20 February 2018

Dear Alison,

Thank you for the letter of 20 December 2017 in relation to the post-legislative scrutiny of the Property Factors (Scotland) Act 2011 (the Act). The letter requested a response to issues raised in a written submission received by the Committee on the Act.

The Act defines the meaning of property factor and provides a framework for protecting homeowners who use their services. The definition includes a local authority who manages the common parts of land used to any extent for residential purposes and owned by two or more persons, or the local authority and one or more other person. It also includes a local authority which manages or maintains land which is available for use by the owners of two or more adjoining or neighbourhood residential properties or the local authority and the owners of any one or more such properties. This only applies where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of land.

All property factors must apply to enter the register of property factors which is prepared by Scottish Ministers. An application must include any dwelling houses, flats or land in relation to which the person acts, or expects to act as a property factor. The purpose of this is to enable a public search of the register to establish if a registered property factor is responsible for maintaining the common parts relating to a specific property address or area of land. The definition of property factor therefore would require a local authority to provide details of all properties which they manage which are entirely in private ownership or which are mixed tenure (i.e. mix of private owners and social housing tenants).

The Act does not make provision that all owners of all properties that have been registered should pay factoring fees. The management and maintenance of common parts of properties may be governed by rules and conditions set out in the title deeds for the properties within a block. Title deeds can vary considerably. Title deeds where, for example, properties have been purchased under right to buy may sometimes include an obligation on each owner to pay a proportion of the cost of managing and maintaining common areas.
A homeowner should check their title deeds to see if there is anything laid down on how repairs and maintenance should be undertaken. Where there is nothing laid down in the title deeds or they are unclear then the Tenements Management Scheme (TMS) at Schedule 1 of the Tenements (Scotland) Act 2004 applies. Under the TMS, maintenance and repair decisions can be taken by majority vote of the homeowners (one vote per flat). A majority decision will be binding to all owners.

Particularly relevant to the points raised in the submission is the Code of Conduct (the Code) for property factors, a requirement of the Act, which sets minimum standards of practice for registered property factors to follow when providing services to relevant homeowners. The requirement for property factors to provide clarity and transparency in all accounting procedures is a key objective of the Code. Section 1 of the Code requires a registered property factor to supply each homeowner with a written statement of services, including a statement of the basis of the property factor’s authority to act and any financial and charging arrangements which apply. The written statement of service must set out the management fee charged by the property factor. It must also set out what proportion of the management fee and charges for common works and services which each owner within a block is responsible for.

The Act also provides a mechanism for homeowners to seek a resolution to any dispute they have with their property factor. A registered property factor must have a complaints handling procedure under the Code. A homeowner must inform their property factor in writing of the reasons why they believe their factor has breached the Code or its property factor duties (as defined under section 17(5) of the Act). A homeowner may apply to the First-tier Tribunal for Scotland Housing and Property Chamber (FTT) if they feel that believe that their property factor has not resolved their complaint or has refused or unreasonably delayed resolving their concerns. The FTT can issue a legally binding enforcement order if it finds in favour of the homeowner. This ensures that property factors operate in a transparent way and that homeowners have a robust route of redress if practices fall short of the required standards.

The Scottish Government is already undertaking work to consider the effectiveness of the requirements introduced by the Act. The current Code is now in its sixth year of operation and the Scottish Government is considering whether to strengthen its requirements. A consultation on proposals to revise the Code and related amendments to the Act was undertaken between 6 October 2017 and 15 January 2018. The consultation also asked for views on whether the original Code has led to improvements in the quality of factoring services to homeowners and whether the Act has improved the wider regulation of property factors. The consultation and associated published responses are available at: https://consult.scotland.gov.uk/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors.

An analysis of responses to the consultation is currently being undertaken. The feedback received from this consultation will inform the Scottish Government’s consideration on whether changes to the wider legislation are required and to shape the standards of service expected of property factors going forward. The Code is set in secondary legislation and any changes are subject to the approval of the Scottish Parliament.

I hope this is helpful.

DAN COULDRIDGE
Team leader – Private Housing Services