pdf)
Information Commissioner's Office (225KB pdf)
Lands Tribunal for Scotland (381KB pdf)
Lands Tribunal for Scotland (supplementary submission) (94KB pdf)
MacRoberts LLP (70KB pdf)
McCarthy and Stone Retirement Lifestyles Ltd (82KB pdf)
Milton of Leys Residents Association (65KB pdf)
Office of Fair Trading (156KB pdf)
Pinsent Masons LLP (61KB pdf)
Property Law Committee of the Law Society of Scotland (73KB pdf)
Property Managers Association Scotland Limited (65KB pdf)
Registers of Scotland (114KB pdf)
Reid, Donald (49KB pdf)
Reid, Professor Kenneth (180KB pdf)
Rennie, Professor Robert (162KB pdf)
Royal Institute of Chartered Surveyors Scotland and the Institute of Residential Property Management (9KB pdf)
Scottish Federation of Housing Associations (148KB pdf)
Smith, Elizabeth (71KB pdf)
Todd, Andrew and Wishart, Robbie (80KB pdf)
Trinity Factoring Services Ltd (79KB pdf)
Your Place Property Management (141KB pdf)

Written submissions are also published (in the order received) on the Committee’s webpage at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/60053.aspx
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