



# **Consumer Focus Scotland Response to the Scottish Government Consultation on Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors**

**16<sup>th</sup> December 2011**

## About Consumer Focus Scotland

---

Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors' clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

## Introduction

---

Consumer Focus Scotland (CFS) welcomes the opportunity to respond to this consultation on the proposed Code of Conduct to set minimum statutory standards of practice for the property and land management industry.

CFS, and previously the Scottish Consumer Council (SCC), one of our predecessor bodies, have had a longstanding interest in property management from the perspective of consumers who use the services of property managers. We have been a strong advocate in this area, repeatedly raising concerns about this market.

In 2007, the SCC took these concerns to the Office for Fair Trading (OFT) which agreed to carry out the first market study into property management services in Scotland<sup>1</sup>. The research made it clear that some homeowners regularly experience difficulties in their relationship with their property manager.

Consumer research has consistently shown there are several key areas of consumer detriment in this market, including:

- Lack of information: many consumers (41%) report that property managers don't make information available about their fees and services.
- Difficulties arranging repairs: 28% of consumers have had problems having repairs carried out.
- Value for money; a third of consumer felt the service they received from their property manager was not good value for money.
- Dissatisfaction: 53% of consumers said they had cause to complain about the service and 35% of all consumers went on to make an actual complaint.
- Poor complaints-handling: two-thirds of those who made a complaint were dissatisfied with how it was handled<sup>2</sup>

In addition, recent Consumer Focus Scotland research found high levels of dissatisfaction among consumers who use the services of land management companies.<sup>3</sup> We found dissatisfaction across a range of issues, including the quality of pre-purchase information, communications and complaints handling and consumers' awareness of the land management services being provided. Overall nearly two thirds (64%) said they were fairly dissatisfied or very dissatisfied with the service their land management company is providing.

Consumer Focus Scotland strongly supported the introduction of the Property Factors (Scotland) Act 2010 and its primary aim of improving the experience of consumers of both property management and land management services. We are pleased that the Scottish Government is starting to develop the statutory framework and we hope this will result in the Act being implemented as planned in October 2012.

---

<sup>1</sup> Office for Fair Trading (2009) Property Managers in Scotland: A Market Study.

<sup>2</sup> Figures from Office for Fair Trading (2009) Property Managers in Scotland: A Market Study. See also Scottish Consumer Council (2007) Consumer Experiences of Property Management Services

<sup>3</sup> Consumer Focus Scotland (2011) Consumer Experiences of Land-owning Land Management Companies

## General Comments

Consumer Focus Scotland, and previously the SCC, have long supported the need for the establishment of an accreditation scheme for property managers, and we were represented on the Scottish Government's working group to develop such a scheme. We therefore welcome the requirement as part of the Property Factors (Scotland) Act 2010 for property managers and land maintenance providers to adhere to minimum standards of service, set out in a Code of Conduct. As detailed in the introduction, research has consistently found problems in terms of quality of service (such as standard of work carried out) and customer service (such as communication, consultation and complaints).

We are pleased that many of the draft accreditation standards have been used as the basis of the draft Code of Conduct. These draft standards were subject to consultation by the Scottish Government and a significant number of responses were received from a range of organisations including local authorities and the private sector, as well as property managers, Registered Social Landlords and private individuals<sup>4</sup>. During the Scottish Government's consultation process on the draft accreditation scheme, we undertook discussion sessions with consumers to ascertain their views<sup>5</sup>. During these discussion sessions, the draft standards were well received, with consumers telling us that they would significantly improve their experience of using property management and land maintenance services.

Consumer Focus Scotland believes that the Code of Conduct will lead to real and clear improvements in the standards of service being received by homeowners. In particular, we welcome the fact that the Code is underpinned by the principle of transparency so that homeowners are clear what they are paying for, how charges are arrived at and the routes available in the event that they wish to make a complaint. As noted above, these are areas where many consumers currently experience problems. The Code of Conduct will also make it easier to assess property managers and measure them against a prescribed set of standards. Any property manager that consistently fails to meet the standards could then be deregistered and would no longer be able to operate in the sector.

We welcome the fact that the Scottish Government has been engaging with both property factors and members of the public as part of the consultation process, with consultation events held around Scotland. Holding such discussion sessions is an important means of ensuring that the Code of Conduct meets the needs of those who use property factoring and land management services. We are also pleased that the Scottish Government has committed to reviewing the Code after an 'appropriate period' to ensure that its operation is appropriate and effective. We would suggest, however, that the Scottish Government should give a clearer indication of when such a review will be undertaken. In proposing such a timescale, it will be important to find a balance between giving the Code sufficient time to bed in and ensuring that consumers do not become disadvantaged if it is not operating effectively.

---

<sup>4</sup> The Scottish Government (2010) *Consultation on Core Standards for a Voluntary Accreditation Scheme for Property Managers and Land Maintenance Companies in Scotland an Analysis of Responses*

<sup>5</sup> Consumer Focus Scotland (2010), Consumer views of *Quality in Common*: draft standards for voluntary accreditation of residential property managers and land maintenance companies.

It is unclear from the consultation whether guidance for homeowners will be drafted to accompany the code. We believe the provision of clear guidance written in straightforward plain language would be a useful tool for homeowners so that they know what to expect from their property managers once the code comes into effect. The guidance should also tell homeowners what they can do if their property manager is not meeting the Code's requirements.

In particular, we believe that it is important that the role of the Homeowner Housing Panel (HHP) is promoted to raise awareness amongst consumers of its existence. Recent evidence from the private rented sector found that tenants' awareness of the Repairing Standard and the Private Rented Housing Panel (PRHP) was fairly low, with only 11% of tenants aware of the PRHP and 12% aware of the Repairing Standard<sup>6</sup>. We would be concerned that without clear guidance, awareness of the HHP is likely to be equally low. The guidance should also explain how the Code fits in with existing title deeds and in what circumstances these take precedence over the Code itself.

While we support the overall approach of the code, there are some areas where we have specific comments and concerns. These are outlined below.

## Answers to Specific Questions

### Question 1: Does Section 1 cover all of the over-arching obligations required of this statutory code?

Yes. This covers all of the over-arching obligations of the statutory code.

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

Yes, we are satisfied with the content of Section 2. Our previous research revealed that only a small number of consumers received some form of written constitution or agreement from their property manager<sup>7</sup>. In our response on the Core Standards for the Voluntary Accreditation Scheme<sup>8</sup> we highlighted the fact that many consumers suggested the idea of a 'welcome pack'. We are therefore pleased to see that the written statement will be provided to existing and new homeowners, at the change of ownership of a property already managed by a factor, and if there are any changes to the written statement.

We also recommended, based on feedback from consumers of both property management and land maintenance services, the inclusion of information on the legal basis of the relationship between service providers and owners on how to terminate the contract. Again this has been included here.

---

<sup>6</sup> *Views and Experiences of Tenants in the Private Rented Sector in Scotland*, The Scottish Government, RF 29/2009

<sup>7</sup> SCC (2007) Consumer Experiences of Property Management Services

<sup>8</sup> Consumer Focus Scotland Response to the Scottish Government Consultation "Quality in Common: Residential Property Managers and Land Maintenance Companies in Scotland: Core Standards for a Voluntary Accreditation Scheme"

We are pleased to see that there are alternative standards for situations where land is owned by land maintenance companies, to make sure that they are applicable in such cases. This addresses the concerns that we have raised previously<sup>9</sup>.

Whilst we welcome the requirement to provide a written statement of services, it should be recognised that written statements may not be suitable for all homeowners, and that some may require statements in other formats and languages. We therefore believe there should be some reference within the Code to property managers ensuring as far as possible that the written statements are accessible to all.

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

We welcome the communication requirements outlined in this section of the code, and in particular the requirement for property management companies to have a procedure for consulting with homeowners and to seek their written approval before providing work or services which will incur charges or fees (in addition to those for the core service). This was a main concern of the consumers involved in our discussions on the proposals for the voluntary accreditation scheme.<sup>10</sup>

We are also pleased to see that there is a requirement for providing contact details and out of hours arrangements in particular. Again, this was part of our previous recommendations<sup>11</sup>.

We strongly support the requirement for property managers to provide contact details for agencies which provide money advice for those experiencing difficulties in paying. Effective intervention by an adviser at an early stage will often be sufficient to help resolve difficulties before they escalate into a more serious problem, requiring more costly and time consuming dispute resolution processes. We therefore think the requirement to signpost consumers to appropriate sources of money advice is in both consumers' and property factors' interests. This requirement is also in keeping with other support for home owners, such as the requirements on lenders to provide information on sources of advice introduced by the Home Owner and Debtor Protection (Scotland) Act 2010.

In addition to the communication requirements currently outlined in the Code, we would suggest it might also be appropriate for property factors to provide information and advice about setting up Owners' Associations, albeit this might be less relevant for consumers of land management companies, depending on the size of the estate and the level of shared responsibility<sup>12</sup>.

In our discussions with consumers, there were strong views about the issue of locating absent co-owners. There was a general feeling that absent co-owners are less concerned about their common responsibilities than owner occupiers. Consumers noted that they were unsure of where to go when things go wrong

---

<sup>9</sup> As 8 above.

<sup>10</sup> As 5 above.

<sup>11</sup> As 8 above.

<sup>12</sup> As 8 above.

with absent co-owners<sup>13</sup>. We think that it should be considered whether property factors ought to assist owners in locating absent co-owners (subject to data protection obligations). We would note that such an obligation was included in the core standards drafted for the voluntary accreditation scheme, consulted upon in 2010.<sup>14</sup>

In addition, during their development, CFS requested that the standards on communication should encourage accessibility for a wide range of consumers, including those who may require alternative formats, translation or interpreting services. We are keen to ensure that these standards remain in the Code and that further advice on accessibility is incorporated into any guidance for homeowners.

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

We welcome the recommendations for more transparency in financial relationships between property managers and home owners. This is a key way to build consumers' trust in their property manager in relation to financial matters.

#### **Question 6: Does Section 5 cover the key matters relating to debt recovery?**

We particularly welcome the requirement that the property factor, or any third party acting on its behalf, must not act in an intimidating manner or threaten homeowners (apart from reasonable threats to take legal action). The property factor or any third party is also prevented from knowingly or carelessly misrepresenting their authority and/or the correct legal position. Correspondence received from consumers of land management companies has drawn our attention to concerns about 'heavy handed' debt recovery practices. There have also been media reports of similar approaches to debt recovery by private sector property managers.

We believe the code would be strengthened if it made clearer what is meant by 'unreasonable' and 'excessive' charges. We have some concerns that without such clarification, these terms could be subjective and open to interpretation. It is our view that any charges for late payment should be reflective of the actual costs incurred by the property manager, and we think this should be explicitly outlined within the Code.

We believe consideration should also be given to including an additional standard, stating that debt recovery should not continue while a bill is in genuine dispute and a complaint is being investigated by the Homeowner Housing Panel. Given that many complaints about property managers relate to disputes over bills, the final Code must protect consumers whose bills are in dispute from being pursued

---

<sup>13</sup> As 5 above.

<sup>14</sup> Scottish Government (2010) *Quality in Common: Residential Property Managers and Land Maintenance Companies in Scotland: Core Standards for a Voluntary Accreditation Scheme*, Edinburgh: Scottish Government

aggressively for the outstanding debt. The inclusion of such a standard would be in keeping with good practice in other sectors, such as the energy sector.

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

We believe that the requirements of this section of the Code – particularly the requirement to provide information about the premium paid, details of any commission or administration fee paid and the share of the insurance premium per homeowner - should address one of the main concerns identified by consumers during our consultations that property managers were, in some way, profiting from the amounts paid by owners for insurance.<sup>15</sup>

However, while we welcome the requirement to provide information on the specific policies taken out for each managed property, this does not address one of the key issues raised during discussions with consumers of property management services around a perceived lack of value for money. Consumers felt that, as they did not see any quotes for their insurance, and many had been with the same insurer for a period of time (therefore missing out on any potential deals available by switching), the policy taken out by their factor did not necessarily represent value for money.

We therefore believe that consideration should be given to the inclusion within this section of the Code of a requirement, similar to that contained in section 7 on repairs and maintenance, for property managers to show how and why a particular insurance policy has been selected, with quotations being made available to homeowners on request.

### **Question 8: Does Section 7 cover the key matters relating to repairs and maintenance?**

We are satisfied that this section will ensure that the main concerns around securing value for money in contracting for maintenance and repairs are addressed. We particularly welcome the requirement for property factors to show how and why they appointed contractors, and that documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection. Many consumers have told us that they felt that property managers do not try to get the best value for money and that they stick with the same companies. This reinforced the findings of the OFT survey where a third of consumers felt that the service they received from property managers was not good value for money<sup>16</sup>. We also think this requirement should help to dispel the widely held belief amongst homeowners that property managers and contractors are in collusion with each other to make money.

---

<sup>15</sup> As 5 above

<sup>16</sup> As 1 above.

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

We welcome the requirement that as part of the written statement of services, a property factor must provide homeowners with a copy of its in-house complaints procedure and details of how the homeowner may access the Homeowner Housing Panel. We also welcome the inclusion of set timescales for acknowledging a complaint and stating a date by which the property factor will respond to the complaint.

However, while the Code states that the overall aim of the property factor should be to deal with enquiries and complaints as quickly and as fully as possible, we note that there are no target timescales given for responding to complaints. We have some concerns that this may lead to problems with the operation of this section of the Code, and may be particularly problematic in the context of homeowners taking complaints to the Homeowner Housing Panel where the property factor has ‘unreasonably delayed’ attempting to resolve the complaint. Again, there is no indication given as to what would constitute an ‘unreasonable delay.’

We would note that there is precedent in other sectors for target timescales to be set. The Scottish Public Services Ombudsman’s guidance, for example, suggests that complaints should be resolved within 20 days.<sup>17</sup> In the energy sector, consumers can take complaints to the Energy Ombudsman if a complaint about an energy company is unresolved after eight weeks. We therefore think that this scheme would benefit from the inclusion of clearer guidelines about target times for the resolution of complaints as well as clarification of what would constitute an ‘unreasonable delay.’

We agree that homeowners should be required to notify their property factor of the reasons why they consider that the factor has failed to carry out their duties, or failed to comply with the Code, before they can take a complaint to the Panel. We agree that only where local resolution fails, should the complaint then go to a higher complaints handling body. While we are concerned at the requirement on the homeowner to put this in writing, we accept that this is a requirement imposed by the Act itself.

We also have concerns about the wording of the second requirement, which restricts homeowners’ ability to take cases to the Panel to situations where the property factor has refused to resolve the homeowner’s concerns, or has unreasonably delayed attempting to resolve them. Again, however, while we believe that it is entirely appropriate for complaints to be taken to the Panel where the factor has failed to resolve the complaint, we note that this is a requirement within the Act itself.

In relation to both of these issues we realise that these are constraints of the legislation but would suggest that the impact of these should be considered as part of the review of the operation of the Code of Conduct.

---

<sup>17</sup> Scottish Public Services Ombudsman Guidance (2011) *Guidance on a Model Complaints Handling Procedure*, Edinburgh: Scottish Public Services Ombudsman

We note the requirement that when a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. We are unclear as to why this requirement has been included and hope that it does not cause additional delay within the complaints process.

### **Question 10: Overall, Is the Code clear, understandable and easy enough to interpret?**

Subject to the comments made above about areas we think would benefit from further clarification, overall we think the code is clear, understandable and fairly easy to interpret. It is a document, however, which is principally aimed at property factors, which sets out their obligations under the Act. We would therefore reiterate the importance of providing guidance for homeowners setting out what the code means for them, and in particular, what standards they can expect in their dealings with their property manager.