

PROPERTY FACTORS (SCOTLAND) ACT 2011

RESPONDENT INFORMATION FORM



Please Note: that this form **must** be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

ALACHO (Association of Local Authority Chief housing Officers)

Title Mr Ms Mrs Miss Dr Please tick as appropriate

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3. Permissions

I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes

QUESTIONNAIRE

CONSULTATION: PROPERTY FACTORS (SCOTLAND) ACT 2011 DRAFT CODE OF CONDUCT FOR PROPERTY FACTORS

Section 1 – General obligations

QUESTION 1: Does Section 1 cover all of the over-arching obligations required of this statutory Code?

If your answer is no, please explain what additional information you would require to explain the obligations more fully.

ALACHO is content that Section 1 broadly covers the over-arching obligations required of the Code.

However, the fact that the Code is superseded by the property title deeds or any contractual agreement between a property factor and homeowner, *where conflict occurs between the Code and such contractual arrangements*, clearly raises the possibility that, in such instances, owners may feel their interests are not be well served by the statutory Code. Title deeds may not have been drafted with owners' best interests in mind. On the contrary, they were often originally drafted to protect the interests of factors. Contractual agreements made between factors and owners may be similarly one-sided, resulting in disputes which are outwith the scope of the Code to resolve.

In such instances, owners may look to the Code and/or the Homeowner Housing Panel for assistance in dealing with issues only to find that intervention is not possible resulting in the overall aims of the Code being thwarted and its credibility being undermined.

In addition, larger authorities, formed at the last local government re-organisation in 1996, may well have significant variations in the title deeds inherited from their former constituent authorities resulting in differential levels of service provision across one authority. This too may cause frustration for owners, resulting in appeals to the HHP which that body is not competent to deal with.

Unfortunately, solicitors and selling agents do not always make the responsibilities of common ownership clear to purchasers, and may neglect to explain in detail the implications of title deed provisions or factoring service charges. If this issue were successfully addressed it could go some way to reducing confusion in future.

Section 2 – Written statement of services

QUESTION 2: Does Section 2 cover the key information that should be provided in the written statement of services?

If your answer is no, please explain what you would like to see expanded.

We are content that the proposed written statement of services broadly covers the key information that owners might expect to receive from a reputable property factor, which all local authorities would strive to be. Some councils, probably a minority, will already have well developed written statements for factored owners. Most however are likely to incur significant work and resources in meeting the comprehensive terms, conditions and delivery standards as set out in the proposed statement.

Keeping track of changes in ownership may prove particularly difficult. By way of example, the first notification a council might receive of an ownership change may be when a bill such as a quarterly statement is sent out. By that time a new owner could be liable for three months charges which could include expensive works and charges agreed by the previous owner, an unpleasant surprise if the situation had not been explained by the new owner's solicitor at time of purchase. It should be possible to link a council's factored property data base with its council tax register in a manner which makes change of ownership transactions an automatic by product of registration for Council tax. This however would be an expensive exercise for authorities with few factored properties and may not be an option for RSLs.

Needless to say, the additional administration and systems development needed to comply with this section of the Code generally is almost certain to involve increased charges to owners, which will not be popular. Some councils may have to carry out significant development of new systems to comply with the code, e.g. setting up payment and debt recovery systems, change of ownership, and/or complaints procedures. This is likely to take some time, and in many cases councils will be unable to meet the implementation deadline of October 2012 and naturally, are concerned about the financial penalties which the Act levies as a consequence. ALACHO would be happy to discuss this situation with Scottish Government, with a view to identifying councils' state of readiness to comply with the Code and in sharing and disseminating good practice as the October 2012 deadline approaches.

Section 3 – Communication and consultation

QUESTION 3: Does Section 3 cover the key matters relating to communications between the property factor and homeowner?

If your answer is no, please explain what you think needs to be expanded.

ALACHO agrees that good communication and consultation are the essence of positive customer relations, and as such broadly agrees that the elements

outlined in Section 3 form a good basis for constructive relationships between councils and homeowners receiving a property factoring service. However, as noted above, establishing this relationship based on the criteria at Section 3, could for some councils entail significant resources in time and money.

Section 4 – Financial obligations

QUESTION 4: Does Section 4 cover the key matters in the financial relationship between the property factor and homeowner?

If your answer is no, please explain what you would like to see expanded.

ALACHO agrees that transparency in financial arrangements between property factors and homeowners should be a critical component of the service relationship. In principle, the arrangements proposed in Section 4 of the draft Code of Conduct would seem to be reasonable. As with other components of the draft Code, the extent to which councils will be able readily to comply with the requirements of Section 4 are likely to vary considerably across Scotland. Local authorities who need to set up systems from scratch will clearly need time to do so, and they will undoubtedly incur significant costs in so doing. Any additional costs will, of necessity, need to be recouped from charges to owners, resulting no doubt in a significant level of complaint from that group.

QUESTION 5: this question is for local authorities and housing associations only:

Standard 4.1 – can you suggest an alternative arrangement to client trust accounts which would allow local authorities and housing associations to ensure that there is a clear separation of funds belonging to homeowners?

ALACHO is currently seeking advice from members on a local authority alternative to client trust accounts. We would however be confident that, given the status of local authorities, an alternative to formal client trust accounts, which would be both transparent and clearly protect the financial interest of owners, will be readily available. In which case Standard 4.1 could be amended fro local authorities to reflect this. We would be happy to discuss possible alternatives with Scottish Government in due course.

Section 5 – Debt recovery

QUESTION 6: Does Section 5 cover the key matters relating to debt recovery?

If your answer is no, please explain which elements you would like to see expanded upon.

ALACHO strongly agrees that robust but fair procedures for debt recovery should be a key component of an efficient factoring service. In a local authority context, bills unpaid by homeowners are more likely to become a burden on council tenants rather than other owners, making it vital that debt recovery is maximised.

We agree that Section 6 broadly covers the key elements of an effective debt recovery system. We believe that where local authorities already operate formal factoring systems the principles outlined in Section 6 are likely to be much in evidence. Where procedures need to be written from scratch costs will be incurred although, as with other elements of the draft Code, we would hope that the sharing of good practice procedures and documentation would help reduce both costs and effort. ALACHO would look to play a helpful part in this process.

Section 6 – Insurance

QUESTION 7: Does Section 6 cover the key matters in situations where insurance is arranged by the property factor?

If your answer is no, please explain which elements you would like to see expanded upon.

We are content that Section 6 covers the key matters in situations where it is agreed that councils should arrange insurance cover as part of the factoring service. That said, it is not always clear to owners why the council has arranged insurance and on what authority (title deeds, voluntary agreement) and whether owners have the option of making their own arrangements. It would be helpful if written agreements between councils and owners made this clear, together with the basis on which the insurance cover was procured (e.g. competitive tender, extension of an existing contract etc).

Where owners are permitted to purchase their own buildings insurance, evidence would need to be provided to councils that cover was adequate and premiums up to date, resulting of course in additional administration for the council as Property Factor.

Section 7 – Carrying out repairs and maintenance

QUESTION 8: Does Section 7 cover the key matters relating to repairs and maintenance?

If your answer is no, please explain what information you would like to see expanded upon.

The repairs and maintenance service area is likely to be the area of most contention between owners and councils, and the source of most complaints. Some owners will question the need for works, and the factor's legal basis for instructing, particularly if costs are relatively high. Others become frustrated if works are not carried out, perhaps because the title deeds specify that majority consent is required for works to proceed, and this consent cannot be gained. Establishing owner consent is likely to have become increasingly difficult in recent years as repairs and improvement grants have disappeared, to be replaced by advice and assistance only.

In this context, and given the current economic climate, councils will need to exercise considerable communication and persuasion skills to convince owners that participation in schemes of common improvement is to their benefit, especially important where works are required for council stock to meet to meet SHQS. That said, councils should be in a good position to explain the benefits of robust asset management and investment procedures to owners, and the standards outlined in Section 7 should act as a helpful guide in this process.

As with other aspects of the draft Code, transparency and openness at all stages of the process, from explaining the need for work and the potential consequences of non-investment, to making clear procurement, works management and complaints procedures, will be essential.

As before, the costs of setting up Code compliant systems to manage repairs and maintenance for owners could be considerable, especially where formal systems do not exist at present. Such costs will need to be included as part of the charging regime for owners.

Some reference to maintenance orders and maintenance plans under Section 43 of the Housing (Scotland) Act 2006 may also be helpful under this section. It is likely that councils will be involved in issuing templates to owners and private factors to assist in drawing up these plans. These should clearly define what is to be carried out under the heading of maintenance, thereby providing clarity in this often contentious area.

Section 8 – Complaints resolution

QUESTION 9: Does Section 8 cover the key aspects of dealing with complaints?

If your answer is no, please explain what information you would like to see expanded upon.

In our view Section 8 seems to cover fairly comprehensively the main aspects of dealing with complaints. As councils who operate a factoring service will know, dealing with owners complaints can be a frustrating and laborious process, costly in terms of time and resources. That is not to say that complaints are never justified, merely that cognisance must be taken of the costs of dealing with complaints. Of course, the existence of clear and effective procedures for the factoring service generally, including a clear written statement, should enable complaints to be investigated and evaluated quickly against clear service standards, thereby reducing costs in the process.

General question

QUESTION 10: Overall, Is the Code clear, understandable and easy enough to interpret?

If your answer is no, please explain which points require further clarification (where possible, please refer to the numbers of specific standards).

In general, ALACHO believes the Code is clear, understandable and easy to interpret, building as it does on the earlier voluntary accreditation standards.

We have attempted to highlight areas where the Code might prove ineffective, e.g. in dealing with issues arising from title deed provisions which owners believe are in favour of property factors, or from potentially unfair contracts between property managers and owners, both of which supersede the Code where conflict exists between them.

We have also highlighted the probability of councils incurring significant costs in setting up systems to comply with the Code, especially where formal procedures do not exist at present, and the difficulties many councils will have in meeting the October 2012 deadline for implementing the Code.

As we say above, ALACHO would be happy to engage in further discussion with Scottish government officials following closure of the consultation period to ensure satisfactory outcomes for councils and owners receiving a factoring service.

