PROPERTY FACTORS (SCOTLAND) BILL

PATRICIA FERGUSON MSP

SUMMARY OF CONSULTATION RESPONSES

Introduction

The intention of the proposal is to “require property factors to register and to make provision for an accessible form of dispute resolution between homeowners and property factors”. The consultation document accompanying the draft proposal for the Property Factors (Scotland) Bill was issued on 19 October 2007 and was open for comment originally until 20th January 2008 and, due to the level of enquiries received, extended until 28 February 2008. A number of late submissions were received after the closing date; they were accepted and have been included in this analysis.

The consultation document was made available from a link on the Proposals for Members Bills webpage on the Scottish Parliament Website: The Scottish Parliament: - Bills - Proposals for Members’ Bills at [http://www.scottish.parliament.uk/s3/bills/MembersBills/index.htm](http://www.scottish.parliament.uk/s3/bills/MembersBills/index.htm). It was also issued to approximately 282 organisations and individuals with an interest in the issue; recipients were encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter.

The Member answered requests for up to another 100 copies to be sent out either electronically or in hard copy.

In June 2008, following the close of the consultation, the Office of Fair Trading launched a market study into property management services for common and shared residential property in Scotland. The study considered issues such as how much choice and information is available to homeowners, how property managers are selected, the quality and costs of the services provided, how homeowners can effectively manage services and whether homeowners have access to redress when things go wrong.

The outcome of the study, which found that ‘the market is not working well for consumers in Scotland’, was published in February 2009 and presented to the Scottish Government at that time. However, the Scottish Government have indicated that it currently has no plans to legislate on this issue.

General

In total 124 responses to Patricia Ferguson’s consultation were received; these were made up of the following groups:

- 97 individuals
- 8 property management/factoring companies
- 4 residents associations
- 3 housing associations
- 3 charities
The majority of respondents, 76%, supported the proposals either in whole or in part. A further 11% of consultees did not explicitly state their position but given the content of their responses were inclined to support some or all of the proposals. Overall, 87% of respondents were supportive.

Some of the reasons given for supporting the proposal included:

- all factors to be registered and to adhere to a Code of Conduct
- some form of “fit and proper person” test to be applied to all factors
- regulation to stop factors making inappropriate charges to clients
- an effective complaints procedure
- an arbitration process to help resolve disputes between factors and clients
- a system of independent audit to ensure work carried out is to a reasonable standard and cost
- a change in the law to make it easier to remove a factor where clients are not satisfied with their performance/charges

Only two respondents explicitly stated that they did not support the proposals. Some of the reasons given included:

- the problems with factors can only be addressed if the law regarding title deeds is amended to restrict the duration of factors’ contracts or exclude factors from title deeds altogether
- existing legislation already allows for disputes to be resolved in the courts and for clients to collectively dismiss their factors
- the issues would be better dealt with by voluntary means

In the remaining 10% of responses it was unclear whether they supported the proposals or not.

Survey by Pauline McNeill MSP
In addition, Pauline McNeill MSP issued a survey on the subject of property factors with the intention of gathering additional information to feed into Patricia Ferguson’s proposal. This survey received 37 responses. As the questions asked in the survey differed from those in the consultation document, they have been summarised separately, as follows.

92% of survey respondents (34) expressed general support for the proposals.

Three respondents did not explicitly state their support for the proposal, although two were inclined to support it given the content of their responses.
The responses to this survey are summarised at Annexe A.

**Responses**

The consultation document posed eight questions; a summary of the responses to each are outlined below.

**Question 1**

*What type/category of property managers should be registered?*

The consultation document proposed that the Bill would introduce a register to operate in a similar way to the Register for Private Sector Landlords. Under the proposals any person involved in the direct control of a business which was appointed as a property factor would have to meet a “fit and proper person” test and registration would be compulsory. The register would be administered by the relevant local authority and failure to register would be an offence liable to prosecution and a fine on conviction (although the local authority would have discretion to serve a Property Factor Penalty Notice with the effect that no charges would be payable under the contract between the factor and homeowner until the Notice was revoked).

58% of respondents directly answered this question. Of those, 83% considered that all types and categories of property manager should be required to register. Two of those believed that the requirement to register should be extended to include land management companies i.e. those that both own and manage the land and that distinction should be made between the two functions. One respondent believed that property managers who are already Registered Social Landlords should not have to register again as they are already regulated, whilst another stated that all property managers responsible for expenditure on behalf of third parties and who charge fees should be registered.

A further 7% supported some system of registration although they did not specify which categories of property manager should be registered.

Additionally, 8% supported registration but believed it should not be required in all cases. Views included:

- the need to register all property managers or agents excluding housing associations and local authorities
- the need to register commercial property managers only (not where factoring was done *voluntarily* by one of owners
- the need to have some form of registration scheme that does not require property managers to register with separate local authorities, as multiple applications would prove too onerous
- support for registration in some form of accreditation scheme.

Only one respondent stated that property managers should not be required to register.
Question 2

*Should everyone involved in the direct control of a business appointed as a property factor have to meet a “fit and proper person” test?*

The consultation document proposed that any person involved in the direct control of a business which was appointed as a property factor would have to meet a “fit and proper person” test and registration would be compulsory.

17% (21) of respondents directly answered this question. Of those, 81% (17) agreed that a fit and proper person test should apply, although views were mixed on who this should apply to. The majority favoured a test applying to those in direct control of property management businesses, such as Directors, whilst others felt the test should apply to all of the business’s employees.

Two respondents were not in favour of such a test for all, with one stating that registration should apply to a firm as a whole and “fit and proper person” tests for all staff would be too bureaucratic. Another believed if such a test were applied, only one principal in a firm should need to meet it but would prefer criteria to be set rather than a test such as this.

Two respondents were undecided on this question.

Question 3

*Who should administer and enforce the Property Factors’ Register?*

The consultation proposed that local authorities administer and enforce the register.

19% of respondents answered this question. Of those, 50% agreed that it would be appropriate for local authorities to administer and enforce the Property Factors’ Register (although one respondent had concerns that some property managers would be required to register with several different local authorities, thereby incurring multiple registrations fees.

29% of those who responded favoured some form of national regulatory body to administer and enforce the register as opposed to local authorities.

Two respondents believed it would be more appropriate for the Scottish Government to carry out this role than local authorities. Other suggestions included Property Managers’ Association Scotland or Registers of Scotland.

Question 4

*How should the costs of maintaining and enforcing a Property Factors’ Register be funded?*

18% of respondents directly answered this question. Of these, 77% stated that the costs of maintaining and enforcing a Property Factors’ Register should be met by property managers. The majority favoured charging property
managers an annual registration fee, while others suggested some form of unspecified levy on property managers.

The remaining responses included the following:

- the costs should be met from public funding
- concern that fees levied on property managers would be passed on to service users

**Question 5**

*What are the disadvantages and advantages in extending the jurisdiction of the Private Rented Housing Committee (PRHC) to resolve disputes between homeowners and factors?*

The consultation document proposed that the jurisdiction of the Private Rented Housing Committee be extended to allow it to sit as a Property Management Committee (PMC) and hear disputes between homeowners and property managers. Homeowners would still have the choice of raising proceedings in the Sheriff Court, but the PMC would be more accessible as it would not require legal representation with the associated costs that entails. The PMC would be an independent and impartial tribunal and provide legal redress.

11% of respondents answered this question. Of these, 10 (77%) detailed advantages to extending the jurisdiction of the PRHC in this way.

One respondent pointed out that the PRHC already deals with different aspects of housing also common to factoring, such as maintenance and repairs to property, collection of money, liaising with residents and dealing with disputes, and so would be well placed to take on this role.

Queens Cross Housing Association commented that “such an approach would be advantageous in providing a more economic and accessible form of dispute resolution between parties”, but stressed that guidance should be issued to ensure that the PRHC was not overloaded with complaints as a result.¹

The Scottish Consumer Council supported the principle of providing consumers of property management services with an independent route of redress separate from the courts, but pointed out that it would require substantial change to the current work of the PRHC.²

Some of the other advantages cited of extending the PRHC’s remit included that the new system would potentially:

- be less costly for complainant compared to existing system
- minimise time taken to resolve disputes between factors and owners
- save the courts time and money

¹ Consultation response no. 109 (Queens Cross Housing Association).
² Consultation response no.51 (Scottish Consumer Council).
• raise standard of factor’s service
• be more accessible than existing system
• provide a body to give advice and deal with complaints

Walker Sandford Property Management believed that there would be no advantage to extending the jurisdiction of the PRHC, stating “There is no correlation between private rented housing and the service provided by factors to private landlords (NOT rental tenants, please note). New expertise would require to be imported”.

The Property Managers’ Association Scotland Limited (PMAS) agreed with this view, stating that “the issues differ from those considered by the Private Rented Housing Committee and different legal knowledge will be required from the chair of each committee.”

The Scottish Rural Property and Business Association suggested that that workload of the PRHC would need to be assessed prior to giving it this extra responsibility.

Question 6

**How should a new form of dispute resolution for homeowners be financed?**

13% (16) of respondents directly answered this question.

The most popular suggestion, made by 38% of those answering the question, was that the costs of dispute resolution be paid by property managers themselves, whether by using money paid for registration fees or from an additional levy on property management companies/individuals.

Another suggestion was this should be publicly funded or at least subsidised by the Government. Two respondents believed that legal aid should be available while two considered that there should be set fee scales and the Property Management Committee should have the power to award costs.

Other suggestions included that the costs should be met by:
• those involved
• the unsuccessful party
• annual levy on householders (collected by property managers)
• fines
• establishment costs defrayed by Government grant
• following the National House Building Council model

Question 7

**What other difficulties with property factors could my Bill address?**

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3 Consultation response no. 69 (Walker Sandford Property Management Ltd).
4 Consultation response no. 92 (Property Managers Association Scotland Ltd).
5 Consultation response no. 114 (Scottish Rural Property and Business Association).
10% of respondents directly answered this question.

Responses were varied and suggestions mainly concerned the regulation of property managers. These included:

- the need for property managers’ charges to be investigated and regulated
- requiring property managers to keep accurate accounts that must be presented on request of homeowners
- a Code of Practice for property managers be introduced, some suggesting it should be linked to their registration
- restrict initial contract to three years duration to make the system fairer and encourage competition between factors
- include a mechanism to ensure property managers collect bad debts instead of passing them onto to paying customers
- retrospective protection for all owners with factor relationships regardless of what title deeds state
- introduce minimum service standards and/or accreditation scheme

The Scottish Consumer Council (SCC) recommended that a voluntary, Office of Fair Trading-approved Consumer Code for Property Managers be developed (separate from the existing PMAS Code, which is not externally validated). The SCC considered that such a Code would be most effective used alongside an accreditation scheme.

One respondent considered that there were problems regarding conflicts of interest, citing two issues. Firstly, the respondent believed that property managers were often unwilling to chase up issues with developers on behalf of homeowners for fear of losing out on future business from that developer. Secondly, the Property Managers’ Association Scotland, currently the only route for those wishing to complain about a property manager, is made up of property managers who may be the subject of complaint.

Walker Sandford Property Management considered that the Bill proposals do not address the problem that property managers face in trying to gain agreement and payment from homeowners for works required. It believed that the Bill should strengthen the law in relation to the responsibility of proprietors of common property to their co-proprietors.

The PMAS shared Walker Sandford’s view on this and added that “the proposals do not address their need for owners to become aware of their obligations as well as their rights in relation to common property and the need for more information to be made available to purchasers so that they have a greater understanding of the reasons for the appointment of their property manager or factor”.

**Question 8**

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6 Consultation response no. 51 (Scottish Consumer Council).
7 Consultation response no. 26 (Anonymous).
8 Consultation response no. 69 (Walker Sandford Property Management).
9 Consultation response no. 92 (Property Managers Association Scotland Ltd).
What have we missed? For instance, does my proposal affect any equality issues? Please feel free to give any comments you feel would be relevant to this Bill proposal?

9% (11) of respondents gave an answer to this question.

Three respondents believed that there was a need for a Code of Practice for property managers. Two suggested having a constitution or statement of rights for homeowners would be beneficial.

One respondent believed that the current law controlling factoring arrangements is fundamentally unfair, stating “Homeowners enter into factoring arrangements individually and yet are forced to find solutions to factoring issues collectively. This puts homeowners at a severe disadvantage. Uniting an estate … can be difficult.” The respondent also considered that many homeowners felt threatened by property managers charging and chasing payment for work that had appeared not to be done, and suggested this may in some cases amount to fraud.¹⁰

Other suggestions included:
- requiring proof from property factor that all bills have been settled when buy-to-let owners apply for renewal of their multi-occupancy licences
- promoting “self-management” and self-factoring
- better definition of what constitutes compulsory maintenance and repair
- schemes to help people afford the spiralling cost of repairs
- greater transparency of property manager’s income from a property.
- a means of dispute resolution between individual owners would be useful
- making it easier for homeowners to change property manager.

Other comments

Many of the responses included a summary of the respondent’s own problems with a factor or factors. In balance to these, responses were received from property factors, trying to set their problems in context and seeking to set out why problems sometimes occur and how the factor has attempted to manage the problem, sometimes working with a large group of people with disparate views. Some responses also point to the fact that some respondents have enjoyed a satisfactory factoring experience.

Summary

83% of those who expressed an opinion regarding what type/category of property managers should be registered believed that all types and categories of property manager should be required to register. A further 15% supported some system of registration but either did not specify which categories of property manager should be registered or considered certain categories should not be required to register. Therefore, 98% of those who commented supported a system of registration for property managers.

¹⁰ Consultation response no. 7 (Paula Hoogerbrugge).
81% (17) of those who gave an opinion agreed that a fit and proper person test should apply, with the majority of those favouring a test applying to those in direct control of property management businesses, such as Directors.

50% of respondents who expressed an opinion on who should administer and enforce the Property Factors’ Register agreed that it would be appropriate for local authorities to carry out this function. A further 29% of those who responded favoured some form of national regulatory body to administer and enforce the register as opposed to local authorities.

77% of those who commented on how the costs of maintaining and enforcing a Property Factors’ Register should be funded believed that these should be met by property managers, with the majority favouring collection via an annual registration fee.

77% of respondents who commented supported extending the jurisdiction of the Private Rented Housing Committee (PRHC) to resolve disputes between homeowners and factors. The main advantages cited were that the system would be more accessible and economical than current arrangements and that the PRHC had expertise in dealing with different aspects of housing also common to factoring.

Views were mixed on how a new form of dispute resolution for homeowners be financed, with over a third of respondents stating that the costs should be met by property managers themselves. Others considered costs should be publicly funded, subsidised by the Government or paid by the unsuccessful party.

There was a relatively low response rate to the member’s question about what other difficulties with property factors the Bill could address. Many of the suggestions surrounded the need for more regulation, transparency and accountability with regard to property managers’ fees and accounting practices. Additionally, a number wanted to see some form of Code of Practice or accreditation scheme for property managers.

A number of issues were raised regarding equality of homeowners, including the need to make it easier to change property managers. Other suggestions for issues the Bill could deal with included greater transparency of property managers’ income from a property and a means of dispute resolution between owners.

Conclusions

The responses to consultation have confirmed the member’s view that there is a need for legislation in the area and provided a number of ideas that the member will consider and use to further develop the policy before completing the drafting of a Bill.

NEBU
January 2010
Responses to Survey by Pauline McNeill MSP

Pauline McNeill MSP issued a survey on property factors to approximately 75 individuals and organisations at the beginning of January 2008 and the closure date for responses was 17 January 2008. Thirty-seven responses were received.

The survey posed the following questions:

1. How satisfied are you with your current property factor, if you have one?
2. Have you ever been involved in a dispute with a property factor?
3. If you have been involved in a dispute, was there a process in place for the fair, affordable and efficient resolution of your complaint? If there wasn’t do you think it would have been helpful to have more protection?
4. Is your property factor a housing association or a private property management company?
5. Do you think it should be easier to change your property factor?
6. Do you support the idea that those involved in the property management business should have to meet a “fit and proper person” test before being included on a Property Factors Register?
7. Are there any other issues about property factors which you would like to let me know about, please remember it is particularly useful to hear about your personal experiences, if you have any?

The responses to these questions are summarised below:

68% of respondents stated that they were not satisfied with their current property factor, whilst 27% were satisfied (or fairly satisfied).

65% of respondents had been involved in a dispute with their property factor, whilst 32% had not.

71% (17 out of 24) of those who had been in dispute with their factors did not believe there was a process in place for the fair, affordable and efficient resolution of their complaint. 54% (13 out of 24) of those (who did not believe there was a process in place for the fair, affordable and efficient resolution of their complaint) stated that it would have been helpful to have more protection.

Of the 35 people who specified the category of their property factor, 18 (51%) were with a private property management company and 17 (49%) were with a housing association.
Of the 33 respondents who answered question 5, the vast majority (97%) believed it should be easier to change your property factor.

100% of the 32 respondents who expressed an opinion on question 6 considered that those involved in the property management business should have to meet a “fit and proper person” test before being included on a Property Factors’ Register.

The main issues raised in response to question 7 of the survey (any other issues) related to:

- poor communication on the part of the property factor with regard to major works undertaken and maintenance
- failure to consult with homeowners prior to works commencing or explain perceived high charges for works carried out
- factors insisting work needs done contrary to the homeowners opinion without entering into discussion on it
- unreasonably high charges both in terms of fees and for maintenance work carried out
- unacceptable lengths of time taken to carry out required works leading to deterioration in buildings and grounds
- failure to respond to requests for maintenance to be carried out
- failure to monitor that subcontractors are doing what they are being paid to do
- poor quality of works undertaken
- non-existent or unsatisfactory complaints procedures
- factors continuing to charge fees while ignoring or failing to deal with complaints adequately
- factors charging for services that are not being provided to an acceptable standard
- disputes over responsibility where multiple factors are involved, and no imperative to come to an agreement

A number of respondents also considered that property factors should not also be allowed to be owners of properties that they factor as this creates a conflict of interest.

11 (30%) of the respondents stated that they were satisfied to some extent with the performance of their factor.