

# Property Factors (Scotland) Act 2011

## Code of Conduct for Property Factors

*Laid before the Scottish Parliament by the Scottish Ministers under Section 14 of the Property Factors (Scotland) Act 2011*

01/2021

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**[This is a draft revised Code of Conduct, subject to the approval of the Scottish Parliament and is due to take effect from 16 August 2021.]**

**If you have queries about when it will take effect, please contact the Property Factor Registration Team at [PropertyFactorRegister@gov.scot](mailto:PropertyFactorRegister@gov.scot)**



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## Introduction to the Code of Conduct (the Code)

The following introductory text outlined at pages 3-7 provides further information on the Code's purpose, who it applies to and the broader regulatory background. It does not form part of the Code.

The Scottish Parliamentary Working Group on Tenement Maintenance (the Working Group), published in June 2019 highlighted the importance of the maintenance of common property and the need to improve the condition of Scottish tenements to ensure that Scotland's housing stock can continue to provide safe and sustainable homes for the future. Homeowners and landlords need to fully accept their shared role in the upkeep of their property. The Scottish Government has made a commitment to take action to implement the recommendations of the Working Group. These recommendations include proposals for new statutory duties on owners in tenements to have owners' associations, building reserve funds and five yearly building condition reports. We will engage with the Scottish Law Commission on these recommendations, with a view to carrying out a law reform project to provide a draft Bill that would implement them. Whilst legislation is being considered and in development, we will seek to support voluntary and incremental change. Where land is owned, managed and maintained by a land maintenance company for the benefit of homeowners, this can involve complex management issues, specialist input and is subject to detailed legal regulation. Property factors play an important role in both supporting homeowners to ensure common property is protected and maintained and in the management, maintenance and sustainability of land. Factors can help to ensure that owners are aware of applicable house condition standards, this includes the Scottish Housing Quality Standard (SHQS) and the Repairing Standard (RS). Homeowners can find impartial advice on repairs, maintenance, the appointment of a property factor and other useful information at <http://www.underoneroof.scot/>.

This revised Code applies from 16 August 2021 and replaces the original Code which applied from 1 October 2012. All registered property factors are required by law to ensure compliance with the Code in terms of section 14(5) of the Property Factors (Scotland) Act 2011 (the 2011 Act).

This Code is one of three main elements to the 2011 Act. The two other elements are:

1. **A register of property factors** (the Register) operating in Scotland is maintained by the Scottish Ministers. All organisations who meet the definition of a property factor, set out in the 2011 Act, are required to register. It is an offence to operate as a property factor without being registered. You can view the Register at:

[www.propertyfactorregister.gov.scot/PropertyFactorRegister/](http://www.propertyfactorregister.gov.scot/PropertyFactorRegister/).

Property factor registration enquiries, including reports that someone is operating as a 'property factor' whilst unregistered, and/or general enquiries on the Code can be sent in writing to the Scottish Government by e-mail to [propertyfactorregister@gov.scot](mailto:propertyfactorregister@gov.scot) or at the following address:

Scottish Government  
Property Factor Registration  
2-H North, Victoria Quay  
Edinburgh  
EH6 6QQ

2. **A dispute resolution mechanism for homeowners** (as defined by section 10(5) of the 2011 Act). A homeowner (as specified under section 10(5) of the 2011 Act) must, in the first instance, notify their property factor in writing of the reasons why they consider that their property factor has failed to comply with the Code and/or failed to carry out their duties under section 17(5) of the 2011 Act. A homeowner must allow their property factor a reasonable opportunity to resolve the matter (see Section 7 of the Code: Complaints Resolution).

A homeowner may apply to the First-tier Tribunal for Scotland Housing and Property Chamber (First-tier Tribunal)<sup>1</sup> for a determination of whether the property factor has failed to comply with the 2011 Act.

Part 2 of [The First-tier Tribunal for Scotland Housing and Property Chamber \(Procedure\) Regulations 2017](#) (the Tribunal rules) sets out the procedures for making an application including an appeals procedure.

While the Scottish Government can comment generally on the requirements of the Code, it is unable to comment on any decisions taken by the Chamber President and/or the First-tier Tribunal which relate to such applications. Applications and/or related enquiries can be sent to by e-mail to [HPCAdmin@scotcourtribunals.gov.uk](mailto:HPCAdmin@scotcourtribunals.gov.uk) or to the following address:

First-tier Tribunal for Scotland (Housing and Property Chamber)  
Glasgow Tribunals Centre  
20 York Street  
GLASGOW, G2 8GT

The website of the First-tier Tribunal can be found at:  
<https://www.housingandpropertychamber.scot/>

This is the national portal for up to date information including decisions, annual reports, legislation and their complaints procedure. It also includes many other useful links to related websites.

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<sup>1</sup> The functions of the Homeowner Housing Panel transferred to the First-tier Tribunal for Scotland Housing and Property Chamber on 1 December 2016.

## **What is the purpose of the Code?**

The Code sets out minimum standards of practice for registered property factors, encouraging transparency in the way that they conduct their business in connection with the management of common property or the maintenance of land as detailed in the homeowner's title deeds.

## **Who does the Code apply to?**

This Code applies to all 'property factors' as defined by section 2(1)(a)-(d) of the 2011 Act who are entered on the Register under section 1 of the 2011 Act.

Broadly, 'property factors' means property and land managers operating in Scotland, whether they are private businesses, local authorities or housing associations (the definition of 'property factor' is contained in section 2(1) of the 2011 Act).

Section 14(5) of the 2011 Act indicates that a registered property factor must ensure compliance with the Code in force at that time.

Section 2(2) of the 2011 Act indicates who is not a property factor. A person is not acting as property factor if they manage or maintain the common parts of land on behalf of a property factor, where that property factor has been engaged to act in relation to the same common parts of land. These persons are not subject to the requirements of the Code. Property factors should however consider the requirements of the Code when instructing third parties to undertake business on their behalf and/or or making decisions/undertaking actions which may have consequential implications for homeowners.

The requirements of the Code do not apply to arrangements where homeowners collectively choose to undertake ad-hoc repairs without using a property factor or self-factor the common parts of their properties, for example, owner associations established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003), or any other circumstances provided for under section 2(2) of the 2011 Act.

## **What may happen if a property factor is found by the First-tier Tribunal not to have complied with the Code or their property factor duties?**

If the First-tier Tribunal finds that the property factor has failed to comply with the Code and/or their duties as specified by the 2011 Act, the First-tier Tribunal has the power to make a 'property factor enforcement order' (PFEO). A PFEO is an order requiring a property factor to undertake such action as a First-tier Tribunal considers necessary, and, where appropriate, make payment to a homeowner, as the First-tier Tribunal considers reasonable. Examples include requiring the property factor to take action such as providing information or to make a payment to the homeowner. A property factor may make a written application to the First-tier Tribunal for permission to appeal a decision on a point of law. The procedure is set out in the Tribunal rules.

## **What may happen if a property factor is found by the First-tier Tribunal to have failed to comply with a PFEO?**

Failure to comply with a PFEO may have serious consequences for the property factor. The First-tier Tribunal has a duty under section 23(2) of the 2011 Act to notify Scottish Ministers of the failure to comply. Scottish Ministers will take this in to account when deciding whether it is satisfied to enter a person on the Register or to remove a registered property factor from it (see sections 4 and 8 of the 2011 Act)<sup>2</sup>. Failure to comply with a PFEO without reasonable excuse is also a criminal offence under section 24 of the 2011 Act. It is for the First-tier Tribunal to report such matters to the Police and/or the Procurator Fiscal Service to investigate. It would be for the Procurator Fiscal to decide whether to prosecute and ultimately for a Court to determine the outcome of any prosecution. Again, a property factor may apply for permission to appeal the decision of the First-tier Tribunal on a point of law.

## **How do the requirements of professional bodies and other legislation relate to the Code?**

The Code is separate from, and additional to, any other statutory requirements which a property factor may be required to adhere to.

In addition to the 2011 Act and the Code, property factors are ultimately responsible for ensuring that they conduct their business in a manner that complies with all relevant legislation (either in Scots law, the law in the rest of the UK or wider).

In particular this may cover duties imposed by legislation relating to property and title, to companies, consumer rights, consumer credit licences and protection, contracts and procurement, data protection, equalities, financial services, freedom of information, health and safety, human rights, property and title conditions, and tribunals and court procedures.

Some property factors will also have specific commitments to meet the regulatory requirements of statutory bodies such as the Scottish Housing Regulator, the Financial Conduct Authority, the Prudential Regulation Authority, the Scottish Information Commissioner's office or have a duty to co-operate with other public bodies. Some property factors may also have to comply with the rules and codes of practice of other professional bodies for example the Institute of Residential Property Management, the Law Society of Scotland, the Property Managers Association Scotland and the Royal Institution of Chartered Surveyors.

## **What is not covered within the Code?**

The Code does not specifically set requirements on how a property factor should act in circumstances that may arise out-with that business arrangement with homeowners, for example, neighbour disputes about noise or antisocial behaviour or a property factor's business arrangement with any other third parties.

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<sup>2</sup> Section 23 of the 2011 Act - Effect of failure to comply with PFEO

## **Training and Development**

It is important for staff to be trained appropriately to be able to implement the Code. Property factors may wish to consider the benefits of being able to demonstrate that their staff have the required skills and knowledge through accreditation and attendance at associated training that is relevant to the work of a property factor in Scotland. Encouraging and supporting continued professional development is key to keeping up to date on developments in the sector and attending / participating in factoring networks and online forum is one way to do this.

## **Useful References for Property Factors:**

### **Data protection**

Each factor is responsible for their own compliance with this legislation, and should consider the guidance available from the Information Commissioner's Office (ICO) to ensure they are meeting all obligations: <https://ico.org.uk/>

When sharing data with another property factor in relation to land or homeowner information, the property factor who has collected the information will be the data controller. Depending on the situation, there may be a number of bases for sharing information:

- express consent for sharing personal data e.g. by issuing a pro forma to homeowners,
- it may fall under the legitimate interests of all three parties to pass the data between the outgoing and incoming factors or
- it may fall under the contractual obligations.

### **Complaints Processes**

Property Factors may wish to be aware that the Scottish Public Services Ombudsman's Valuing Complaints Website contains information to help support improvement in public sector complaints handling, including model complaints handling procedures and other resources which could be adapted for the private sector. <https://www.spsso.org.uk/for-organisations>

### **Debt Advice**

Names of organisations and information on formal debt relief and management products - bankruptcy, protected trust deeds, and the Debt Arrangement Scheme (DAS) - is available on the Accountant in Bankruptcy's website: [www.aib.gov.uk](http://www.aib.gov.uk).

## CODE OF CONDUCT

The requirements from this point forward (pages 8-32) form part of the Code and apply from 16 August 2021.

Appendix 1 is a glossary of terms used in the Code, and also forms part of the Code.

### Overarching Standards of Practice

The following are the overarching standards of practice that property factors should apply in carrying out their work:

- You must conduct your business in a way that complies with all relevant legislation.
- You must be honest, open, transparent and fair in your dealings with homeowners.
- You must provide information in a clear and easily accessible way.
- You must not provide information that is deliberately or negligently misleading or false.
- You must apply your policies consistently and reasonably.
- You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.
- You must not unlawfully discriminate against a homeowner because of their age, disability, sex, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, race including colour, nationality, ethnic or national origin, religion or belief or sexual orientation.
- You must ensure all staff and any sub-contracting agents are aware of relevant provisions in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property.
- You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.
- You must ensure you handle all personal information sensitively and in line with legal requirements on data protection
- You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.



- You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

Some of these points are expanded in the later sections of the Code.

## Section 1: Written Statement of Services

**N.B. Section 1 covers the contents of the written statement of services (WSS) only. The provisions relating to service standards are covered in the later sections of the Code.**

- 1.1 A property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner makes an application under section 17 of the 2011 Act to the First-tier Tribunal for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their WSS as part of their compliance with the requirements of this Code.
- 1.2 A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:
  - within 4 weeks of the property factor:-
    - agreeing in writing to provide services to them; or
    - the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;
    - identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS
  - at the earliest opportunity (in a period not exceeding 3 months) where:
    - substantial change is required to the terms of the WSS.

Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version;

- 1.3 At all other times, a copy of the latest WSS must be made available by the property factor on request by a homeowner.

### How the Code applies to different types of land ownership

- 1.4 The requirements in relation to the content of the WSS will depend on who owns the land which is factored. Unless otherwise stated, section 1.5 below will apply to all property factors. However, if land is owned by a land maintenance company or a party other than a group of home owners, Section 1.6 on Authority to Act applies rather than Section 1.5 A.
- 1.5 The WSS must make specific reference to any relevant legislation and must set out the following:

## **A. Authority to Act**

- (1) a statement of the basis of the authority the property factor has to act on behalf of all the homeowners in the group<sup>3</sup>. Property factors operating under a custom and practice arrangement with no formal appointment should clearly indicate this arrangement to homeowners in the WSS. Where this is the case, homeowners and property factors may wish to consider formalising their appointment.
- (2) where the property factor has purchased the assets of another property factor, a clear statement confirming whether the property factor has taken on the outstanding liabilities of the previous property factor, and any other implications of the takeover for homeowners;
- (3) where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners.

## **B. Services Provided**

- (4) the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service);
- (5) the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a 'menu' of services) and how these fees and charges are calculated and notified to homeowners.

## **C. Financial and Charging Arrangements**

- (6) the management fee charged by the property factor, including any fee structure and also the property factor's policy for reviewing and increasing or decreasing this management fee;
- (7) what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services that each homeowner is responsible for. This is likely to be set out in the title deeds for the property. If management fees are charged at a flat rate rather than as a proportion, then this should be clearly stated;

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<sup>3</sup> For example (not an exhaustive list):-

- Named in the Title Deeds as the property factor for the first (x period of time). This manager's burden has/has not expired.
- Appointed by a decision of a majority of homeowners on x date in accordance with the Tenement Management Scheme set out in the Tenements (Scotland) Act 2004.

- (8) any arrangements relating to payment by homeowners towards a deposit, float or floating fund, confirming the amount, payment process and repayment policy (at change of ownership or where the service is terminated by homeowners or by the property factor) (see section 3 of the Code: Financial Obligations);
- (9) any arrangements for collecting payment from homeowners for sinking or reserve funds, specific projects or cyclical maintenance, confirming amounts and payment process;
- (10) the timing and frequency of billing and by what method homeowners will receive their bills;
- (11) how the property factor will collect payments, including timescales and methods (clearly stating the payment methods available to homeowners). Any charges relating to late payment must clearly state the period of time after which these charges would be applicable (see Section 4 of the Code: Debt Recovery);
- (12) the property factor's debt recovery procedure which must be made available on request (see section 4 of the Code: Debt Recovery).

#### **D. Communication and Consultation**

- (13) how homeowners can access information, documents and policies/procedures that they may need to understand the operation of the property factor;
- (14) procedures and timescales for responding to enquiries and communications received from homeowners in writing and by telephone (including details of the property factor's standard working hours);
- (15) the property factor's complaints handling procedure<sup>4</sup>;
- (16) the property factor's privacy notice and their registration details with the Information Commissioner's Office's Data Protection Public Register.

#### **E. Declaration of Interest**

- (17) a declaration of any financial or other interests which the property factor has in the common parts of property and land to be managed or maintained, for example as a homeowner (including where the property factor is an owner or acting as a landlord but not where it is undertaking letting agency work in respect of a property<sup>5</sup>). If no interest is declared, then this must be clearly stated.

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<sup>4</sup> This may refer to a general complaints handling procedure which is not restricted to complaints about property factoring for example where the property factor is a local authority or a housing association.

<sup>5</sup> Section 61 of the Housing (Scotland) Act 2014 – Meaning of letting agency work

**F. Information about the 2011 Act and the duties it places on property factors.**

- (18) this will include the duty to Register, the use of a Property Factor Registered Number and the duty to comply with the Code.

**G. How to End the Arrangement**

- (19) clear information on when and how a homeowner should inform the property factor of an impending change in ownership of their property (including details of any reasonable period of notice which is required by the property factor to comply with its duties under this Code. This information should also state any charges for early termination/administration costs;
- (20) clear information that homeowners may (by collective or majority agreement or as set out in their title deeds) terminate or change the service arrangement including signposting to any relevant legislation, for example the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. This information should include any “cooling off” period or period of notice;
- (21) a clear statement confirming the property factor’s procedure for how it will co-operate with another property factor to assist with a smooth transition process in circumstances where another property factor is due to or has taken over the management of property and land owned by homeowners; including the information that the property factor may share with the new, formally appointed, property factor (subject to data protection legislation) and any other implications for homeowners. This could include any requirement for the provision of a letter of authority, or similar, from the majority of homeowners to confirm their instructions on the information they wish to be shared.

G (20) and (21) do not apply to situations where homeowners do not own factored land.

**The following requirements apply where the land is owned by a land maintenance company or a party other than the group of homeowners**

1.6 The WSS must make specific reference to any relevant legislation and must set out the following in terms of authority to act:

**A Authority to Act**

(1) a statement of the legal basis of the arrangement between the property factor and the homeowner;

(2) a description of the use and location of the area of land to be maintained, including a map where possible (this information must be updated to reflect any changes):

- within 4 weeks of the change;
- within 4 weeks of the property factor identifying that they have provided misleading or inaccurate information at the time of previous issue; or
- at the earliest opportunity (in a period not exceeding 3 months) where substantial change is required.

## Section 2: Communication and Consultation

- 2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.
- 2.2 Factors are required to comply with current data protection legislation when handling their client's personal data, and to ensure that this information is held and used safely and appropriately.

The Code requires that:

- 2.3 The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.
- 2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.
- 2.5 A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. . If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors.
- 2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.
- 2.7 A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and

as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

- 2.8 A property factor must take all reasonable steps to ensure that their property factor registered number is included in any document sent to a homeowner.<sup>6</sup>
- 2.9 Where another property factor is due to take over the management of property and land owned by homeowners; the outgoing property factor must co-operate (within the limits of their authority to act and data protection legislation) with the new, formally appointed, property factor (and vice versa), to supply each other with information about the land and properties to be factored and contact details for homeowners. This could be achieved via a letter of authority from the majority of homeowners to confirm their instructions to the outgoing property factor and list the information they wish to be shared.
- 2.10 Where the property factor has purchased the assets or otherwise been introduced to homeowners by the existing property factor, the letter of introduction should include a clear statement that homeowners are responsible for choosing and appointing their property factor and are not obliged to take up the offer of services.

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<sup>6</sup> This is also required by section 13(3) of the 2011 Act and can be taken into account by the Scottish Government in relation to a further application to register (see section 4(4)(b)(ii) of the 2011 Act).



## Section 3: Financial Obligations

- 3.1 While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.
- 3.2 The overriding objectives of this section are to ensure property factors:
- protect homeowners' funds;
  - provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;
  - make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.
- 3.3 All property factors should be aware of the threat of money laundering and must comply with all relevant legislation and guidance to minimise the risk that they and their business will be used to launder the proceeds of crime.
- 3.4 A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for.
- 3.5 If homeowners decide to terminate their arrangement after following the procedures laid down in the title deeds or in legislation, or the property factor decides to terminate the arrangement, a property factor must make the financial information that relates to their account available to the homeowners. This information must be provided within 3 months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).
- 3.6 Unless the title deeds specify otherwise, a property factor must return all funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill, following a change of property factor.
- 3.7 In cases where a property changes ownership, the property factor must confirm the process for repaying any funds that are due and presenting the final financial information relating to the account. This must be provided within 3 months of the property factor being made aware of the actual date of change in ownership (the date of settlement) unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing them of the change in ownership).

- 3.8 A property factor must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on the sale of the property).

**In order to protect homeowner funds, if the property factor is a housing association or a local authority:**

- 3.9 Homeowners' floating funds must be accounted for separately from the property factor's own funds, whether through coding arrangements or through one or more separate bank accounts.
- 3.10 In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account or accounting structure must be used for each separate group of homeowners.

**All other property factors:**

- 3.11 Homeowners' floating funds must be held in a separate account from the property factor's own funds. This can either be one account for all its homeowner clients or separate accounts for each homeowner or group of homeowners.
- 3.12 In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account must be opened in the name of each separate group of homeowners. A property factor must only transfer funds from one such account to another in line with the arrangements in any agreement with homeowners to do so.

## Section 4: Debt Recovery

- 4.1 Non-payment by some homeowners may affect provision of services to others, or may result in other homeowners in the group being liable to meet the non-paying homeowner's debts in relation to the factoring arrangements in place (if they are jointly liable for such costs). For this reason it is important that homeowners are made aware of the implications of late payment and property factors have clear procedures to deal promptly with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating.
- 4.2 It is a requirement of section 1 of the Code (written statement of services) that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is made available to homeowners.
- 4.3 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.
- 4.4 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.
- 4.5 When dealing with customers in default or in arrears difficulties, a property factor should treat its customers fairly, with forbearance and due consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions is available from not-for-profit debt advice bodies.
- 4.6 A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe.
- 4.7 If an application against a property factor relating to a disputed debt is accepted by the First-tier Tribunal for consideration, a property factor must not continue to apply any interest, late payment charges or pursue any separate legal action in respect of the disputed part of the debt during the period from when the property factor is notified in writing by the First-tier Tribunal that the application is being considered and until such time as they are notified in writing of the final decision by the First-tier Tribunal or the Upper Tribunal for Scotland (if appeal proceedings are raised).

- 4.8 On request, a property factor must provide homeowners with a statement of how service delivery and charges will be affected if one or more homeowners does not pay their bills.
- 4.9 A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation.
- 4.10 A property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging other homeowners (if they are jointly liable for such costs). This may include providing homeowners with information on options for accessing finance e.g. for major repairs. Any supporting documentation must be made available if requested by a homeowner (subject to data protection legislation).
- 4.11 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).

## Section 5: Insurance

- 5.1 A property factor must have, and maintain, an adequate professional indemnity insurance policy, and ensure that it is appropriate for its level of income and type of services offered. This applies to a property factor that is a local authority or housing association unless it is able to arrange equivalent protections through another route. Details of the policy (including name of provider, policy number and summary) or equivalent protections must be made available if requested by a homeowner who wishes to verify the policy is in place.
- 5.2 Property factors may wish to make homeowners aware of their statutory duty to insure against prescribed risks, such as fire or flood (see section 18 of the Tenements (Scotland) Act 2004, and the Tenements (Scotland) Act 2004 (Prescribed Risks) Order 2007 (SSI 2007/16)).

### **If the agreement with homeowners includes arranging any type of buildings or contents insurance, the following standards will apply:**

- 5.3 A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:
- the basis upon which their share of the insurance premium is calculated,
  - the sum insured,
  - the premium paid,
  - the main elements of insurance cover provided by the policy and any excesses which apply,
  - the name of the company providing insurance cover, and
  - any other terms of the policy.

This information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner.

- 5.4 Homeowners must be notified of any substantial change to the cover provided by the policy.
- 5.5 A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the policy. They should also disclose any financial or other interest that they have with the insurance provider or any intermediary. A property factor must also disclose any other charge they make or apply for arranging such insurance.
- 5.6 If applicable, a property factor must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. This information must be made available if requested by a homeowner. If homeowners are responsible for submitting claims on their own behalf (for example, for work that is not on common parts), a property factor must take reasonable steps to supply

to homeowners all information that they reasonably require in order for homeowners to be able to do so.

- 5.7 A property factor must take reasonable steps to keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves if required.
- 5.8 On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes.
- 5.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available to homeowners on request

#### **Property Revaluations for buildings insurance:**

- 5.10 A property factor must notify homeowners in writing of the frequency with which property revaluations will be undertaken to establish the building reinstatement valuation for the purposes of buildings insurance. It is good practice for re-valuations to be undertaken at least every 5 years and sums assured reviewed in other years using the BCIS Rebuilding Cost Index. The property factor must adjust this frequency of property revaluations if instructed to do so, in line with the arrangements in any agreement with homeowners

#### **Where Public Liability Insurance is Required**

- 5.11 On request, a property factor must provide homeowners with clear details of the costs of public liability insurance, how their share of the cost was calculated, and the terms of the policy and the name of the company providing insurance cover.

## Section 6: Carrying out repairs and maintenance

- 6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.
- 6.2 Property factors may also agree, by contract, to instruct that specific maintenance duties are undertaken by specialist contractors on behalf of homeowners which contribute to fire safety. For example, the requirement in fire safety law to maintain any measures provided in communal areas for the protection of firefighters e.g. firefighters lifts, rising fire mains etc, or to ensure that common areas are kept free of combustible items and obstructions.
- 6.3 A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.
- 6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.
- 6.5 If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible.
- 6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.
- 6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.
- 6.8 A property factor must take reasonable steps to appoint contractors who have public liability insurance.

- 6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.
- 6.10 A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the contract.
- 6.11 A property factor must disclose to homeowners, in writing, any financial or other interests that the property factor has with any contractors appointed by them.
- 6.12 If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.



## Section 7: Complaints Resolution

### Property Factor Complaints Handling Procedure

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.
- The complaints process must, at some point, require the homeowner to make their complaint in writing.
- Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.
- How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.
- Where the property factor provides access to alternative dispute resolution services, information on this.

7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

7.3 A property factor must not charge homeowners for handling complaints unless this is explicitly provided for in the property titles.

7.4 A property factor must retain (in either electronic or paper format) all correspondence relating to a homeowner's complaint for a period of at least 3 years from the date of the receipt of the first complaint.

7.5 Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the previous property factor must co-operate with the current property factor (and vice versa) to ensure the exchange of all necessary or relevant information. This can include, information about outstanding complaints. Where information about an unresolved issue that was the subject of a complaint has been shared with the new, formally appointed factor, they have the option, if they so choose, to progress this complaint rather than starting a new one.

7.6 Complaints that have arisen in connection with issues that arose during the appointment of a previous property factor should be dealt with by that property factor. Any unresolved issues that require to be addressed can be raised with the new, formally appointed property factor if the continuing failure is present after their appointment. This will be dealt with as a new complaint in accordance with their complaints handling procedure.

## Glossary of terms used in the Code

This glossary of terms in the table below forms part of the Code and is relevant to its interpretation.

Abusive or intimidating	For a property factor (or a third party acting on their behalf) to communicate to a homeowner in a manner where it is reasonable for the homeowner to form a view that this manner is offensive or insulting and/or for a property factor or a third party acting on their behalf to cause the homeowner fear and alarm including threats of physical and/or non-physical violence against the homeowner.
Authority to Act	A statement that makes clear the basis on which a property factor is acting on behalf of homeowners including any legal basis where applicable.
'Cooling off' period	A set period of time after an arrangement is agreed between homeowners and a property factor during which the homeowners can terminate the contract without incurring any penalty notice that may apply.
Collateral warranty	An agreement associated with a primary contract (often concerning building work) which provides for a duty of care to be extended by one of the contracting parties to a third party not party to the original contract.
Commercially sensitive	Information which if disclosed may prejudice the commercial interests of the property factor or any other person, who may be an individual, a company, a public authority or any other legal entity.
Complaint	<p>An expression of dissatisfaction (either orally or in writing) from a homeowner or homeowners in relation to the standards of service provided by their property factor. Whilst complaints can be submitted orally, the Property Factors (Scotland) Act 2011 provides that an application to the First-tier Tribunal cannot be made unless:</p> <p>a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and;</p> <p>(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.</p>

Core Service	Factoring services under agreed fee arrangements which do not incur additional <i>ad hoc</i> fees and charges.
Custom and practice	A course of action between a property factor and homeowners which has historically been undertaken in a particular way and is considered by both parties as the norm in the absence of any formal contract or arrangement between a property factor and homeowners.
Delegated authority	Authority granted by homeowners to a property factor to make decisions on their behalf always up to an agreed threshold without the property factor seeking further agreement from the homeowners.
Emergency repair	Where urgent work is required to prevent damage, or in the interests of health and safety, and where there is not time for the property factor to use the normal channels of consultation and decision-making with homeowners.
Enquiries	A request (either orally or in writing) asking for information where the request does not include an expression of dissatisfaction (see “complaint”).
Floating funds (“The Float”)	The collective term for advance payments made by homeowners kept in a maintenance account by a property factor to deal with routine or minor repairs.
Financial Conduct Authority	The conduct regulator for financial services firms and financial markets in the UK.
First-tier Tribunal for Scotland Housing and Property Chamber	<p>It is an independent judicial body that determines tenancy related housing disputes within the private rented sector and matters relating to property factor compliance with the 2011 Act.</p> <p>The First-tier Tribunal for Scotland (Housing and Property Chamber) performs the functions which used to be carried out by the Private Rented Housing Panel (“prhp”) and the Homeowner Housing Panel (“hohp”).</p>
Homeowner	<p>As defined in section 10(5) of the Property Factors (Scotland) Act 2011.  <a href="http://www.legislation.gov.uk/asp/2011/8/section/10">http://www.legislation.gov.uk/asp/2011/8/section/10</a></p> <p>This may also include owners of commercial premises where these are on land used to any extent for residential purposes, the common parts of which are managed by a property factor.</p>

Housing Association	As defined in section 1 of the Housing Associations Act 1985.  <a href="http://www.legislation.gov.uk/ukpga/1985/69/section/1">http://www.legislation.gov.uk/ukpga/1985/69/section/1</a>
In writing	Where the Code requires a property factor or homeowner to communicate in writing' or 'provide in writing' or 'make available in writing' any document, this can include a 'digital format or electronic format. This would include, for example, providing an accessible reference (a link) to a document that is held online or on a website; access credentials to a customer portal or providing the documents electronically e.g. a word document or spreadsheet attached to an email rather than in writing as hard copy. Where a factor has a website it is acceptable for the factor to provide information on the website to say how the document can be requested rather than making it available on the website itself.
Land	Can mean both land and any buildings and other structures on that land.
Letting agency work	As defined in section 61 of the Housing (Scotland) Act 2014.  <a href="http://www.legislation.gov.uk/asp/2014/14/section/61">http://www.legislation.gov.uk/asp/2014/14/section/61</a>
Local Authority	As defined in section 2 of the Local Government etc. (Scotland) Act 1994.  <a href="http://www.legislation.gov.uk/ukpga/1994/39/section/2">http://www.legislation.gov.uk/ukpga/1994/39/section/2</a>
Owners' Association	As defined in Section 2 of the 2011 Act
Professional indemnity insurance	A form of liability insurance which protects a property factor from bearing the full cost of defending a negligence claim by homeowners.
Property factor	As defined in section 2 of the Property Factors (Scotland) Act 2011.  <a href="http://www.legislation.gov.uk/asp/2011/8/section/2">http://www.legislation.gov.uk/asp/2011/8/section/2</a>
Property factor duties	As defined in section 17(5) of the Property Factors (Scotland) Act 2011.  <a href="http://www.legislation.gov.uk/asp/2011/8/section/17">http://www.legislation.gov.uk/asp/2011/8/section/17</a>
Property factor enforcement order	As defined in section 20 of the Property Factors (Scotland) Act 2011.  <a href="http://www.legislation.gov.uk/asp/2011/8/section/20">http://www.legislation.gov.uk/asp/2011/8/section/20</a>  An order requiring a property factor to undertake such action

	as a First-tier Tribunal considers necessary, and, where appropriate, make payment to a homeowner, as the First-tier Tribunal considers reasonable.
Property factor registered number	A number allocated to a property factor upon registration by Scottish Ministers in accordance with section 13(1) and 13(2) of the Property Factors (Scotland) Act 2011. A property factor must take all reasonable steps to ensure that this number is included in any document sent to a homeowner.
Property Factors (Scotland) Act 2011 (2011 Act).	An Act of the Scottish Parliament which makes provision for <ul style="list-style-type: none"> <li>a) a register of property factors operating in Scotland;</li> <li>b) a dispute resolution mechanism through the First-tier Tribunal for Scotland (Housing and Property Chamber) to resolve disputes between homeowners and property factors; and</li> <li>c) the Code of Conduct for Property Factors.</li> </ul> <p><a href="http://www.legislation.gov.uk/asp/2011/8/contents">http://www.legislation.gov.uk/asp/2011/8/contents</a></p>
Prudential Regulation Authority	Responsible for the prudential regulation and supervision of insurers.
Public liability insurance	A form of liability insurance which compensates a person if they experience personal injury or damage to their property.
Out-of-hours	The time period which is out-with any standard working hours as set out in a written statement of services provided to a homeowner.
Reasonable	A course of action, consideration or decision which is fair, sensible and appropriate.
Register of property factors (the Register)	The public register prepared and maintained by the Scottish Ministers (or other delegated authority) under section 1 of 2011 Act. <p><a href="http://sedsh119.sedsh.gov.uk/propertyfactorregister/">http://sedsh119.sedsh.gov.uk/propertyfactorregister/</a></p>
Registered	The property factor is currently entered on the Register with a property factor registered number allocated by Scottish Ministers.
Scottish Ministers	As defined in section 44(2) of the Scotland Act 1998. <p><a href="http://www.legislation.gov.uk/ukpga/1998/46/section/44">http://www.legislation.gov.uk/ukpga/1998/46/section/44</a></p>

Scottish Housing Regulator	Regulates the interests of people who use the services of a social landlord such as a local authority or a housing association.
Self Factoring	Where homeowners have decided to organise their own building management, repair and maintenance.
Sinking or reserve funds	A fund used to gather monies from homeowners to pay for major repairs. The arrangements are normally written into the title deeds to the property.
Substantial change to the Written Statement of Services (WSS)	Any change to the WSS which is necessary as a result of substantial, amended or additional factoring arrangements, changes to the property factor code of conduct or other relevant legislative requirements (including the finding of a First-tier Tribunal or Upper Tribunal).
Tenement Management Scheme	The tenement management scheme under the Tenements (Scotland) Act 2004 sets out procedures flat owners may need to follow when making 'scheme decisions' about maintaining and repairing common parts, depending on the title deeds.  <a href="http://www.legislation.gov.uk/asp/2004/11/schedule/1">http://www.legislation.gov.uk/asp/2004/11/schedule/1</a>
Tenements (Scotland) Act 2004 (2004 Act)	An Act of the Scottish Parliament which makes provision about the boundaries and pertinents of properties comprised in tenements (as broadly defined in the 2004 Act) and for the regulation of the rights and duties of the owners of properties comprised in tenements.  <a href="http://www.legislation.gov.uk/asp/2004/11/contents">http://www.legislation.gov.uk/asp/2004/11/contents</a>
The Code	The property factor code of conduct as defined in section 14 of the Property Factors (Scotland) Act 2011.
Title Conditions (Scotland) Act 2003	An Act of the Scottish Parliament which makes further provision about real burdens, servitudes and certain other obligations affecting land; to amend the law relating to the ranking of standard securities; and for connected purposes  <a href="http://www.legislation.gov.uk/asp/2003/9/contents">http://www.legislation.gov.uk/asp/2003/9/contents</a>
Title deeds	Title deeds are proof of ownership of land and buildings and contain various rules that apply to the building.

Unreasonable or excessive	A course of action, consideration or decision where it is reasonable to take the view that the action, consideration or decision is unfair, disproportionate or generally deemed to be beyond what is considered as typical or normal.
Unregistered	Not entered on the Register.
Upper Tribunal for Scotland	The Upper Tribunal hears appeals on decisions of the Chambers of the First-tier Tribunal
Written statement of services (WSS)	A document which sets out the service delivery standards of the business arrangement in place between a property factor and a homeowner, as set out at Section 1 of the Code of Conduct.