



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 23 May 2012

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
11th Meeting 2012, Session 4

CONVENER

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Margaret McCulloch (Central Scotland) (Lab)

*Aileen McLeod (South Scotland) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Minister for Housing and Transport)

Gordon Paterson (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 6

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 23 May 2012

[The Convener *opened the meeting at 10:00*]

Subordinate Legislation

Property Factors (Code of Conduct) (Scotland) Order 2012 [Draft]

The Convener (Maureen Watt): Good morning, everyone. I welcome you to the 11th meeting in 2012 of the Infrastructure and Capital Investment Committee. I remind everyone in the room to turn off their mobile phones, as they affect the broadcasting system. We are all present and correct today—no apologies have been received.

The first item of business is subordinate legislation: the draft Property Factors (Code of Conduct) (Scotland) Order 2012. As this is an affirmative Scottish statutory instrument, the minister will make some opening remarks after which there will be an opportunity for committee members to comment on the SSI before asking the minister questions. We will then ask the minister to move the motion and there will be an opportunity for formal debate. I refer members to paper 1, which contains a copy of both the order and the code of conduct.

I welcome Keith Brown, the Minister for Housing and Transport—good morning, minister—and his supporting officials: Gordon Paterson, team leader, and Frances Murphy, senior policy officer, both from the private housing services division; and Annalee Murphy, solicitor. The order is laid under the affirmative procedure, which means that the Parliament must approve it before the provisions may come into force. Following this evidence session, the committee will be invited to consider a motion to recommend approval of the order under agenda item 2. I invite the minister to make some introductory remarks on the order.

The Minister for Housing and Transport (Keith Brown): Thank you, convener. The order sets a date for the new code of conduct for property factors to come into force, which is 1 October. The Property Factors (Scotland) Act 2011 was passed in the spring last year with wide support across the Parliament. It originated in a member's bill that was introduced by Patricia Ferguson and aims to create a statutory framework that will protect home owners in Scotland who use the services of a property factor.

The code of conduct sets out minimum standards of practice for registered property factors—that is in section 14(1) of the act. A 12-week public consultation was held between September and December last year. Eight consultation workshops were held in Glasgow, Edinburgh and Aberdeen and 138 written responses were received. Those responses and the analysis report were published on 16 February. The key topics that are addressed by the code include communicating with home owners; banking arrangements; insurance issues; repairs and maintenance procedures; and complaints handling.

A thorough and wide-ranging consultation has been undertaken to get the code of conduct to the stage that it is now at. We believe that the code strikes the right balance in terms of where standards are pitched and that it will strongly support the aims and aid the effectiveness of the new legislation on factors. The overriding principle is transparency. Home owners will know what services they will receive, how the charges that are levied are arrived at and how their property factor will communicate with and consult them.

The code of conduct that is now under consideration is the result of a thorough and rigorous process. We have consulted extensively and have given careful consideration to a wide range of relevant issues. We believe that the code is robust and that it will introduce an effective and proportionate set of standards that will provide a solid framework to protect the interests of home owners. For that reason, I recommend that the committee support the order and recommend that Parliament should vote to approve it.

The Convener: Thank you. I invite comments and questions from members.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): This is interesting for me because I made a submission to the consultation, and one never knows how many suggestions from one's submission have been taken up. Probably not many of mine have been taken up, but other people's may have been. It would be interesting to get an indication of how much change was brought about by the consultation. I will raise a couple of my points now and a couple later, if I may—I will not go through all of them.

A couple of things that were in the first version of the code have been omitted from the final version. Why has the original section 1, on general obligations, been omitted completely? That was the only section of the original version that referred to title deeds, which are a big outstanding issue in relation to factoring. That and some other matters that were in the general obligations section of the original version have disappeared. Why?

Perhaps of even more concern is the omission of what would have been section 2.6—it was section 3.6 in the original version but, because of the omission of the original section 1, the sections in the new draft do not correspond with those in the original. Section 3.6 of the original version, on communication and consultation, said:

“You must ensure that homeowners have a route for providing feedback to you on the service provided.”

In my response to the consultation, I suggested that you add that factors must respond to the feedback and take action to improve services where reasonable. That subsection has disappeared from the end of section 2, so there is no reference to home owners having an opportunity to provide feedback.

Two good things that were in the original document have disappeared altogether. Why have they suddenly disappeared?

Keith Brown: Some things have been taken out of the general obligations section because, in a number of cases, they cut across reserved issues. For example, some points in relation to title deeds and compound interest involved complicated interactions between reserved and devolved issues. We tried to make sure that we kept the remit of the revised code within devolved issues and that we took on board the comments of home owners and other interests.

Malcolm Chisholm is right to say that there have been a number of changes, and I will confirm what they are. We have simplified the requirements in relation to the written statement, in particular the requirement to review or to interpret the title deeds. We have extended the timetable for property factors to provide the written statement to their existing customers. We have removed the reference to compound interest, because that is not within devolved powers. However, a home owner can still apply to the home owner housing panel to say that the charges that are being levied are excessive. The home owner housing panel may rule that a charge is excessive in cases where that is because of compound interest, although they may not state that as the reason. That check is still there.

The requirement on factors to provide sinking funds, or reserve funds, as trust accounts has been removed because we concluded that that was not appropriate for a statutory instrument. References to the fairly complex relationship between title deeds and the court have been simplified. In all of this, title deeds will remain superior to provisions of the court when there is a conflict between the two. The relationship between title deeds and contractual agreements has also been simplified in the code of conduct. That accounts for some of the changes.

There is a substantial degree of coverage of communication and consultation in the code of conduct. We believe that

“Good communication is the foundation for building a positive relationship”.

We are quite conscious of that. Indeed, this morning I spoke to a home owner whose dealings with a factor highlighted that good communication is sometimes not happening. The code seeks to change that. In particular, the code seeks to ensure that communication is not allowed to be abusive or intimidating. That will be particularly beneficial in, for example, sheltered complexes or complexes designed for older people. Putting that in the code will be very useful.

The code also says that home owners have to be provided with contact details, including a telephone number. It states:

“If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out-of-hours emergencies”.

Factors

“must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees”.

There are exceptions to that where there is a degree of delegated authority.

Regarding feedback, we are requiring factors to

“respond to enquiries and complaints received by letter or email within prompt timescales.”

They should deal with those

“as quickly and as fully as possible, and ... keep homeowners informed”

as required. Factors’

“Response times should be confirmed in the written statement”.

We believe that those things will move us towards far better lines of communication and consultation between home owners and factors, even if that is different from what was in the original version.

Malcolm Chisholm: I have two other issues to flag up, and a general question to ask.

I imagine that the committee will agree to the motion. What opportunities will there be to amend the code in the future if it is found to be deficient? I would be grateful if you could answer that question as well as respond to my other points. I think that everybody is very positive about the 2011 act, but people said in the debate on the bill that the code of conduct is at its heart. If it is not strong enough, people will be disappointed in the legislation, which we do not want.

I have a couple of suggestions for additions to the code, which flag up issues. People are concerned about the way in which charges tend to go up significantly from year to year. Section 3.3 of the code helpfully deals with that, stating that there must be a

“detailed financial breakdown of charges”.

My suggestion is to add that any increase in charges should be fully explained. Some of the complaints about factoring services that I get involve people saying, “Why has my bill suddenly doubled? Nobody has told me why.”

I will mention just one more suggestion rather than go through all of them. People are also greatly concerned when they have to pay for people who have defaulted on their payments. That is dealt with in section 4.7 of the code, which states:

“You must be able to demonstrate that you have taken reasonable steps to recover unpaid charges”.

Obviously, people feel that it is an injustice if they have to cover the charges of two or three people—or more—who fail to pay. I suggest adding the word “all” before “reasonable steps” in section 4.7, but I am more concerned to flag up the issue as another major problem that needs to be addressed.

I hope that what is in the code of practice will help. I am just arguing that those two sections ought to be strengthened, because the issues that are involved cause so much concern.

Keith Brown: On the first point, our intention is to review the code in the second of the three-year periods, so it will be reviewed within the next six years. We will take on board any lessons learned from it and subsequent measures that we might take in relation, for example, to the ability to switch factors, which is not included at the moment. I think that we mentioned in the business impact assessment that we would do that in the second of the three-year periods.

Like Malcolm Chisholm, I hear from constituents about the problem of some home owners being jointly liable for the failure of others to pay. However, I think that that is permissible only if it states in the missives that they are jointly liable in that respect, but I am willing to be corrected on that.

Home owners will now be able to require that they get a breakdown of any charges for work done, which has not happened previously. For example, this year, some people report that their insurance premiums have suddenly gone up by 40 per cent. They will now have to be satisfied that the factor has gone through a proper process in that regard and, when they get the quote, they

have to be informed whether the factor has received any commission.

I think that the code has robust provisions on transparency and on having a proper measure of how fees are arrived at. However, the final check will be through the panel, which will be able to look at a quote, for example, and say, “You have not given a breakdown of how the costs have been arrived at.” I was recently made aware of a case in which a group of home owners were charged—I think—£40 each as part-payment for a fence that had been erected on a different estate. Perhaps that was not noticed initially because there was no breakdown of the charge or what it was for. Errors would be less likely to arise if such information was included.

I think that the code is robust enough to ensure that people will know what they are going to be charged. That is the main import of the code. People will also be able to challenge a charge if they feel that it is unfair and, of course, they will have the backstop of the panel, which will be able to consider any challenges. However, they will not be able to say, for example, “We don’t believe it’s right that you can charge compound interest on unpaid bills.” Factors have the right under United Kingdom legislation to charge compound interest and we cannot say that they should do otherwise. However, if the panel believes that a charge is excessive, it can say so. I think that the code is robust.

10:15

Alex Johnstone (North East Scotland) (Con):

The code is a major step forward. The area that has concerned me most in the north-east has been the management of green spaces. There is a great deal in the code that is helpful about that.

However, the primary interest of some people I talk to is still to break the arrangement that they are in. Section F of the written statement, on ending the arrangement, refers to

“signposting to the applicable legislation.”

Does the Government believe that that will deal with the issue once and for all or will it be necessary to revisit that legislation in order to make the code robust enough to deal with the demands of those who would still like to break their arrangement with a factoring company?

Keith Brown: No. As I said previously, the code will not allow arrangements to be broken in the circumstances to which the member is referring—I have the same situation in my constituency. The code will largely seek to deal with factors who are providing a factoring service. In the situation that Alex Johnstone describes, it is often the case that the factor owns the open spaces, which makes it

much more problematic to break the arrangement. If you say, "We no longer want you to maintain the spaces," but they own the spaces, there is an issue. We intend to consult further on that this summer as part of the proposed housing bill. I think that it was discussed during the passage of the Property Factors (Scotland) Bill.

The Convener: Will the order make it more or less likely that properties that have a common entry will be factored?

Keith Brown: It is hard to say—it would be down to the market. I imagine that, crucially, home owners will be much more satisfied with the charges that are being levied, the service that they are receiving and the fact that there is a dispute resolution process. It will make them more at ease with factoring.

Similarly, for factors, it will put things on a much more structured footing, not least in relation to factors' obligation to pursue payments that have been missed. Initially, there will be the issue of having to register, comply with the code and adhere to the standards within the code. However, the environment in which the factor and the person receiving the factoring services work will now be much more stable and transparent. That in itself may lead to more factoring arrangements being made.

The Convener: A large number of property owners are not of British origin and find it difficult to communicate in English. Do you have any plans to translate the code into other languages?

Keith Brown: That is a good question.

Gordon Paterson (Scottish Government): We undertook an equalities impact assessment for the code of conduct. Because the code covers all home owners, it was difficult to identify specific population groups. We are encouraged by the property factors' own complaints procedures and practices that property factors will be able to provide information in the required format for all equalities groups.

The Convener: If there are no further questions, we move to the formal debate on the draft order. I ask the minister to move motion S4M-02940.

Motion moved,

That the Infrastructure and Capital Investment Committee recommends that the Property Factors (Code of Conduct) (Scotland) Order 2012 [draft] be approved.—
[Keith Brown.]

Motion agreed to.

The Convener: I thank the minister and witnesses for their evidence.

Annual Report 2011-12

10:19

The Convener: The next item is to consider a draft annual report for the parliamentary year from 11 May 2011 to 10 May 2012. I refer members to paper 2. Does any member have any comments to make on the draft annual report? I wondered whether we should put in that we had a session on homelessness with stakeholders and that it was well received. We will check whether that session was within the period that I mentioned, but I think that it was.

Do members agree the draft report?

Members indicated agreement.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): I would like to raise a point that is not about the report itself, but about the Scottish Government's "Scotland's Digital Future—Infrastructure Action Plan". My understanding is that the procurement plan is imminent. Can we factor a review of that into our work? I understand that people have been seconded from elsewhere to help the Scottish Government to put that plan together and that there have been changes since we had people in to talk about it. It might be an idea to get something on that on to our agenda.

The Convener: Okay.

Alex Johnstone: That is one for next year.

Adam Ingram: Yes.

The Convener: As no one has anything else to say, I remind members that there is no formal or informal business on 30 May or 6 June. There will be informal briefings on the hydro nation water resources bill and the procurement bill on 13 June.

Meeting closed at 10:21.

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