

Minister for Victims and Community Safety submission of 21 June 2023

PE2006/D: Review and simplify the legislation in relation to dismissal of property factors

Thank you for your letter dated 10 May 2023 to my officials. I apologise for the delay in responding.

You have asked for the Scottish Government's views to three questions arising from the Committee's consideration of PE 2006 on 3 May 2023. The responses are as follows:-

- what has been done since June 2022 to seek views on the draft Code from consumer facing bodies and land-owning land maintenance companies;

The draft code was considered internally and found to be in need of further development before it could be shared with consumer facing bodies. In particular, further consideration is being given to how any voluntary code of practice on dismissing and replacing landowning maintenance companies would interact with the Code of Conduct under the Property Factors (Scotland) Act 2011.

- when the finalised Voluntary Code of Practice will be published;
and

Given the further consideration referenced above, it is not practical at present to give a date as to when the Voluntary Code of Practice will be published. I will, however, commit to providing an update by early next year on the progress.

I would draw to the attention of the Committee that the volume of correspondence received by the Scottish Government raising concerns about land-owning land maintenance companies has fallen considerably over the last 10 years. We are unable to identify the precise reason for this. One reason could be the introduction of the Property Factors (Scotland) Act 2011 which introduced a Code of Conduct. The Code sets minimum standards that factors need to meet. Where homeowners consider there has been a breach of the Code they can make an application to the First Tier Tribunal for Scotland (Housing and Property

Chamber). This may have brought an improvement to performance resulting in fewer complaints.

- whether the Scottish Government believes that the current legislation on dismissal of property factors is working, and what evidence it has for that view.

The Scottish Government considers that the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 do provide the necessary mechanisms to enable homeowners to dismiss and appoint a property factor where the title deeds do not provide adequate procedures.

That view is supported by the fact that the Scottish Government receives a low volume of correspondence highlighting problems when homeowners decide to switch factor. We tend to see more correspondence from homeowners seeking initial information about the procedure for changing their property factor, rather than subsequent indications that the procedure is not workable.

The Code of Conduct for property factors requires that information on switching factor be set out within the written statement of services provided by a property factor. The website [Under One Roof](#) also provides practical advice on the procedure.

Modern title deeds for developments often include provisions on the dismissal and replacement of property factors.

There is a need for all homeowners to work together to dismiss their factor. Contacting all homeowners can be problematic in some circumstances, for instance where there are absentee owners or where the properties are let. Practical advice is available at [https://underoneroof.scot/articles/1073/How to find your title deeds /T racing absentee owners](https://underoneroof.scot/articles/1073/How_to_find_your_title_deeds_T_racing_absentee_owners).

It is acknowledged that during the process to dismiss there may be instances where difficulties arise but as this may be attributable to practical rather than legal difficulties, it does not necessarily highlight a need to be addressed by legislation.

There are no current plans to consult on changing the law in this area.