

# Minister for Victims and Community Safety submission of 28 March 2024

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

Thank you for your letter dated 14 February 2024. I apologise for the delay in responding.

You have drawn my attention to the petitioner's further two submissions and requested an update on the Voluntary Code of Practice for land owning land maintenance companies.

The petitioner has provided further details on their situation in their submissions. I acknowledge that these situations can be challenging for residents.

The petitioner recognises that, rather than raising widespread or systemic issues, this petition highlights difficulties in a particular relationship between property factor and homeowners. I note the petitioner suggests there are a number of live applications to the First-tier Tribunal (Housing and Property Chamber) pertaining to this case. You will understand that I cannot comment on the specific circumstances of a private dispute, but with regard to the broader issues this petition raises, I consider that the current legislative framework does provide effective means by which to resolve these issues.

The Property Factors (Scotland) Act 2011 introduced a Code of Conduct for property factors ("the Code"). The Code requires that factors provide homeowners with a written statement of services at the start of the relationship. The written statement of services must include clear information on how to change or terminate the service arrangement, including signposting to the applicable legislation. This information should state clearly any "cooling off" period, period of notice or penalty charges for early termination. Failure by the factor to provide this information to homeowners at the outset of the factoring arrangement is a breach of the Code.

The procedures for homeowners to vote to remove property factors are often set out in title deeds. If these are silent then the Title Conditions (Scotland) Act 2003 and Tenements (Scotland) Act 2004 provide the

necessary mechanisms to enable homeowners to dismiss and appoint property factors.

It is open for any party with an interest to challenge the validity of a vote taken by homeowners. That is a protection for homeowners, to ensure that votes are properly taken and reflect the views of the majority.

Where a factor and homeowner disagree about the procedure to be followed in dismissing a factor, or the validity of a vote taken to remove a factor, the sheriff court can determine whether the procedure to remove a factor was properly followed, and whether or not a property factor has been removed. In my view that is the appropriate means by which to determine, in any particular case, whether a property factor has been removed by the homeowners.

Regarding the use of homeowners' funds to pay a factor's legal costs, if homeowners consider that a factor has used the homeowner's funds for a purpose not authorised by the terms of the factoring agreement or title conditions, homeowners may seek a remedy in the sheriff court. Further, the Code requires that homeowners know what it is they are paying for, how charges are calculated and that no improper payment requests are involved. If homeowners consider that the factor has used their funds for purposes which are not detailed in the written statement of services, homeowners may apply to the First Tier Tribunal (Housing and Property Chamber) ("the Tribunal") to establish whether the property factor has failed to comply with the Code.

Where the Tribunal considers that a property factor has failed to comply with the Code, the Tribunal may make a property factor enforcement order, requiring the property factor to take such actions, including making payments, as the Tribunal considers necessary. Failure to comply with a property factor enforcement order is a criminal offence. Non-compliance with the code of conduct or with property factor enforcement orders may ultimately be grounds for removal of a property factor from the register of property factors. Removal from the register would require the property factor to cease to operate as a property factor, or face criminal sanction.

In light of these existing remedies by which homeowners may challenge the actions of a factor, in my view, legislative change at this time is neither necessary nor proportionate.

With regard to the progress of the voluntary code of practice for land owning land maintenance companies, this code would apply only where homeowners pay a land-owning land maintenance company for management of the open spaces that are owned by the land maintenance company. This issue is distinct from the dismissal of traditional property factors (where the factor does not own the land maintained). There does not appear to be any suggestion of the involvement of a land-owning land maintenance company in the present petition.

Unfortunately, due to other work pressures, work has not progressed on the voluntary code of practice as anticipated. I will consider how this work is taken forward and what other information could be usefully provided for homeowners who are thinking about switching property factors.

**SIQBHIAN BROWN**