Property Factors (Scotland) Act 2011
Code of Conduct for Property Factors – Draft for consultation

Response from the Chartered Institute of Housing Scotland
The Chartered Institute of Housing welcomes the opportunity to respond to the Scottish Government’s consultation on the Code of conduct for Property Factors. The Chartered Institute of Housing is the professional body for people involved in housing and communities. We are a registered charity and not for profit organisation. We have a diverse and growing membership of over 22,000 people – both in the public and private sectors.
CIH Scotland has more than 2,500 members working in local authorities, housing associations, housing co-operatives, Scottish Government and Government agencies, voluntary organisations, the private sector and educational institutions. The CIH aims to ensure members are equipped to do their job by working to improve practice and delivery. We also represent the interests of our members in the development of strategic and national housing policy.
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Response from the Chartered Institute of Housing Scotland

Introductory comments

CIH Scotland welcomes this opportunity to comment on the draft Code of Conduct for Property Factors.

CIH Scotland strongly supports the principles of the Property Factors (Scotland) Act 2011 and was also involved in the development of core standards for a voluntary accreditation scheme for property factors: this was meant to recognise those factors who went beyond the statutory minimum in terms of service standards.

CIH understands that the development of the accreditation scheme has been put on hold pending implementation of the Code of Conduct and other provisions in the Act.

It is not our intention to submit a detailed response, but rather to draw attention to some areas where more clarification or detail might be required. Given the key role that property factors play in the coordinating of repairs and maintenance services, CIH Scotland recognises the need for minimum standards of practice for the property and land management industry.

As it stands the code appears to be reasonable in its expectations and is unlikely to lead to good property factors having to significantly improve their services, and will in most cases be a process of adapting some aspects of their service to meet the precise requirements of the code.

The wider context

For many social landlords, one of their main concerns is how to deal with repairs and maintenance issues in mixed tenure blocks and in particular with cash poor owners who cannot or are unwilling to pay their share of the cost of works. This can prove a real headache for some landlords who end up having to pay the costs on behalf of the owners or leave the block in a state of disrepair which is unacceptable to their tenants. CIH Scotland has called for the introduction of Building Reserve Funds\(^1\) which are an essential tool to ensure that funding arrangements are in place to take early action to deal with repairs and maintenance issues in privately owned property. A Building Reserve Fund also ensures that issues regarding the amount of the fees and the proportion to be paid by each owner are defined from the outset. CIH continues to urge the Scottish Government to consider introducing Building Reserve Funds as compulsory in all new flatted accommodation in Scotland.

\(^1\) [http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Building_Reserve_Funds_in_Privately_Owned_Flats._Making_the_Case](http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Building_Reserve_Funds_in_Privately_Owned_Flats._Making_the_Case)
The general feeling among property factors or managers is that factoring agreements are normally very difficult to enforce. This has been tested in a recent case reported in Inside Housing where a housing association in England lost a court case against a group of owner occupiers in right to buy properties who refused to pay a service charge. This raises the question about the sort of factoring related clauses (if any) that are being written into Right to Buy contracts. Property factors and landlords need to be encouraged to check their current contracts and re-draft if necessary.

**General points on the code**

CIH Scotland welcomes the introduction of a Code of Conduct for property factors. The code as suggested appears to be reasonable and should address concerns about the inconsistency of property management services across Scotland. We have a few points where we believe require further clarification or amendment is needed.

There appears to be a degree of confusion and uncertainty among some social landlords about who the code applies to. It is not clear whether the code applies only when there is a formal factoring agreement in place or whether it covers those councils and RSLs who do not operate a regular factoring service, but carry out major works as and when required and then recharge owners. We strongly suspect that the code will apply in both such situations, but our sense is that this should be spelt out: this can be done in such a way as to advise social landlords in a general way, i.e. it will still be for individual landlords to form their own legal view on where the code does or does not apply. Further clarification on this would be particularly welcome as those councils and RSLs who have no formal factoring agreements in place are likely to need to introduce a significant range of measures in order to comply with the code. Due to the staff and time resource required in these situations, CIH Scotland would suggest that consideration may need to be given to extending the deadline date for compliance with the code.

On section 2 (written statements), the code needs to be clear whether the written statement is to be separate from the factoring agreement. If it is acceptable for this to be one and the same document, then in most cases one imagines that the factoring agreement would need to be amended to include all the requirements of the written statement.

Regarding the suggested timescales for responding to enquiries and complaints, CIH Scotland would suggest that the Code of Conduct could mirror the model complaints procedure currently being developed by the Scottish Public Services Ombudsman (SPSO) which will require all comments and complaints coming into local authority and housing association landlords to be resolved, where possible, by front line staff within 5 working days. More complex high level cases will, however, be given a timescale of 20 working days when submitting a fuller response would be more helpful to the complainant. Reflecting this model would help to achieve consistency in practice regardless of who is providing the service.

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In section 4 on financial obligations, CIH is concerned with the use of the term “their account”. There is a danger that this might imply that owners consider the money they have paid in to the fund to be their money and not the fund’s money. As a consequence owners might think they are entitled to what remains of their share on sale of the property. To avoid such an approach, it should say “the account”.

In terms of providing homeowners with a detailed description of the activities and works carried out over the year, CIH would suggest that a template or model pro forma would be helpful here to ensure consistency. There could also be the potential for a model factoring agreement and CIH would be interested in working with the Scottish Government and other partners to produce this.