

Under One Roof submission of 22 June 2023

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

Thank you for contacting Under One Roof Scotland for its views on the petition.

Under One Roof believes that factoring, whether by a commercial entity, a housing association, or by owners themselves, is one of the best ways to address building disrepair in the private housing sector.

We also believe that the Property Factors Code of Conduct has provided significant clarity for owners, not just of their rights, but of their responsibilities when engaging their property factor. There are misconceptions about the role of property factors in relation to common repairs, and through our website resources and other activities we attempt to make clear what owners can expect of their factors, and what they are collectively responsible for apart from their factor.

As noted by the Scottish Government's response to this petition, and the briefing from SPICe, there are procedures outlined in existing legislation to dismiss factors, and that the interaction of multiple pieces of legislation and title deeds make this a legally complex issue which may not be able to be resolved without court action.

Also noted by the SPICe briefing's recounting of a report from the Justice Committee in 2013, and from the Scottish Government's response to that Committee, this same complexity throws up barriers that should be addressed.

We should note that legal complexity related to tenement management is not limited to dismissing factors; there are many issues related to common repairs of properties in Scotland which are difficult to resolve due to legislative grey areas of various Acts (proposed clarity of which the ongoing work of the Scottish Parliament Working Group on Tenement Maintenance is attempting to address).

One barrier to addressing complex issues related to tenement management is the cost of legal proceedings. Under One Roof operates a free Information Service which answers enquiries from owners and property managers of tenement flats, and we often hear of disputes that require engaging a solicitor, but that are unaffordable by those wishing

to clarify or resolve a dispute; our worry is that the issue remains unresolved – and the building remains in disrepair.

This is why the First-Tier Tribunal's work is welcome. It clearly provides benefits for owners and property managers to proceed with legally binding proceedings, and clarity to all parties, without the need of solicitors.

Without commenting specifically on this individual case, Under One Roof would like to see the Scottish Government circulate the draft Voluntary Code of Practice for land-owning maintenance companies, as described in the SPICe briefing, and seek the views of housing professionals, owners and other organisations whether such a code, or other options such as the First-Tier Tribunal, would reduce the barriers for owners to replace factors when there is an overwhelming desire to do so, without causing significant unintended consequences that would reduce the number of factored buildings in Scotland.