Scottish Homeowners’ Property Factors Toolkit
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Are you unhappy with the service you are getting from your factor in Scotland?

In 2009 a report from the Office of Fair Trading (OFT) found that a lot of people were dissatisfied with their factors. At that point there was no statutory regulation.

‘This is a market that is not working well for many homeowners in Scotland. People often have little or no understanding about their rights, households rarely switch factors, suppliers do not seem to be actively competing with each other and the options for consumers when things go wrong are very limited. The OFT’s recommendations for change should be to the benefit of many Scottish consumers.’ OFT Chief Executive 2009.

The Property Factors Act (Scotland) 2011 came into force in October 2012 and this toolkit from Govan Law Centre will help you understand what your rights are and how you can make sure your factor’s procedures are in line with them. The toolkit is informative only and does not constitute legal advice. Its use is subject to the disclaimer on page 19 below.

If you understand and know what to expect from your factor you will be able to hold a badly performing factor to account, improve your common property and the living conditions of everyone in your building.

• Part 1 will tell you what the law says
• Part 2 will tell you how to complain and the procedures
• Part 3 will list some common problems and suggest possible action

Part 1: THE LAW

Main points of the Property Factors Act (Scotland) 2011¹:

i) Mandatory Registration
ii) Code of Conduct
iii) Dispute Resolution Procedure

(a) Registration

- Every property factor in Scotland has to be registered. They must be a fit and proper person. The Scottish Government holds and maintains the register. If you want to find out if your factor is registered you can check here

- Registration is valid for 3 years

**What if my property factor isn't registered?**
It’s a criminal offence not to be registered. The factor could be fined up to £5,000 (level 5 on the standard scale) if found guilty.

(b) Code of Conduct

Under the statutory Code of Conduct, the factor must give you a WRITTEN STATEMENT of services that they will provide to you. This statement must include:

- **Authority to Act**
  the starting point from where they are acting for the homeowners in the building. This could be based on what your title deeds say or another agreement if, for example, you bought your house through “Right to Buy”

- **Services**
  details of the main services that they will provide

- **Billing and Costs**
  a breakdown of how much each service will cost, how frequently bills will be sent out and how the costs will be divided between the flats in your building. Arrangements for paying should also be explained.

- **Response Timescales**
  details of times within which they will reply to enquiries or complaints by letter or email

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Complaints

a copy of their in-house procedure which will include how to take cases further to Homeowners Housing Panel (see below); and

Ending the contract

Clear information on how to bring the property factor arrangement to an end including any notice period or penalty charges.

In addition there must be a clear written procedure for debt collection. The above is not a full list of what Factors must do. See the complete set of standards, which property factors need to stick to.³

(c) Dispute Resolution

The Act also introduces a new body called the Homeowner Housing Panel (HoHP) which has been set up to consider disputes between factors and homeowners.

The Homeowner Housing Panel (HoHP) says that it aims to have informal and flexible proceedings to resolve property factor disputes as simply as possible and to help homeowners and property factors to understand their rights and duties in relation to the legislation.

Where an application is referred to the committee, the HOHP must decide whether the property factor has failed to carry out its duties or comply with the Code of Conduct. When they have made their decision, they then consider whether they want to make a Property Factor Enforcement Order PFEO.

More information on how the HOHP works and what happens at a hearing is given in Part 2 below on “HOW TO COMPLAIN”.

Part 2: How to Complain

If you are unhappy with the services you have had from you factor the first thing to do is let them know about it and put it in writing. They must have a complaints procedure and it should set out how they will deal with your complaint and the

³ http://www.scotland.gov.uk/Publications/2012/07/6791
timescales. Ask for a copy of the procedure but make you send off your complaint as soon as you can - don’t waste time waiting for the procedure to arrive.

Write to your property factor - explain why you’re complaining. Keep copies of all your letters and emails and take a note of any phone calls, what was said and agreed.

*An example complaint letter is provided in Appendix 1 below.*

**Next Step: Homeowners Housing Panel**

If the factor refuses to resolve your complaint or has unreasonably delayed in trying to resolve it, then you can make an application to the HoHP. You must include evidence that you have told them about your complaint so you should include copies of your letters and any other correspondence to back up your case.

The panel consists of three members: a legally qualified Chairperson and two Housing members. If it is agreed that your application can be referred to the Panel, you will be notified. Hearings are normally held in public unless you have a special reason for wanting it to be held in private. There are no costs attached to bring an application to the HOHP and no costs can be awarded against you.

You can represent yourself. You don’t need to have a solicitor. The hearings are informal and the Chair will explain the procedure to you.

You must also include with your application, evidence that you have notified the property factor of the complaint and they have refused to resolve it or unreasonably delayed in resolving it plus copies of any correspondence.

*An illustration of a completed HoHP application is provided in Appendix 2 below.*

**What happens after the decision is issued?**

If the Panel finds in your favour, then a “property factor enforcement order” PFEO will be issued and the Factor must carry out the actions as stated.
The order must specify a period within which action is required normally 21 days and may specify particular steps to be taken. For example, requiring the property factor to apologise, clarify procedures and where appropriate make reasonable payment to the home owner. It is a criminal offence not to comply with the order made by the HOHP.

**What if I don't agree with the decision?**

You can appeal to the sheriff on a point of law within 21 days of being told of the decision on a point of law. This means your appeal is not about the facts of the case but about the procedure or a misinterpretation of the law. You may need legal advice on how to do this. You will find more information on how the HoHP works and copies of past decisions at the links below:

How the HoHP can help: [http://hohp.scotland.gov.uk/prhp/2577.html](http://hohp.scotland.gov.uk/prhp/2577.html)


Forthcoming hearings and reported decisions of the HOHP can be found here: [http://HoHP.scotland.gov.uk/prhp/2562.html](http://HoHP.scotland.gov.uk/prhp/2562.html)

**Part 3 - Common factoring problems**

**Do I need to have a factor?**

It may be compulsory in some situations, for example:

- Included in Title Deeds

- A newly built development - the developers may have the right to appoint a factor of their choosing for a specific period after property built. Normally this is included in the Deed of Conditions drawn up by the builder.

- Right to Buy – the housing association you bought your home from may have the right to appoint a property factor in some cases for up to 30 years, or until a certain percentage of the flats in your block have been sold through right to buy. For example GHA have a factoring arm called
Your Place and more information can be found here: http://www.your-place.net/content/

- Self-factoring – This could be considered but you should be aware that clear and regular communication between owners is essential. Research has shown that property management arrangements work much better if there is an owners association or some other effective arrangement for communication.

What’s the procedure for appointing or dismissing a factor?

Your title deeds may say what the rules are to appoint or dismiss the factor. It is usually a majority decision. You should call a meeting of owners and vote and then write to the factors – giving your decision

Date … Address of Property
“We the owners of property … address met on date and agreed to terminate your appointment as factor in terms of our title deeds. This decision is effective from … date…”

Make sure it is signed by the required numbers of owners and keep a copy of the letter. You should check the contract with the factor to see if there is any notice period and how any remaining float is to be returned to the owners.

If your Title Deeds don’t mention how to appoint or dismiss the factor, you can use the Tenements Scotland Act 2004 which includes the Tenant Management Scheme (TMS). Basically the TMS ensures that if the Title Deeds don’t make provision on decision-making then a simple majority of owners will be able to take decisions. Click on the link below for more information on this.

Common Insurance

You must insure your own flat and your share of the common property so that you can meet your obligations to rebuild if you need to. So everyone in a tenement must be adequately insured. Normally your factor would organise the insurance to the full reinstatement value and you should ask for proof of this. If one owner is not properly insured, any of the owners can go to court to enforce this obligation that they get proper full insurance.
Problems with payment

Your factor **must** have a debt recovery procedure included in the Statement of Service that they sent to you. You should read this and make sure you understand the policy. If you don’t pay the factor’s bill, they may raise an action against you to recover the money. If this happens, they may also request a Notice of Potential Liability for Costs. This could mean that you cannot sell your property until this notice is lifted.

If your factor is taking you to Court for unpaid bills, DON’T IGNORE the letters. You may feel you are getting a poor service from your factor but it is important that you have told them what the problems are and asked them to sort it out. You need to have a record and copies of your complaints because if they do take you to Court and you’ve ignored the bills, it will be difficult to defend any action against you.

Get legal advice if you’re worried about this.
Appendix 1 – Example Complaints Letter

Insert date

Dear Sir/Madam

[INSERT YOUR NAME AND ADDRESS AND ANY REFERENCE NUMBER]

I refer to your letter of ... [date]

Possible complaint examples

• indicating that you intend to increase the float amount from £X to £Y. I am unhappy about this increase and I don’t want to pay it. I am unsure under what authority this increase has been decided and there has been no consultation with the residents.

• You have not explained my share of the costs of the repairs to the roof and you have not given a full explanation of the what actual work was done. I understand from my neighbour that there is still water penetration in the roof space.

• Stating the proposed repairs would be carried out several months ago and the contractor had been appointed. You gave no timescale of the repair schedule and to date no repairs have been started.

I consider that you have not complied with the Code of Conduct for Property Factors. I look forward to your early reply. If I do not receive a reply with your proposals to resolve my complaint within 4 weeks, I intend to make an application to the Homeowner Housing Panel.

Yours sincerely

Signed
Appendix 2 – Example of HOHP Application Form

Guidance on completing Application Form for the Homeowner Housing Panel

Applications to The Homeowner Housing Panel
Section 17(1) of the Property Factors (Scotland) Act 2011

This application form should be completed if you wish the Homeowner Housing Panel to consider whether your Property Factor has failed to comply with the Code of Conduct or otherwise failed to carry out their duties. To take a complaint to the Homeowner Housing Panel, homeowners must first notify their Property Factor in writing of the reasons why they consider that the Factor has failed to carry out the Property Factor's duties, or failed to comply with the Code. The Property Factor must also have refused to resolve the homeowner’s concerns, or have unreasonably delayed attempting to resolve them. There is a Guidance Note on our website relating to completing the application form and also the Information Guide to the Homeowner Housing Panel. We recommend that you read these guides before you complete the application form. The guidance should assist you with completing this form, understanding the procedure relating to your application and understanding the types of factoring complaints which hohp can deal with. If you require this guidance in hard copy, then please contact us.

If you are filling in this form for someone else, please remember to fill it in as if you are the homeowner of the property. Fill in this form in black Ink, block capitals and by ticking any boxes that apply. Remember that your Property Factor will be sent a copy of this form and any attachments received with it.

When we receive your application, we will send you a reference number which you should quote whenever you contact us. If any information you give in this form changes, you must immediately give us written details of the change. We aim to treat you politely and with care. In return we expect you to be polite to our staff.

1. Details about your complaint which help us to identify if it is a residential property factoring issue or a land management issue

a) Does the complaint relate to management of common parts of a building which is used to any extent for residential purposes?
Yes □ No □

If yes, is your interest as owner of a flat/terraced house/semi-detached house/detached house/other (please strike though ones which do not apply)

b) Do you currently pay a management fee for factoring services?
Yes □ No □

c) Does the complaint relate to management or maintenance of land (not a building) which you jointly own with others as part of a residential property which you own?
Yes □ No □

d) Does the complaint relate to management or maintenance of land (not a building) which adjoins or is neighbouring to your residential property and which is available for your use, but which is not owned by you?
Yes □ No □
2. Details of the property or land to which the complaint relates

a) Property Address and postcode

FILL OUT YOUR ADDRESS DETAILS HERE

b) Land designation/address

IF COMPLAINT IS PERTAINING TO LAND/GARDENS, SPECIFY AREA AND ADDRESS DETAILS

3. Homeowner contact details

a) Title (Mr, Mrs, Miss, Ms) Mr

b) First name Joe

c) Last name Bloggs

d) Daytime telephone number 0141 123 4567

e) Mobile number

f) Email address, if available

g) Correspondence address (if different from address in Section 1)
Section 4: Details of your representative

If you have a legal representative then you should enter their details in this section of the application form.

4. Details of your representative if you have one (this may be either a legal representative or someone who has agreed to act for the homeowner). If you have no representative, then please leave this section blank.

   a) Title (Mr, Mrs, Miss, Ms)  
   b) First name  
   c) Last name  
   d) Daytime telephone number  
   e) Mobile number  
   f) Email address, if available  
   g) Profession  
   h) Correspondence address

If you name a representative, you should be aware that all our letters and correspondence will normally be sent only to them. If you do not have a representative, please move on to Section 5.
Section 5 – Property Factor Contact Details

Insert the contact details for your factor here.

Section 6 – Property Factor Representative Details

If you have been dealing with your factoring company’s solicitors, enter their details here.
Section 7: Details of your Complaint

- If your complaint is regarding your factor not complying with the Code of Conduct, you should complete Section A of this form. The Code of Conduct was introduced by the Property Factors (Scotland) Act 2011, and you must make reference to the sections of the Code in your application form. The Code of Conduct sets out your factor’s responsibilities. There are examples of duties that your factor has under each section. You should read the Code of Conduct and identify what area your complaint falls under.

7. Details of your Complaint

Please complete either A or B (or both A and B if you feel it is appropriate)

A. Does the complaint relate to a failure to comply with the Code of Conduct?

Please read the Code of Conduct (this is available on our website or on request from the HOP) and then tick the appropriate box which specifies the part of the Code which you believe has been breached, and in the space provided list the paragraphs of the Code which you feel the Property Factor has failed to comply with.

1. Written Statement of Services
   - Sections:

2. Communications and Consultation
   - Sections:

3. Financial Obligations
   - Sections:

4. Debt Recovery
   - Sections:

5. Insurance
   - Sections:

6. Carrying out repairs and maintenance
   - Sections:

7. Complaints resolution
   - Sections:

B. Does your complaint relate to a failure to carry out the Property Factor’s duties?

Yes [ ]  No [ ]

If yes, then you will require to specify below the duties or legal responsibilities which you believe have not been carried out by your Property Factor. You may be asked to provide evidence of these duties and to avoid us writing for this evidence, it would be helpful if you attach to your application any factoring contract, title deed or other document which you believe evidences the duties:

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In this section, you must fill out details of your complaint. You should make reference to dates and correspondence you have sent to your factor where you can:

Example 1: In February 2013, I had remedial work carried out to my property as part of a building programme to treat dampness. I was advised that the work to be carried out may affect the internal walls of my property. My property factor advised me that any damage caused would be made good after the dampness treatment. My walls were affected significantly, and the property factor advised me that arrangements would be made for them to be re-plastered within a fortnight of the dampness works being completed. I received no contact from my factor in the two weeks following the completion of the works. I tried to contact my factoring company by telephone but was not able to speak to anyone who could give me information on my situation. On 4th March and 8th March, I sent e-mails to my factoring company asking for someone to give me an update on the situation, and I did not receive a reply. By April 2013, the re-plastering work still had not been carried out in my property, and this meant that I could not put my house back together as there was still significant work to carry out to my property. Since this time, I have submitted two letters of complaint to my factor on 5th April 2013 and 12th April 2013 advising that I do not think that they have complied with their duties under the Code of Conduct. They have still not resolved this matter properly. I am unhappy about the length of time it has taken for the repairs to be carried out as well as the lack of contact I have had from my factor throughout the process. They have failed to give me realistic updates after initially giving me an undertaking as to the time it would take for the work to be instructed.

This complaint could fall under section 6 or section 2 of the Code of Conduct.

Example 2: I was sent a letter by my factor in January 2013 to advise that they were increasing the level of my factor’s float from £25 to £100. I contacted my factor when I received the letter and spoke to a receptionist at my factoring company. She told me that they were advised to tell customers that they had to pay this money, and that it was to ensure that repairs could be carried out to the building. She also advised it was because other residents were not paying their bills. I wrote a letter to my factor on 21 January 2013 stating that I was unhappy with the increase in float, and that I did not want to pay it. I also asked what authority they had to increase the float without consulting the residents. I received a response to my letter on 4 February 2013, advising that I had to pay the increased amount of the float within 14 days otherwise they would start debt recovery proceedings against me.
In this section, you can detail how you feel the factor has failed to resolve the problem. This could include:

Example 1: My factor has failed to resolve the complaint, as the repairs have not been carried out to my property. They have also failed to give me any indication as to when the works will be carried out. They advised initially that the works would be carried out within two weeks, and this time limit was not adhered to. I wrote to the factors on a number of occasions and enclose with my application copies of these letters. I did not receive responses to my letters. I also sent numerous e-mails to my factoring company about this matter and did not receive any response. The only contact I had with my factor was over the telephone, but I did not make any real progress with finding out what was happening with my repairs.

Example 2: I have had no response from my factor about the authority that they have to increase my float. I wrote my factoring company a letter on 21 January 2013 asking what authority they had to increase the float. At this time, I referred my factor to my title deeds, which set out an initial £25 float that had been set on the property. The title deeds did not appear to confer that this could be altered, certainly not by property factor. My property factor did not take any notice of this and threatened me with legal action if I refused to pay.

- If you are referring to specific pieces of correspondence with the factor, you should include this with your application form.
- If you are referring to title deeds, you should also provide the panel with a copy of your title deeds for reference.
In this section, you can detail how the failure of the factor to carry out their responsibilities has affected you:

*Example 1:* The failure of my factor to resolve the problems at my property has meant that I have been severely inconvenienced in my enjoyment of my property. The repairs to the internal area of my property were incidental to the initial repairs to be carried out and this is why it was important for the factor to ensure that they made good the damage. I have now made arrangements to instruct the re-plastering on my own. I would be looking to recover the money that I will have to pay out to ensure that this work is carried out.

*Example 2:* I have been affected by my factor failing to carry out their responsibilities because I have been threatened with debt recovery action without properly understanding why these charges had been applied to me.

- This section can include any financial losses that you had. You should provide proof of purchase with your application for the panel’s reference

In this section, you should set out how you would like the complaint to be resolved, etc.

- You could seek to be reimbursed for any losses you have had.
- The Panel can order for an apology to be made to a homeowner.
- You should set out how you personally wish the issue to be resolved.
Section 8: Mediation

You should fill out whether you and the factor have undertaken any mediation processes and the outcome of this.

8. Mediation

Have you and your Property Factor attended mediation to resolve the issue?

Yes [ ] No [ ]

If you answered Yes please supply evidence of this process and briefly state the outcome below:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

9. Signature

Subject to the following declaration, we will store and process the information you provide in line with the Data Protection Act 1988. Under the Act you can ask to see all the information we have about you.

In order to process your complaint, hlop may need to contact the Factoring Registration Team and we may require to write to the Property Factor for further information and obtain reports from relevant specialists. In terms of the legislation which governs the application process, we will require to send copies of any application, attachments, correspondence and representations to the Property Factor complained about. Do you authorise hlop to disclose information received from you relating to the complaint and to send copies of any documents to the Property Factor and the Registration Team or any specialist who is asked to provide a report?

Yes [ ] No [ ]

Please note if you are unwilling to let us disclose information or obtain further details, then we will be unable to process your application. Please also note that legislation requires hlop to make any committee decisions and statements of reasons publicly available.

Your/your representative's signature

Date

Required attachments to application:

(please tick to confirm you have supplied the appropriate information)

a) the notification from the homeowner to the Property Factor for the purposes of section 17(3)(a) of the Act; [ ]

b) any response in writing provided by or on behalf of the Property Factor to that notification; [ ]

c) any other correspondence between the homeowner and the Property Factor relating to the homeowner’s concern; [ ]

d) any written statement of services provided by the Property Factor to the homeowner as required by the Property Factor Code of Conduct. [ ]

Additional attachments:

Evidence of Mediation process having been undertaken and the result. [ ]

Evidence of the Property Factor’s duties, if appropriate. [ ]

Section 9: Signature

Your application must be signed to be considered. You should also ensure that you provide the attachments listed in the checklist, including letters, etc.
Disclaimer: Please note this document is an illustrative guide only and is not legal advice. A local law centre or advice agency may be able to represent you for free, if not you may be able to get free help from a local solicitor under the ‘Advice and Assistance Scheme’ in Scotland.

Govan Law Centre is an independent community controlled organisation which exists to tackle unmet legal needs within the Greater Govan area and other areas of social disadvantage as determined by the Govan Law Centre Trust. It is a Scottish Charity SC030193. Its legal work is undertaken by the independent legal practice of Dailly & Co. Solicitors.

Written by GLC’s Ailie Doyle, Public Legal Education Officer and Samantha Brown, Solicitor, with funding from the Esmee Fairbairn Foundation.

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