

# **Glasgow Factoring Commission**

## ***FINAL REPORT OF THE GLASGOW FACTORING COMMISSION***

***JANUARY 2014***

***ADDRESSING THE CHALLENGES FOR THE  
MANAGEMENT, MAINTENANCE AND REPAIR  
OF RESIDENTIAL PROPERTIES IN GLASGOW***

***The Glasgow Factoring Commission  
Chairperson: Jean Charsley***





## FOREWORD AND ACKNOWLEDGEMENTS

This is the final report of findings and proposals for action and change arising from the enquiry into the management, maintenance and repair of residential properties in Glasgow carried out by the Glasgow Factoring Commission between June 2012 and October 2013.

Its main purpose is to set out a plan of action for change and to specify what roles can be played by owners, property factoring organisations, property professionals, the local authority and the Scottish Government in working together to improve the operation of an effective repairs and maintenance system for residential properties where there is shared ownership of the common property.

There is a shorter summary version of this full report, which also contains the finalised Action Plan. The summary report and action plan can be accessed via the following link  
<http://www.glasgow.gov.uk/index.aspx?articleid=10524>

The Commission reviewed not only the operation of factoring in Glasgow, but perhaps more importantly, the many issues associated with the repair and maintenance of the major form of housing in Glasgow, flatted housing or tenements whose owners share responsibility for their upkeep.

All of the Commission members are grateful to Glasgow City Council for setting up this commission independent of the council, allowing the extension of its remit from factoring to include repair and maintenance. We are also grateful for giving us the support of such experienced staff and for the council's commitment to the findings of the commission.

The report is the culmination of much hard work and personal commitment by members of the commission and of the frank and helpful evidence given by individuals, professionals and organisations across the public, private and voluntary sectors. It clarified the serious problems associated with the repair and maintenance of Glasgow's housing.

My sincere thanks go to all involved, including the members of the Commission themselves, who gave so generously of their time and experience. I include John Morrison who gave much able support and advice to the Commission before his death in 2012, Jennifer Shedden who administered the setting up of the Commission and Jennifer Russell who served until May 2013. My special thanks to Steve McGowan who co-ordinated the project and Les Milne who collated and summarised all of the evidence and findings. Without the input of all the people who took part the report would not have been so comprehensive.

*Jean Charsley*  
*Chair*  
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# EXECUTIVE SUMMARY

## Introduction

- 1 “Factoring” is the term most often used, especially in the West of Scotland, to describe the system of maintaining the common parts of a subdivided residential building containing individual flatted dwellings. Essential and routine maintenance work is carried out on behalf of all of the owners by a property factor appointed by the owners. In exchange, owners pay a management fee and a share of the costs of any routine and extraordinary repairs to common elements and any other specified services. This arrangement is usually set out in the title deed conditions to the property and/or in the form of a written contract (“The Factoring Agreement”).
- 2 Factoring of residential properties in Scotland emerged from the tenement building boom of the late 19th and early 20th Centuries, and was especially significant in Glasgow, where landlords built and owned whole tenements. The factor was the landlord’s agent with authority to collect rents and manage tenancies. Private renting as a tenure went into severe decline from the middle of the 20th century with much of the original tenement stock converting to owner occupation. At the same time, a large proportion of the city’s population moved to new Glasgow Corporation housing, and to the emerging owner occupied market beyond the city boundaries.
- 3 The principal role of the property factor in the tenement and other private housing built from the 1920s onwards became one of property manager. Nevertheless, in spite of major periods of demolition and re-building throughout the city, factoring of common properties remains a key feature of residential life, affecting around three-quarters of all households in Glasgow. The management of common property elements in these buildings is therefore key to the well being of a large number of Glasgow’s citizens.
- 4 Emerging issues associated with factoring led to the establishment of the Glasgow Factoring Commission in 2012. These issues include rising cost and unpredictability of fees and other charges, concerns over quality of contractor workmanship, varied quality of customer service and value for money. The initial findings and proposed possible solutions of the Commission are summarised under Key Findings and Main Recommendations below.
- 5 Although the Commission initially set out to investigate the operation of factoring of residential properties in the city, it became clear that a number of inter-related problems have been emerging which, if not comprehensively addressed in the short to medium term, will lead to significant and possibly irreversible damage to the economic and social fabric of hitherto stable areas of Glasgow. This may well be replicated in other parts of urban Scotland.

## Context

- 6 In recent times, it has become apparent that there has been a breakdown of the culture of mutual agreement to maintain property and to share costs of common repair across all types of flatted dwellings between the owners.
- 7 This breakdown can lead to serious disrepair and disputes over bills and non-payment, which in turn leads to falling property value and threatens the longevity of the property and adjoining properties.
- 8 The problem is apparent across all types of flatted properties including recently built developments and those sold under the “right to buy” (RTB) which are now factored in the main by housing associations. The Commission concludes that a critical point has been reached as the century-old factoring tradition appears to have broken down in particular blocks of flats and areas across the city.

- 9 It is the Commission's view that the trend towards further fragmentation of ownership and responsibility and decline in standards of maintenance and residents' behaviour must become more widely understood and addressed.
- 10 To avoid a repeat of the situation which led to widespread slum clearance in the middle part of the 20th century, the underlying causes of market failure must be addressed co-operatively by all of the key players starting now.

### Changes to the original remit of the Factoring Commission

- 11 An important challenge for housing providers and policy makers in the city is to ensure that past investment is protected to extend the life of the original pre-1919 tenements. However, factoring issues are not solely confined to these original tenement and terraced areas, and the Factoring Commission was from the outset mindful of factoring issues being found across properties constructed between 1919 and the first decade of the 21st century.
- 12 The Commission originally set out to:
- Act as representative grouping of key stakeholders
  - Take evidence and consider issues relating to factoring
  - Identify good practice and build on it
  - Identify ways in which residents with no factor can deal with common repairs and maintenance
  - Make recommendations for improving factoring in the city
  - Make recommendations which ensure that residents are aware of their rights and also of their responsibilities
  - Produce a report for public consultation.
- 13 As a direct result of evidence presented to the Commission, In the course of its deliberations, the Commission also reviewed
- The legal framework within which factoring, property maintenance repair and individual and collective property rights sit
  - Issues about enforcement of statute
  - Human and financial resources available to tackle both building repair and behavioural problems.
- 14 The Commission identified four main groups of properties where maintenance, and repair challenges were significant in relation to factoring:
- The remaining 19th and early 20th century tenements where ownership has become much more fragmented in recent times
  - Former council estates (mainly 4-in-a-block, but also tenements and deck access housing) where right to buy and on-selling had created conflicts over common property refurbishment and replacement costs
  - Modern large scale developments which are a mix of owner-occupiers and owner-landlords
  - Properties in all three categories where there is no factor.

### Key Findings

- 15 There is a need to re-build confidence in property management providers through greater openness, transparency and regular feedback from consumers.
- 16 There has been significant under-investment on the part of owners over many years, resulting in deterioration of properties.

- 17 There is a significant and widespread lack of understanding on the part of owners as to the importance of good property maintenance and management.
- 18 There is currently no obligation on the part of owners to carry out regular common property condition checks, and as a result, no requirement to effect comprehensive maintenance plans. However, there is already established practice in respect of commissioning, implementing and applying comprehensive property surveys by a number of registered social landlords (RSLs) and private sector factoring operations. It follows that there would also need to be a mechanism to encourage implementation of routine common property checks.
- 19 There is a problem of balancing individual rights with the need to protect common property fabric. This is because, in the long run, preventative action will result in significant savings for current and future owners, and will prevent factors from “walking away” before repair problems and non-payment become intractable.
- 20 The legal framework associated with factoring and common property maintenance is complex and difficult for the lay person to comprehend. There is no single comprehensive guide, written in plain English, which explains the relationship between the different acts relating to property maintenance and property management.
- 21 There has been no comprehensive review in recent time of the nature of title deeds and apportionment of common maintenance shares to reflect the situation in the 21st century.
- 22 The problem of individuals who refuse to pay their fair share of reasonable common repairs, charges and insurance premiums is significant. This is perhaps the biggest single threat to the stability of the factoring and property maintenance systems across all of the factored stock categories.
- 23 There is no local (i.e Glasgow wide) list of factored properties. The Scottish Government’s Property Factoring website is not designed to provide this information at a specified geographical level. This makes it difficult to identify properties which have no property factor. Factor-less owners have very little information on who potential factors might be.
- 24 A number of owners in recently built multi-unit developments have encountered issues relating to additional charges arising. These tend to relate to lack of in-built tailored sinking fund schemes and a lack of any nationally regulated system which assures contractual buy in to long-term maintenance plans.
- 25 The current dispute resolution arrangements through the Homeowner Housing Panel and the Small Claims and Sheriff Courts are, in themselves complex for owners to navigate and can be a traumatic experience for complainers.
- 26 Glasgow City Council, whilst having no legal powers in relation to factoring, has an interest in and a role to play in encouraging good practice across the private housing sector, in terms of raising quality, and providing assistance and support within its legal obligations and available resources.
- 27 There are a number of issues emerging which appeared to be difficult to resolve simply through co-operation between stakeholder organisations operating in the city, and which will require some intervention at a national level. These tend to arise from the legal framework relating to home ownership obligations in Scotland and are particularly pertinent in relation to points 18, 19, 20, 21, 22, 24 and 25 above.

## Conclusions

- 28 The Commission identified a significant number of issues and concerns about factoring and the negative attitude of many owner-occupiers and owner-landlords to proper and planned property management and maintenance. In the course of its deliberations, the Commission has suggested possible solutions to most of the issues raised. Some of these can be addressed in the short term, through mutual co-operation between local stakeholders. However, several of the problems identified require a longer-term solution, and some of these need to be considered following further consultation with key professional bodies and the Scottish Government.
- 29 The factoring system – and factors themselves, are not the primary source of problems for owners, though it appears that their cause is not aided by the negative image and reputation which a number of individual factors have attracted, and which has now become ingrained in the public psyche. This perception can only be changed by factors themselves focussing on improving their customer service and working together and with other organisations to positively alter this perception. Factoring of property in Glasgow – whether organised through larger-scale private companies, RSL subsidiary companies or owner associations engaging in self-factoring is a necessary and important function of the housing system in the city. However it cannot function well unless trust is restored, and systems are in operation to protect diligent owners.
- 30 The Commission concludes that the proposals for change need to be prioritised, but has not opted to prepare a prioritised “wish-list” as such. Accordingly it has prepared an Action Plan which requires the participation of a number of stakeholders including the City Council and the Scottish Government.
- 31 The Commission also recognises that change associated with any of the proposals as set out within the Action Plan will require time and effort from participants. Many of the proposed solutions which have emerged from the process will almost certainly require additional resources and /or smarter use of current resources to enable them to be delivered. However the long-term cost of doing nothing is likely to be far greater than the cost of enacting change.
- 32 The Commission’s Action Plan is set out in the ANNEX to this report
- 33 The Commission is in agreement that the City Council is the organisation which is best placed to co-ordinate the development of the Action Plan. This would include meeting the Scottish Government to discuss practicalities, working with representatives of professional bodies and assisting with the co-ordination of local partner inputs.



# Main Recommendations

## Service delivery

- 34 Notwithstanding the significant changes brought about by the introduction of the Property Factors (Scotland) Act 2011, the Commission concludes that property factors individually or collectively should build upon this through:
- Better communication of the level of fees being charged for services and billing, including insurance issues and repairs progress
  - Clearer explanation of the purpose of the float charge and its legal basis
  - Regularly testing their own assumptions and performance. The Commission recommends that where property factors are not already doing so, they should carry out their own customer satisfaction surveys and make these available to their own factored owners.
  - Better transparency in the procurement of repairs and insurance to achieve value for money
  - Being more pro-active in encouraging the regular surveying of common property elements and
  - Providing assurance that repairs have been carried out effectively and to a good standard.

## Provision of good quality information and advice

- 35 The Commission argues strongly for the introduction of a campaign of information and advice.
- This would have to be a co-ordinated campaign involving factors, estate agents, solicitors and others, with its primary focus on the City of Glasgow local authority area.
  - A key proposal is the establishment of a Glasgow-wide Property Factoring and Common Property Advice website, supplemented with printed material. The Council should also map the extent of non-factoring in properties and target such areas.

## Owner responsibility and the legal position in Scotland

- 36 It is recognised that there are a number of cultural, financial and legal aspects to the reasons why some owners are unwilling to recognise their responsibilities. The Commission urges the Scottish Government to review the overall legislative framework relating to common property maintenance and repair. The Commission recognised that it would be difficult to make retrospective change to title conditions. The Commission also found some pieces of legislation which appeared contradictory or not appropriate to the situation in Glasgow. The Commission also concluded that private property-related legislation has become too complex and difficult for lay owners to navigate. Therefore
- The Scottish Government is urged to consider consolidation of legislation into one act in the longer term, but as an immediate action, to overhaul guidance on the full range of property law matters and translate this into plain English.
  - Anomalies in the Tenement Act need to be brought to the attention of the Scottish Government, particularly in regard to the applicability of some key clauses as they relate to title conditions in Glasgow and the West of Scotland
  - There is also scope to extend the Tenement Management Scheme to include clauses which allow for
    - setting up reserve funds,
    - carrying out regular surveys (the “Private Housing MOT”),
    - making common property insurance mandatory without exemption, and
    - dealing with anomalies over fairness where titles are shared between separated buildings and with the distribution of share costs between flat owners and shopkeepers.

- In the absence of binding legislation in respect of survey and repair, the Commission concludes that mandatory surveys are desirable. In the interim, focus should be on encouraging and supporting owners. Incentives could be developed, for example to encourage owners to develop maintenance plans, ideally through the factor or self factoring owners association. Property factors (both private and RSL) in Glasgow could lead by example, with the City Council Private Sector Grants and Advice service providing practical support.
- The Commission also believes that if this cannot be generated through information and advice, then some degree of compulsion may have to be considered. Only the Scottish Parliament can enact such a change.

## **A stitch in time – addressing issues before purchase**

- 37 Potential owners need much better information about the condition of the property they are purchasing and their mutual repairing responsibilities.
- Estate agents and conveyancers have a major role to play and the Commission recommends that there should be simple written explanations of the owner’s title deeds and how these interact with other legislative requirements, such as the Tenement Management Scheme which is the bedrock of the Tenements (Scotland) Act 2004.
  - This Act should be reviewed in terms of introducing regular compulsory common maintenance reports and plans and/or the setting up of sinking funds.
  - The Home Report (HR) is a key element of the property purchase process enshrined in law. This is otherwise known as the “Single Survey”, and which the vendor is obliged to provide to prospective purchasers. However, The HR provides only minimal information on the condition of common building elements.
  - Whilst the Commission concludes that it would be unfair to make selling owners responsible for detailed surveys of common property, regular (common property) surveys or maintenance plans need to be organised by the property factor or the group of owners in the block. This information, together with information recorded in repair log books could be fed into the Home Report of the property being placed on the market.

## **Affordability**

- 38 Financially, the recent recession has deepened the problem of owners who simply cannot afford to pay for repairs.
- The City Council is limited in its resources to pay individual “missing shares” or offer grant support. It can and does take enforcement action, mostly in geographic priority areas where problems have accumulated which threaten the stability of whole street blocks.
  - National action is required to set up loan fund, equity release, mortgage to rent and other similar schemes for owners who cannot afford to participate in common repair schemes.

## **Debt recovery and disputes between owners**

- 39 It is proposed that
- The Home Owner Housing Panel or an equivalent housing tribunal or court should have the power to deal with disputes between owners, primarily in relation to debt recovery,
  - There should be a parallel system in place to adjudicate over title disputes and obligations to take responsibility which gives responsible owners quicker and less expensive redress, and
  - powers to those who register and licence landlords be strengthened.

## Addressing poor thermal performance of older buildings

- 40 Unless some of the fundamental problems associated with lack of ongoing maintenance are addressed, the Scottish Government's commitment to increasing energy efficiency will be unmet, specifically in older, mainly private sector tenement stock. However, this also affects a number of flatted properties and tenements constructed between 1920 and 2000 where stock is not in majority ownership of a social rented landlord
- The application of thermal efficiency measures in common areas such as loft spaces must be preceded by a professional assessment of roof condition and any essential repairs enacted prior to commissioning of insulation works
  - Application of internal insulation should be encouraged in older tenemental properties, but have regard to any major building defects identified.

## 1.0 STRUCTURE OF REPORT

- 1.1 The Commissioners distilled a very large number of witness statements, testimonies and written submissions which were provided to the Commission, but mainly the content of the report is the culmination of consensus views reached by Factoring Commission members resulting from synthesis of this material and individual member expertise.
- 1.2 The report begins with the context and rationale for the setting up of the Commission, with reference to an analysis of Glasgow's housing development over the last century (Chapter 3). The background to the setting up of the Commission is summarised. Its full original remit is provided at **APPENDIX 1**, and its composition at **APPENDIX 2**.
- 1.3 Chapter 4 contains a description and analysis of all of the key issues raised by contributors and the expert input of individual Commission members and Council specialists which have resulted in the Commission's findings and proposals for change. **APPENDIX 3** lists those organisations, companies and individuals who responded to the Draft Consultative Report.
- 1.4 Emerging themes arising from the analysis at Chapter 4 were ordered into individual issues summary matrix sheets, which reflected specific aspects of the problem and the sources of the issues raised. These summaries helped the Commission to signpost suggested solutions to the core problems, highlighting likely obstacles and ways of removing them where possible, or at least managing them. The headings used to separate out the elements of the themes which emerged are provided as a separate appendix to the full report (**APPENDIX 4**). The populated sheets for each theme are available on request.
- 1.5 The proposals emerging from each of these summary matrix sheets were then developed into a much shorter Action Plan, (**see ANNEX**). The Action Plan assigns lead and shared roles for implementing elements of the action plan and provides provisional timescales for implementation.

## 2.0 ACCESSING FACTORING COMMISSION DOCUMENTS

- 2.1 Minutes and all submissions made to the Commission over the course of its meetings have been recorded. Both minutes and summaries of the material can be provided on request via Commission's e-mailbox or address.
- 2.2 The summary report made to the Commission in October 2013 of responses to the Draft Consultative Report can be provided on request. This document excludes inputs made by individual respondents who requested that their comments not be made public.
- 2.3 The Factoring Commission's e mailbox will remain available to manage requests for archive and other relevant information until 31 December 2014.

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## 3.0 BACKGROUND TO THE SETTING UP OF THE GLASGOW FACTORING COMMISSION

### A century and a half of change in housing in the City

- 3.1 The original model of the Glasgow tenement arose from the expansion of population in the villages which surrounded the burgh of Glasgow, which resulted from rapid industrialisation and immigration. Before, during and after their annexation into the pre-1914 city boundaries, builder/landlords responded to the demand for accommodation by developing tenements in these communities. A factor was appointed as the building proprietor's agent, usually with the authority to organise maintenance of properties, collect rents and manage tenancies, even to the point of carrying out eviction for non-payment of rent.
- 3.2 As the century wore on, the role of factor as rent collector became less significant. The perspective that the factor was de facto also the landlord has persisted over many years and may explain the confusion over the legal status of property factors and the role of the property factor today.
- 3.3 In essence, factoring is the system used to maintain the common parts of a sub-divided residential building containing individual flatted dwellings (usually, but not exclusively, a tenement building) by legal or mutual consent of all the owners of the individual units making up the whole building.
- 3.4 Essential and routine maintenance work is carried out on behalf of all of the owners by a property factor appointed by the owners. In exchange, owners pay a management fee and a share of the costs of any routine and extraordinary repairs to common elements, in addition to any other agreed common property related services which reflect modern living in the 21st century. The factor can sometimes also be an owner, and may therefore also be operating as a landlord, but more often than not the factor does not own the tenement and acts under instruction of owners and as an agent of these owners.
- 3.5 An important feature of these tenement communities is that, at the point of construction, arrangements were put in place, often written into the title deeds held by the builder/owner of the tenement block, to appoint a factor to let and maintain the properties on behalf of the owner(s) or development trustees. However, by the 1960s, many of the properties which had been rented out were sold off individually, leading to more fractured ownership and property factoring arrangements.
- 3.6 The issue of the future of the tenements came to a head following the storm of January 1968, when the extent of the poor condition of roofs and chimney heads became apparent. This brought about a change in attitude to the future of tenements in the city, paving the way for the introduction of Housing Action Areas (1), the genesis of the community based housing association movement and the introduction of repair and improvement grants, backcourt upgrading and tenement stonecleaning, funded by the City Council. By the mid 1980s there was significant take-up of repair grant, with high levels of grant being offered. This boosted the value of pre-1919 properties at that time. However, this was not accompanied by binding longer-term maintenance agreements.

- 3.7 Individual tenements are more often than not abutted by similar if not identical tenements on either side, giving the impression that rows of tenements form one complete building, when in fact each tenement (often simply referred to as a “close”) is a separate legal entity. This can give rise to major issues when disrepair in one tenement spreads to an adjacent tenement (for example, outbreaks of dry rot, structural damage caused by subsidence affecting a whole street). Maintenance, for example of gutters or roof tiles tends to be done only for that portion of the roof which pertains to the individual tenement. In addition, shares of common costs are worked out on the basis of the number of discrete units within the tenements (usually one sixth or one eighth). Where there is a shop unit forming part of the tenement, this arrangement changes with shop owners often charged a much larger share.
- 3.8 In the first half of the 20th century, the mutually-agreed maintenance system enshrined in the original title conditions of individual tenement blocks broke down in several inner city tenement communities. This breakdown appears to have coincided with the process of the demolition of tenements lacking standard amenities and the insatiable demand for larger family housing and the accompanying mass new build Council housing programme between the 1920s and 1970s. Property owners and factors appeared unable or unwilling to find a solution to these problems, and so intervention by Glasgow Corporation became the norm.
- 3.9 In response to the trend after 1945 for the application of blanket redevelopment policies at both national and local level, and since the early 1970s, community-based housing associations have successfully restored as much of the original core tenement stock as possible. They have also assumed the role of factor for property in which they have majority ownership and will consider taking on the factoring of properties, usually within their geographical area of operation where a majority of owners seek an alternative arrangement.
- 3.10 In order to cope with continuous population growth and severe overcrowding in the tenements, during and after the two world wars, the city boundaries were expanded to allow Glasgow Corporation and the Scottish Special Housing Association (SSHA) to build new estates, known as “housing schemes” in order to alleviate this overcrowding from within these older tenement suburbs.
- 3.11 In 1980, the Right to Buy (RTB) for Council, SSHA and New Town Development Corporation tenants became enshrined in law and had a significant impact on the pattern of ownership especially within the City Council and (former) SSHA housing schemes (2). Many purchasers, who had never been home owners before, while benefiting from substantial discounts on the price they had paid for the property, were unaware of the potential costs of repairing and maintaining common roofs and other elements, and many simply did not have sufficient resources to pay for these repairs and improvements.
- 3.12 A specific issue affecting these properties is variation in title deeds. Whereas the earliest RTB purchasers were not required to pay for maintenance of common grounds, this was gradually amended to include such a burden. This also gave rise to issues concerning maintenance of certain common grounds by the City Council.
- 3.13 In the last ten years, the Glasgow Housing Association has been able to raise the resources to upgrade the remaining former municipally owned houses to make them last well into the 21st century, and to transfer onward around 22,000 of the 80,000 properties transferred from the City Council to community-based housing associations. However, the logical progression of improving blocks in sequence was hampered from the start by the problems associated with right to buy owners being unwilling or unable to participate in these building-fabric envelope schemes, even with the provision of improvement grant.

- 3.14 One of the remaining challenges for housing policy makers and providers in the city is to return to some of these core city areas to ensure that they are protected and can last well into the present century. However, factoring issues are not solely confined to these original tenement and terraced areas, and the Factoring Commission was from the outset mindful of factoring issues being found across properties constructed between 1918 and the first decade of the 21st century.
- 3.15 In parallel, new housing development constructed since the 1990s along the riverside and the routes of the suburban rail network, where there were once docks, shipyards and warehouses has added to this diversity. However, in spite of their relatively recent construction, owners in these new developments have also experienced specific problems with absentee owners' failure to pay their share of maintenance costs, leading on occasion to significant health and safety issues as well as contributing to a fall in property values.
- 3.16 This boom in new housing development was also fuelled by UK public policy and legislation liberalising financial services and banking in the mid 1980s which appeared to encourage speculative development. This public policy failed to predict or address a situation where the value of property would go into reverse in the event of a severe recession. In particular the trend towards purchase of multiple properties to let appears to have put these purchasers' cash flows at risk when values fell and demand did not meet expectations. As a result, fall in property value is likely to have led to a fall in income, with a withdrawal of payments into property maintenance and common insurance funds.
- 3.17 And so, in spite of decades of progress and change, there remain a number of challenges relating to the main groups of properties where a factoring service is critical. These challenges are:
- To protect the heritage of the remaining 19th and early 20th century tenements where ownership has become much more fragmented in recent time
  - To resolve some of the key problems relating to common repair and maintenance in former council estates (transferred to GHA and other housing associations through first and second stage transfer) and properties transferred by Scottish Homes (formerly SSHA properties) also to housing associations (3)
  - To clarify responsibilities and resolve disputes in modern large scale developments which are a mix of owner-occupiers and owner-landlords
  - To provide a means of support and guidance for owners in all three of the above where there is no factor.
- 3.18 The work of the Commission is not, therefore confined to the issues associated with the original core tenement stock. At least seventy per cent of the city's housing stock is tenemental or flatted. Therefore, effective and quality property management is vital to the repair and maintenance of Glasgow's housing stock, both old and new.
- 3.19 Lessons can be learned from these events. The Commission is alert to the danger that the problem of rapid turnover in occupancy of properties, further fragmentation of ownership and lack of responsibility could return, as the original concept of a common maintenance agreement for properties with shared common elements becomes more diluted
- 3.20 Since the onset of the credit crunch in 2008, some new issues have emerged including:
- a relative decline in owner-occupation of tenements as the key first rung on the property ladder
  - a new generation of owner-occupiers and transient renters with no experience of the traditional norms and obligations associated with the maintenance of common areas
  - the increase in renting out properties through letting agents many of whom remain unregulated.
  - homeowners being unable to find the resources to maintain their properties where their only asset is the property they own



## Perceptions of property factors and recent legislative change

- 3.21 Faith in the discipline and practice of property management appears to have taken a knock because of a perception that some factors may not be providing owners with value for money, or may not be discharging the duties expected of them. The other side of the coin is that factors and property managers may assert that owners do not always understand or discharge the responsibilities which are laid down in their title deeds, or cannot be located and held responsible for paying their fair share of common costs.
- 3.22 Until recently there was no central source of information on factored properties. However the Property Factors (Scotland) Act (**Scottish Parliament, 2011a**) [http://www.legislation.gov.uk/asp/2011/8/pdfs/asp\\_20110008\\_en.pdf](http://www.legislation.gov.uk/asp/2011/8/pdfs/asp_20110008_en.pdf) was formally passed into law on 7 April 2011, and came into force on 1st October 2012 in an effort to improve service delivery and hold factors and property managers to account. The basic requirement of the Act is that organisations, and persons, operating as a property factor, who wish to continue to operate as a property factor, must register with the Scottish Government on the Register of Property Factors.
- 3.23 It is a criminal offence for property factors not to register. Registered property factors must adhere to the 'Code of Conduct for Property Factors'. The Code provides details of the minimum standards of practice with which factors must comply.
- 3.24 Each factor is obliged to provide a written statement of services to its customers including how it will communicate and consult with owners, how it will carry out repairs and maintenance, recover debt, and what its processes are in relation to complaints resolution.

If there is a dispute between an owner and his or her factor, the issue can be referred to the Homeowner Housing Panel, once it has exhausted the factor's own complaints process. Non-compliance with an enforcement notice issued by the Homeowner Housing Panel is also a criminal offence. Existing factoring operations in Glasgow

- 3.25 There are a large number of factors / property managers operating in the city. Based on the factoring companies with a Glasgow post code identifier registered on the national Scottish Property Factoring Register, there are around 40 private factors and property managers operating in Glasgow, with varied portfolios.
- 3.26 According to the Property Managers Association Scotland (PMAS), in the Greater Glasgow area, there are over 200,000 dwellings and / or related common grounds under maintenance where at least one or more owner is affected and which are managed by a PMAS member. In addition to the well-established private factors, many of which have existed since the late 19th and early 20th centuries, housing associations in the city have also been providing factoring services since the 1970s.
- 3.27 As of March 31st 2011, community-based housing associations factored just over 14,000 dwellings between them, and Glasgow Housing Association's subsidiary YourPlace factored around 25,000 properties.
- 3.28 There are also a number of self-factoring groups established in the city, formed where there was dissatisfaction with existing factors or where there was no factor at all.

## The role of the local authority in fostering good practice in property management and repair

- 3.29 Glasgow City Council (GCC) does not own or factor residential property, and has no statutory responsibility for the operation of factoring. Its statutory focus is on breaches of building control or environmental health regulations. It has certain powers in relation to protecting buildings which are sub-standard. The Council can offer owners advice and assistance on the maintenance and repair of their properties in accordance with Section 72 of the Housing (Scotland) Act 2006. GCC, along with other local authorities is required to publish a Statement of Assistance, currently accessible through the Council's website. **(Glasgow City Council, 2012a)** <http://www.glasgow.gov.uk/CHttpHandler.ashx?id=6499&p=0>.
- 3.30 The Council currently allocates a budget for private sector housing repair (Private Sector Housing Grant (PSHG)) on an annual basis which allows it to offer financial assistance to cover a range of circumstances. Specific forms of assistance are identified in the Statement of Assistance. Broadly speaking, financial assistance is targeted at residential properties with parts in common ownership. Pre-1919 stock which forms the majority of properties in disrepair has historically tended to receive a higher proportion of the budget, as prioritised for funding. There are restrictions on the resources available and how these can be apportioned. The Council has some discretion in terms of providing the "missing share" to effect common repair where one or more owners cannot or will not contribute, and where it is deemed to be in the public interest to proceed with the work. The Council must re-claim the cost with interest through the courts if necessary.
- 3.31 Local authorities, including Glasgow City Council have a duty to prepare a housing strategy at least once every five years. The strategy is designed to encourage the improvement of all housing in the city including privately- owned and privately-rented properties with the purpose of meeting a broad range of housing needs. The Council has a statutory duty to secure accommodation for homeless households. This can include properties in the private rented sector.
- 3.32 In terms of emerging issues in relation to problems associated with factoring being raised by individual elected members on behalf of their constituents and in the wake of the passing of the Property Factors Act, the Leader of the Council initiated an independent enquiry into the operation of factoring in the city. This became part of the Council's Strategic Plan 2012 – 2017 **(Glasgow City Council, 2012b)** <http://www.glasgow.gov.uk/CHttpHandler.ashx?id=14572&p=0>

## Original and amended remit of the Glasgow Factoring Commission

- 3.33 The Glasgow Factoring Commission was originally established to enquire into the operation of factoring in the city, with a view to developing proposals which could be collectively endorsed by all key stakeholders and consultees in the project for the benefit of Glasgow's citizens, providing a model for action and leading to a delivery plan. (Appendix 1). It aimed to hear the real experiences of owners and factors, at a time when factors were coming to terms with the provisions of the Act. This was also against a backdrop of:
- the changing ownership landscape as described earlier
  - revisions to the legal and enforcement framework established by the Scottish Government between 2003 and 2011
  - the need to provide greater access to advice and redress to tenants and owners
  - the Scottish Government's quest to make all housing more thermally efficient in order to meet climate change CO<sup>2</sup> emission targets, in the context of carrying out such works where there is disrepair which must be addressed before these measures can be effectively applied.

- 3.34 From the start of the process, it became clear that the Commission needed to look beyond the problems of services provided by factors and property managers or the problems which factors and property managers experience when managing communal repairs and maintenance. Examining the obstacles to good management of the repairs and maintenance of the principal form of housing in Glasgow (tenements and flatted properties) and a holistic approach were key to finding solutions and our eventual recommendations.
- 3.35 Many individuals contributed evidence which was helpful, highlighting a broad range of issues and problems, not all of which are capable of resolution through our recommendations. However, the Commission has endeavoured to set out what it considers needs to be done in terms of an integrated approach within a complex legal framework.
- 3.36 The patchwork of relevant law proved to be a challenge in its own right, and the issues of cultural attitudes and new patterns of ownership and renting assumed greater prominence in the course of dialogue and discussion.
- 3.37 As a direct result of the evidence received by the Commission on the wider problem of poor maintenance, the remit of the Commission changed to reflect the focus of the problem.
- 3.38 The Commission therefore needed to reflect the original terms of reference but also to take due account of the new but equally-challenging issues which emerged over the course of the year.
- 3.39 The original agreed remit was to:
- Act as representative grouping of key stakeholders
  - Take evidence and consider issues relating to factoring
  - Identify good practice and build on it
  - Identify ways in which residents with no factor can deal with common repairs and maintenance
  - Make recommendations for improving factoring in the city
  - Make recommendations which ensure that residents are aware of their rights and also their responsibilities
  - Produce a report for public consultation.
- 3.40 In the course of its deliberations, the Commission also reviewed:
- The legal framework within which factoring, property maintenance, repair and individual and collective property rights sit
  - Issues about enforcement of statute and the human and financial resources available to tackle both building repair and behavioural problems.

## Recent developments in factoring

- 3.41 Notwithstanding the work of the Commission, factoring has assumed a much higher profile in the course of the last year with Registered Social Landlords and private sector property managers beginning to share their approaches and experiences and establishing shared best practice. The Scottish Housing Regulator published research in 2012 on the priorities of homeowners factored by registered social landlords to assist in shaping the regulatory approach concerning performance indicators relating to non-tenant service users in the Scottish Social Housing Charter. (**Scottish Housing Regulator, 2012**)  
<http://www.scottishhousingregulator.gov.uk/sites/default/files/publications/Gypsy%20Travellers%20and%20Factored%20Owners%20Report.pdf>The Commission welcomes these developments.

- 3.42 In addition, the Justice Committee of the Scottish Parliament has recently published its findings into the operation of the Title Conditions (Scotland) Act, 2003 **Scottish Parliament (2013)** <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64203.aspx> and (**Scottish Parliament, 2003**) [http://www.legislation.gov.uk/asp/2003/9/pdfs/asp\\_20030009\\_en.pdf](http://www.legislation.gov.uk/asp/2003/9/pdfs/asp_20030009_en.pdf) echoing several themes which emerged from the work of the Commission, one of which, the need for a review of residential conveyancing practice and procedure has been mooted by the Law Society of Scotland [http://www.lawscot.org.uk/news/press-releases/2013/june/news\\_propertygroup5613](http://www.lawscot.org.uk/news/press-releases/2013/june/news_propertygroup5613)

### The work of the Commission

- 3.43 In the course of its lifespan, the Glasgow Factoring Commission has explored a wide and extensive range of issues, which are a microcosm of factoring and property maintenance concerns found right across urban Scotland. The Commission has heard expert testimony, received many individual and collective opinions and received a host of written submissions. The Commission has also hosted a major community event and Commission members have come together in workshops to extract the core challenges and suggest practical solutions to the issues raised in evidence.
- 3.44 The findings of the Commission should build on the Property Factors and related Acts, and the emerging mutual co-operation which appears to be forming between private and RSL-based factors. The Commission sought to bring together in one document solutions to a number of complex issues, bring key professional groups together and highlight areas where tenement and housing law might be enhanced in order to provide an informed platform on which to start the process of informing and educating owners and tenants.

### Chapter Notes

- (1) Housing Action Areas for Improvement were introduced to comprehensively address the problem of tenements lacking standard amenities (lack of inside toilets, lack of bath or shower, lack of hot water etc) under the Housing (Scotland) Acts 1974 and 1987
- (2) All properties previously managed by the Scottish Special Housing Association (SSHA) were transferred to Scottish Homes following the Housing (Scotland) Act 1988. Tenants retained their right to buy upon transfer. All remaining tenanted and void properties were subsequently transferred onward to individual housing associations across Scotland during the 1990s and early 2000s.
- (3) To this can be added privately built 4-in-a-block properties of similar age and construction found mainly in the south and south west of the city. A number of these properties have been bought up by speculative purchasers for private renting. These properties while being designed for family accommodation have problems associated with sound insulation. More recently, problems with anti-social behaviour, communal garden maintenance and responsibility for keeping other communal areas tidy have emerged.

## 4.0 COMMISSION FINDINGS AND OPTIONS FOR CHANGE

### Protecting the city's housing heritage

4.1 At least two-thirds of Glasgow's housing is located in subdivided buildings which contain flats or maisonettes ("tenements"). All of this property requires effective property management. The effect of loss or further deterioration of this property is serious. As outlined in Chapter 3, the city now appears to have reached a critical point in terms of saving and protecting the existing built heritage, which still remains a trademark. Glasgow tenements, while not dissimilar to the urban form found in most Scottish cities and towns have some unique characteristics. These features if lost will be almost impossible to replicate and the cost of replacement is likely to be prohibitive. Accumulating market value – previously a selling point for this type of property – could also fall as a result of a combination of the following:

- Significant change in the residential market place following the credit crunch in 2008
- The effect of increasing proportions of privately-rented properties compared to owner-occupied properties in individual tenements
- Owner complacency and lack of understanding of maintenance responsibility in respect of title deeds and conditions
- Absentee ownership and lack of regulation of letting agents
- Lack of basic knowledge of legal requirements and regulations, on the part of many owner-occupiers and owner-landlords.
- Increased costs of restoration and reductions in overall grant resources of the City Council.

4.2 Symptoms of the growing malaise identified by the Commission include:

- Falling property values: first-time buyers unable to move up the property ladder; owners trapped in negative equity; owners unable to sell properties, often leaving them with little choice but to wait it out, become private landlords themselves or sell on at a reduced value
- Rising numbers of empty properties
- Continuous demand for assistance in respect of disrepair especially in older tenement property
- Dissatisfaction with ability of landlords, letting agents, property factors, and local and national authorities to resolve disputes over responsibility and share of repair and maintenance costs
- Poor standard of behaviour of residents in terms of litter and bulk refuse accumulation, internal damage to properties, poor hygiene standards and un-maintained gardens and landscaping.

4.3 Although the Commission initially set out to investigate the operation of factoring of residential properties in the city, it became clear that a number of inter-related problems had been emerging.

4.4 This further review of the remit was prompted by a number of concerns raised in the course of submissions received:

“.....MHA is of the firm belief that effective factoring  
is dependent upon good management and  
ensuring that property condition is maintained to a high level”  
Milnbank Housing Association

“.....It see “ It seems to be left up to individual property owners to  
resolve complaints. This is not always possible when owners are  
not aware of legal issues and what their rights are”  
Factored owner

## How this can be addressed

- 4.5 The Glasgow Factoring Commission can contribute to wider debate on how these broader trends and their symptoms can be arrested. It is the Commission's view that they must become more widely understood and addressed in order to avoid a repeat of the slum-clearance eras before and after the world wars.
- 4.6 The underlying causes of the negative change described above must be addressed co-operatively by all of the key players starting now.
- 4.7 In addition to organisations engaged in the factoring of residential properties, the other property professionals such as conveyancing solicitors, property surveyors, estate agents, letting agents and property developers have an important part to play in promoting positive change and best practice in respect of property management and maintenance.
- 4.8 The Scottish Government has a role in terms of providing a robust legal and regulatory framework and in providing support and innovative development funding.
- 4.9 Glasgow City Council needs to be able to enforce statute which is workable, to promote inter-agency co-operation, provide impartial advice and find ways of accessing sufficient resources to cope with demand.
- 4.10 Not least, owner-occupiers and owners who are also landlords need to take greater responsibility for their own actions, including investing their own resources.
- 4.11 The Commission, in examining the evidence presented to it on the actual operation of factoring and the attitudes and culture pertaining to maintenance and repair found examples of both good and poor practice.

## Emerging good practice

- 4.12 There is some evidence that self-regulation and good practice in service delivery may be bearing fruit. The Commission heard testimony of situations where individuals had formed their own self-factoring schemes or where the appointment of an alternative property factor had turned round previously problematic tenement closes and groups of property where the factoring arrangements had broken down, for example the Mondriaan development on the Forth & Clyde Canal. YourPlace provides a survey service for all of its factored owners.
- 4.13 Property factoring organisations and companies have responded to legislation passed specifically to provide redress to owners where there are disputes or disagreements between property factors and individual owner occupiers. Key elements of the Property Factors (Scotland) Act, 2011 have been successfully implemented. These include the requirement for every property factor to produce and distribute a Written Statement of Service for every factored owner and the establishment and operation of the Homeowners Housing Panel to enforce the Property Factors Code of Conduct.
- 4.14 While it is still too early to judge the impact of the Property Factors Act, the Homeowner Housing Panel has considered and adjudicated upon a number of complaints brought against property factors. The fact that all factors have had to register and provide written statements to all of their customers is in itself a significant achievement.

- 4.15 There is some evidence that sharing of best practice between property managers in the private and voluntary sectors is taking place. For example, the Scottish Factoring Network, formed by the Scottish Federation of Housing Associations (SFHA) and the housing association training body, SHARE, has been holding seminars and organising conferences, to which members of the Property Managers Association Scotland (PMAS) have also been invited. PMAS have provided speakers at these events.
- 4.16 Factoring was the subject of a workshop at the Chartered Institute of Housing Scotland Conference held in March 2013. The Commission notes that PMAS is a trade body and that representatives attend events on a voluntary basis. However, a more specific and structured agenda on factoring has been slow to get off the ground to date. There is little evidence of “joined up” industry-wide commitment to improving customer service for factored owners, regardless of whether their factor is private or voluntary sector based.
- 4.17 The Commission heard evidence of training courses and was provided with sample information used in course which have been run in recent years via the Institute of Property Management and which have been attended by staff from a number of property factoring organisations in Glasgow
- 4.18 There is also considerable scope for improved customer-focussed joint working between property managers, housing-service providers and professionals in the property industry in general.

### Addressing alleged poor practice

- 4.19 During the lifetime of the Commission, and in spite of the enactment of the legislation from October 2012, there have been numerous newspaper reports since that date which allege poor practice or poor treatment of customers by a small number of property factors. Glasgow City Council elected members have continued to receive specific queries and complaints about the operational practices of some factors. It is clear that there remain a number of “grey” areas in respect of the way that the Code of Conduct is being interpreted.
- 4.20 The Commission received a number of individual written submissions from homeowners and property factors, including the largest privately-owned property factor operating in the city. In addition, the Commission received input from property specialists and trading standards officers within the City Council and also from self-factored owners who explained why they had opted to take on factoring responsibilities themselves.
- 4.21 In his submission to the Commission, the City Council’s Trading Standards Team Leader provided a number of examples of situations where alleged poor practice had been referred to the service.

*“Complaints are received covering a wide variety of issues, including failure to consult on costs of work, failure to carry out work as agreed, failure to carry out work to a reasonable standard, aggressive practices to recover alleged debt and failure to negotiate on disputed bills”*

**Glasgow City Council Trading Standards report to Commission**

4.22 The range of issues raised by factored owners in the form of written submissions brought directly to the Commission from homeowner and residents groups related to such diverse matters as poor communication and attitudes to customers, inconsistent explanation of bills and poor value for money, especially around appointment of contractors and the escalating costs of common insurance:

*“It appears to me that the working practices of most Glasgow factors are outdated. Their use of online technology is minimal, their opening hours are inconvenient for most working people and it is not uncommon for the entire office to close at lunchtime – a ludicrous practice for a company in the business of customer service”*

**Factored owner**

*“.....our bills are very vague at the moment and it is extremely difficult to get clear, understandable answers.....According to the Deeds of Conditions.....the factor....has virtually carte blanche on what they can spend with absolutely no reference or notification to the homeowner...”*

**Crown Street Residents Association**

*“(Name of factor withheld) always use the same companies for common repairs...Most of the workmanship is of a poor standard”*

**Factored owner**

*“We have had the same insurer (Name of insurer withheld) and the same policy number since 2005. This indicates that (Name of factor withheld) have never sought to secure a better value cover from another insurer....The insured value is in excess of 200% of the property value and 28% higher than the top of the range re-instatement values published by RICS”*

**Factored owner**

4.23 A similar range of issues was raised at the community consultation event held in September 2012 (See 4.29 below).

4.24 In response to this criticism, individual private factors and the Glasgow and West of Scotland Forum of Housing Associations (GWSF) also submitted evidence outlining some of the obstacles which property factors need to overcome in order to provide a good factoring service in circumstances where it can be extremely difficult for them to operate effectively:.

*“The problems which have been and will continue to be experienced, despite legislation, have been there for many years. Firstly, homeowners’ intransigence and apathy. Secondly, an inability of responsible homeowners (or indeed their factor as agent), to instruct common maintenance and repair where intransigence or apathy prevails amongst their neighbours”*

**Neil J Watt, Director, Hacking and Paterson Management Services**

*“We acknowledge the poor services provided by some factors and we welcome the new legislation which we hope will address this problem. However in our experience long term under-investment in buildings and negligence by co-owners is a far greater problem”*

**Glasgow and West of Scotland Forum of Housing Associations**



## Operation of the Property Factors (Scotland) Act 2011

- 4.25 The law as it currently stands requires all property factors to register with the Scottish Government, to comply with the Property Factors Code of Conduct and to provide a Written Statement of Services to every one of its factored owners.
- 4.26 The Act has only been in operation since October 2012. In the period since its enactment, every property factor's senior partner or officer has been required to complete a form to show evidence of being a fit and proper person to provide property factoring services. All factors, on at least one occasion, have uploaded their list of factored properties to the Scottish Government Register website. Most have or are in the process of providing their factored owners with a written statement of services specific to the individual tenement or building. For some private and Registered Social Landlord (RSL) based property factors this has been a considerable administrative task, which has incurred legal and other costs to these organisations.
- 4.27 Nevertheless, the Commission is of the view that this catching up, however inconvenient and painful it may have been, was necessary given the comments made about the long and deep-seated roots of some of the problems being encountered by homeowners and property factors over many years. However, it is the Commission's view that the content of the Written Statement is most likely to represent a minimum standard of service and is also likely to be open to some interpretation.
- 4.28 While it was not possible to obtain a full range of written statements, it is apparent that individual property factors have some scope in terms of wording the Statement and any Factoring Agreement. The devil can be in the detail, so until the Homeowners Panel has received and dealt with a sufficient number of cases upon which to draw wider conclusions, it is considered to be too early to pass judgement on the quality of these written statements, or to comment on how user friendly they might be. If they have been written in such a way as to merely pass a minimum test of compliance with the code and nothing more, then their actual usefulness to owners may be limited.

## Improving service quality

- 4.29 Notwithstanding the statutory arrangements under the Property Factors Code of Conduct, there is a need to re-build confidence in property management providers through greater open-ness and transparency and regular feedback from consumers. Recurrent themes and issues which emerged particularly at the Community consultation event of September 2012 related to the need for greater transparency and easy-to-follow rules around the most ubiquitous services provided to homeowners.

### *Regular maintenance contracts*

- 4.29.1 Owners need to be assured that the contractors appointed to carry out regular / routine repair works and maintenance and so on have been secured through a competitive process. Of the 32 occasions where issues under the heading "Value for money" were raised at the community consultation event, one fifth of issues raised concerned workmanship quality, standards, time taken to effect repairs or effective control of sub-contractors. A further 18% of comments under this heading concerned provision of evidence of competitive tendering. While the Property Factors Code of Conduct (PFCC) makes no reference to providing clients with the detail associated with the re-hiring of contractors, this still remains a recurrent source of irritation for owners who have concerns that the same contractors are being re-hired time and time again, without any obvious justification. The Commission therefore recommends that factors offer evidence to their customers of a cost and quality assessment in the procurement of regular maintenance contracts.

- 4.29.2 Where there are obvious benefits of re-hiring a contractor, especially if they have particular knowledge or skills associated with maintaining a particular type of property, but if their costs or schedule of rates are higher than a competitor, owners need to be advised of this. Private factors could learn from the experience of RSLs which are obliged to show transparency in procurement. This usually takes the form of a cost-quality review following a tendering procedure. As part of their governance process, this analysis has to be presented to the factoring subsidiary board or the housing association's governing body prior to contractor appointment. Account of past performance may also be taken into consideration.
- 4.29.3 Private factors may wish to set up a focus group of owners from a cross-section of blocks of properties or, in the case of a large modern development, the whole complex, to discuss how a similar arrangement could be applied and how this might be communicated to all owners within the relevant property manager's portfolio. It is recognised that this could be an expensive option for some factors.

### *Procurement of extraordinary repair works*

- 4.29.4 Related to the above is the occasional need for one-off or extraordinary repairs, usually over £1000 including VAT (though this can vary from factor to factor), where quotations are procured on behalf of or at the behest of owners prior to agreement to proceed. It may be that the regular contractor is able to carry out the work, but it is good practice to offer choice especially where the repair requires specialisms which the regular contractor may not possess. Sometimes this can be done through sub-contracting, but the same principles of transparency as outlined above could be applied.
- 4.29.5 The downside to this is that even where factors have operated good practice in regard to procurement, and demonstrated value for money, owners in the block are not legally bound to accept the final outcome, and may opt to appoint an alternative contractor.

### *Service quality assurance in actual repairs and improvements carried out*

- 4.29.6 A recurring issue which emerged through testimony to the Commission and at the Community Event concerned the actual quality of completed (or uncompleted) jobs, with owners feeling that they had not received good value for money in terms of the lasting impact of the repair or improvement, or worse, felt that they had been charged for work that had not been done, or that this work had in fact been carried out in a different property but charged to their common property account. This was reflected in the specific frequency of complaints about quality standards above
- 4.29.7 This raises two related concerns. Firstly a belief on the part of owners that some factors are not carrying out quality control checks. Secondly, that there may not be a process for confirming with a technical inspector that the correct work has been applied to the correct account.
- 4.29.8 Against this, is the argument that quality of some repairs, especially roof-works cannot be guaranteed because of the technical nature of a possible recurring problem or access issues. There are also health and safety considerations for inspectors and contractors. Owners need to appreciate these difficulties and be prepared to pay a premium for added quality assurance and the safety of inspectors and tradesmen.

## *Customer satisfaction survey techniques*

- 4.29.9 At the Community Consultation event, 13% of participants raising an issue about confidence in and reputation of factors highlighted the need for regular responsive communication by factors. Increasingly across a number of service industries, immediate (sometimes instant) customer feedback has become the norm. The use of techniques such as freepost satisfaction cards left by the contractor, online surveys, a freephone arrangement for customers to report repairs and service quality, texting or phoning customers prior to repair work commencing have become commonplace. Some factoring operations in the city already do this.
- 4.29.10 These techniques have become a useful means of encouraging confidence in both contractor and factor performance, but fundamentally the focus should be on internal quality control. Owners need to be convinced that there has been at least a sample survey check on workmanship and that the technical inspector is independent of the contractor, not just working on behalf of the factor, but by extension on behalf of the factored owner.
- 4.29.11 The Commission also recommends the introduction of regular and planned industry-wide and localised satisfaction and performance surveys. The details of this require to be considered carefully. For example how could this be done, at what level of sample, who should do it and how it can be paid for? These details would require to be agreed through discussion within the industry and with consumers. The Commission noted that the Scottish Social Housing Charter (**Scottish Housing Regulator, 2013**) <http://www.scottishhousingregulator.gov.uk/sites/default/files/publications/All%20Satisfaction%20Indicators%20010213.pdf> has a specific performance indicator for RSLs providing factoring to evidence the percentage of owners satisfied with their factoring service. There is an argument for using this as a minimum for all property factors.
- 4.29.12 The Commission discussed the relative benefits of an independent city wide survey of all factors against the voluntary route where factors themselves organise surveys in much the same way that RSLs do when gauging satisfaction of their services to tenants. The down-side of a city-wide sample survey is that it is likely to provide average results covering a broad number of factoring operations which may be meaningless in the short term and which may mask poor service by “the usual suspects”. On this basis, the Commission has concluded that it may be more productive for factoring organisations to carry out their own independent customer satisfaction surveys and report their findings directly to owners within their own portfolios.
- 4.29.13 The Commission noted that the Office of Fair Trading (OFT) (**Office of Fair Trading, 2009**) [http://www.offt.gov.uk/shared\\_offt/reports/comp\\_policy/oft1046.pdf](http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft1046.pdf) survey of 2009 sets out a baseline methodology which could be adapted by property factors subject to agreement with the OFT.

## *Front-line service, communication and accreditation*

- 4.29.14 Recognition of the importance of personal service in terms of frontline face-to-face, telephone and e-mail contact between factoring administration and the customer is a key area, and while this may appear obvious it is perhaps the single most important improvement which could be made to restore confidence.

- 4.29.15 Strongly linked to this are the further development of accreditation schemes and the development of qualifications in factoring administration, which may include modules on customer care, use of smart and shared technology run by organisations such as Landlord Accreditation Scotland (LAS). Private landlords through the Scottish Association of Landlords, housing associations and other property professionals, including letting agents already participate in accreditation schemes. The main benefit of accreditation from the consumer’s point of view is that it is usually carried out by an independent body. Accreditation of property factors may be an additional means of building confidence in the system.
- 4.29.16 The Commission concludes that investment in these approaches will eventually bear fruit. However, it is recognised that there are costs associated with these initiatives, which one way or another will be borne by owners. There is also likely to be resistance to change and a degree of apathy on the part of owners. However, if the purpose of this is more effectively communicated to owners, outlining the longer-term benefits, and this is connected to regular customer satisfaction surveys which show improvement, then the risk may be justified.

### *Fees and charges*

- 4.29.17 A long standing complaint of owners is the method used to explain and justify fees and charges which appear on bills – in particular the justification for the float and the apparently random increases in the administration or management fee. While individual factors may be (in their view) clearly setting out the rationale for the float and amount of fee to be charged in the Written Statement, these still remain a source of confusion and individual owners are often puzzled by the variation in the management fee when compared to the charge levied by other factors operating in the same community.

- 4.29.18 “Common Repair, Common Sense” (2004) describes the purpose of the floating charge as being:

*“to ensure that the manager has sufficient funds in hand to  
pay for regular costs”*

**Extract from Section 5 of “Common Repair, Common Sense”, Communities Scotland, 2004**

However, this statement does not go on to qualify what is meant by “regular costs”. At the community consultation event, under the heading of charges and debt recovery, 35% of comments related to the need for transparency in relation to charges levied for services, fees, accurate billing, the provision of tariffs of charges and justification for “front loading” of charges.

- 4.29.19 The Commission is of the view that there could be clearer explanation of the legal basis for requesting a floating charge and other service charges and factoring fees. In response to the Draft Consultative Report, Property Factors made the point that there is a lack of understanding by politicians of the practical necessity of the floating charge. On the other hand, owners will rarely be aware of the historic reasons for charges. For example, in respect to the legal requirement for owners to pay a float when they take up residence, owners may wish to know what this is for and how the sum requested has been arrived at. The Commission’s understanding is that this may be set out in the original title conditions and if not, by default, addressed within the terms of the Tenement Management Scheme which forms Schedule 1 to the Tenements (Scotland Act, 2004) (**Scottish Parliament, 2004**)  
[http://www.legislation.gov.uk/asp/2004/11/pdfs/asp\\_20040011\\_en.pdf](http://www.legislation.gov.uk/asp/2004/11/pdfs/asp_20040011_en.pdf) (1)

- 4.29.20 In regard to the level of the floating charge levied, the reasons for any supplementary increase should be more clearly explained and whether or not the charge applies only to that property or is being levied across the entire portfolio. Assurance needs to be given that it is not simply being levied to support administration which is already being charged through the management fee, nor used to cross-subsidise other properties where fees have not been successfully collected.
- 4.29.21 In other words, the float may be more accurately described as an emergency fund which will allow specific repairs to be completed in advance of regular billing. This suggests that there should be evidence of refunding of the float to the owners' separate float account, once the formal bill for the work has been itemised in the next quarterly bill and the relevant share of that work paid separately. The main reassurance required here is the provision of a clear explanation of what the float has actually been used for and advice of the amount remaining in the individual's float account on a regular basis.
- 4.29.22 The Commission therefore calls for clarity in law as to the purpose of the floating charge and clearer guidance on its application for both property factors and owners.

### *Billing and actions to recover sums owed*

- 4.29.23 At the community consultation event, nearly 30% of issues concerning billing were about the need for transparency and accuracy of bills. A concern of some owners who pay their bills on time is the potential for mis-billing and the practice of taking owners to court for recovery of sums which may turn out to be wrongly allocated. There is also a problem of recovering sums of money owed from owners who have moved on without providing the factor or their neighbours with a forwarding address.
- 4.29.24 It is obviously in the factor's interest to recover costs and this in itself generates more administrative costs in preparing and sending letters and raising court actions. These costs will generally be passed on to owners. If the bill which is sent out is incorrect or if the factor chooses not to track down missing owners who have not paid their share, then the remaining owners will feel that they are being unfairly charged.
- 4.29.25 The solution to this might be for factors (where they have not already done so) take steps to avoid mis-billing and thereby avoid taking individuals to court prior to checking that the apportionment of costs is correct. Some assurance needs to be given that if a mistake is made in billing and/or that court action has been wrongly taken that the company itself bears the cost as a business.
- 4.29.26 It is also suggested that factors review their processes in terms of the need for and timing of court actions, based on past payment histories.
- 4.29.27 The Commission supports the idea of tracking down bad debtors. Factors need to use every legal means at their disposal to trace individuals who have moved but not settled their factoring bills within a reasonable period of time.

### *Common Buildings Insurance*

- 4.29.28 A particular source of contention is the basis on which common buildings insurance premiums are arrived at and the benefits to owners. A concern brought to the attention of the Commission was that common insurance premiums have been rising and/or that the same insurance company has been commissioned year after year. Again this was a source of contention at the community consultation event with a quarter of comments made on the "value for money" heading concerning transparency over common insurance premiums.

- 4.29.29 While property factors may give assurance that the best deal has been brokered, this needs to be accompanied by evidence, much in same way as an individual might compare motor insurance or individual buildings or content insurance quotes. Assurance also needs to be given that insurance premiums are not being levied to cover lost income from individuals who have failed to pay shares of repair costs or other fees and charges. Where claims have been made, owners need to know what these were and why they resulted in an increase to the premium levied the following year.
- 4.29.30 There is a legal requirement that common buildings insurance must be purchased by every homeowner to cover loss or damage to common parts. This is in addition to buildings insurance for the individual property. However the Commission heard testimony that there are exceptions which can be granted. The Tenements (Scotland) Act 2004 Section 18 (5) gives owners the right to enquire as to whether or not every other owner has adequate insurance and has paid the insurance premium. Many factors do make reference to this in their handbooks and websites, but it would be useful if this information on the legal position was made universal in all Written Statements. However, in practice it can be difficult for individuals to obtain this information and to have the other owner(s) take out common insurance without the need to go to court to force the issue. The matter of enforcement needs to be addressed separately.

### *Dealing with other owners who cannot or will not pay bills*

- 4.29.31 Currently, factors are not obliged to inform individual owners of the names of individuals in the block who have failed to pay their bills. There are often good reasons for this, not least of which is data protection legislation. There is a need to protect a vulnerable individual from possible intimidation or where the person concerned simply does not have the resources with which to pay. Nevertheless, owners requests to release this data should provoke more vigorous action to pursue such debtors, and assurances need to be given that the factor is actively pursuing non-payers on their behalf. Nevertheless the issue of non-payment by other owners remains a particular issue. This was a major concern for many community consultation event participants with nearly half of the comments about issues associated with absentee owners highlighting the problem of contacting or tracing these individuals.
- 4.29.32 This is clearly a highly emotive and difficult area for both factors and those owners who comply with their duties, and not one for which the Commission has an answer. In regard to any threats or intimidation, it is suggested that the Homeowners Housing Panel might consider how such cases may be best dealt with. The Commission is minded to suggest that de-registration and significant and punitive fines for this type of behaviour should be applied, if a breach of the Code has been confirmed by the Homeowner Panel.
- 4.29.33 With regard to the issue of “can’t pays”, or where an individual may be at risk, the Commission took the view that such a decision to disclose should be at the discretion of the factor. Otherwise, the pursuit of debtors is a matter for the factor, although the Commission would support any means of speeding up the current process of securing owed sums through the Small Claims or Summary Court system for those owners who are clearly taking advantage of the slow debt recovery process. In these circumstances, the creation of fast-track housing courts may be a solution.

## *Other related service quality matters*

4.29.34 There is some overlap between issues across several of the themes which were explored in the course of the Commission's work. Reference is here made to issues developed elsewhere in this report which are connected to factoring practice, These include:

- Encouraging and developing planned common property surveys
- The ability or otherwise of owners to switch factor
- Clarifying the contribution which managing agents can make, especially where issues of communication on share of repairs and other costs need to be agreed on behalf of absentee owner-occupiers or owner-landlords.
- The issue of those who will not pay with reference to dispute resolution, including payment of common insurance premiums

4.29.35 A key question posed in the formal consultation on this section was the extent to which the Property Factors Code of Conduct already adequately covered any or all of the issues explored above and the practicability of applying these suggested solutions. Related to this is the question of whether or not current sanctions for breaches of the Property Factors (Scotland) Act, 2011 are appropriate and can be enforced.

### *Suggestions emerging from the consultation included:*

- That individual Property Factors (PFs) should invest in improved information on their own websites, ensure that development funds are property specific and introduce welcome packs for new customers.
- That factors should carry out customer service surveys and improve training for staff in dealing with customers.
- That sufficient time was needed to bed in the relevant provisions in the PF (Scotland) Act and allow for review of outcomes from Homeowner Housing Panel adjudications. On the other hand, one PF suggested that the trade bodies needed to set higher standards for the industry. RSL – based factors wanted the Scottish Government to police the quality of written statements to ensure that they are fit for purpose and property specific.
- That it was too early or impractical to review sanctions for breaches of the Code, but that emerging issues raised through the work of the Commission should be re-considered by the Scottish Government when the PF Code is scheduled for review in 2015.

## **Promoting owner responsibility, improving information and advice in the context of the impact of social and cultural change**

4.30 The Commission found that there is a significant lack of understanding on the part of many owners as to the importance of good property maintenance and management, and often a basic misunderstanding of the role of the property factor. Some exploration of the reasons why this may be the case can assist in finding a solution.

4.30.1 A misconception that factors and landlords are one and the same may still persist. This is in spite of the purchase and re-selling of individual flats which were originally rented out in the past. However, the resurgence of private renting and some of the issues associated with resident behaviour may also be contributing to a belief that the factor has some responsibility for addressing the conduct of tenants of private rented housing, when in fact this is clearly the responsibility of landlord-owners and their letting agents.

- 4.30.2 As alluded to in the background section, the private housing landscape has changed dramatically in recent years. More and more would-be first-time buyers have opted to rent privately, usually through a letting agent, whose primary objective is to act in the financial interests of the client and maximise income. The appetite for homeownership has been dampened and this is reflected in recent trends in terms of the change in tenure breakdown over the last ten years. In the City of Glasgow, comparative estimates provided by GCC Development and Regeneration Services show an increase in the proportion of properties in private renting from 27,000 in 2004 (9.3%) to 55,500 (18.7%) at April 2012. This may actually be an underestimate, as it is not known how many properties are being rented out by individual owner-landlords who have failed to register. Figures for outright owner occupation for the same period suggest a reduction from 141,000 (48.7%) to 132,000 (44.4%). Private renting as an alternative or additional source of income for many owners appears to have become more attractive.
- 4.30.3 New house purchase is often seen as a better option for first time buyers (assuming they can obtain a mortgage), partly because of incentives associated with new development promotion. In these circumstances, the purchaser does not always have to deal first-hand with professionals in the house purchase process chain.
- 4.30.4 House builders, often in partnership with estate agencies have been developing “one stop” packages where a single contact point acts as a gateway to conveyancing and other aspects of the purchasing process. The client pays a fee and the “full package” is arranged for the purchaser. This trend is likely to continue and will most likely also be applied in tenement and multi-unit development scenarios, even where there is also a selling element to the transaction.
- 4.30.5 What this means is that the client is not being encouraged to engage properly with the title conditions, even although relevant information is likely to have been prepared and notified to the purchaser by the conveyancing solicitor at the point where the missives need to be signed.
- 4.30.6 The Commission heard views of owners who described a breakdown in the culture of shared responsibility. There appears to have been a loss of connectivity with the previous generation of tenement flat owners. The last tenement flat buying generation had real experience of the written and unwritten responsibilities of tenement residents, but it appears that many new flat dwellers come from a variety of backgrounds and these individuals may have little or no experience of tenement traditions in Glasgow. Many of these new residents are renters, not owners with a personal stake in the building as a whole. Owners whose permanent home is a flat in Glasgow but who work abroad or elsewhere in the country may be less likely to participate directly in communal repair and maintenance issues for their tenement.
- 4.30.7 All of this comes at a time when digital technology has changed communication. It is increasingly difficult for any one individual or any one organisation (especially one with unique importance to the city, such as factoring) to make itself heard when there are so many businesses and other organisations competing for the attention of their target audience.
- 4.30.8 The Commission found that this social and cultural change was both a threat and an opportunity. A threat because it is difficult to see how a trend started some years ago can be reversed without the need to resort to more regulation, which might in any case be impossible to enact, but also an opportunity to use the new technology to get the message out about the responsibilities which go with home ownership.



- 4.30.9 The Commission concluded that the issue can only be addressed through a major information and advice campaign and the provision of supporting infrastructure to maintain momentum and encourage innovation. This will include engagement with the new digital technology in order to raise awareness. But how to make factoring and property maintenance interesting and worth doing for this new generation? This is a significant challenge. Such a campaign will require resources and the backing of a number of key players and regulators in the industry.
- 4.30.10 Respondents to the Draft Consultative Report were strongly of the opinion that the Scottish Government could do much more to explain the relationship between particular clauses of property related acts, particularly on the rights and duties of owners. Indeed a number of respondents made the case for change at an operational level to ensure that the powers of local authorities were made clear through one single consolidated Act.
- 4.30.11 The lynchpin of this campaign would be the creation of a new website specifically dedicated to property factoring, maintenance and repair. Given the comments above about cultural change, it may be that the “hook” has to be the actual process of house purchase and sale. However, the need for a prominent and easily accessible, popular website is self evident in terms of the importance of digital media as an influence as well as the major source of knowledge in the early 21st century. However, it is also recognised that those excluded from or choosing not to use digital media require access to guidance and a level of support which fits their circumstances.
- 4.30.12 The Commission also recognised that having a website alone is no guarantee that the target audience can be easily reached. There is clearly also a need to make use of social media and instant messaging to try to engage with both owners and tenants.
- 4.30.13 The Commission carefully considered the concept of the creation of a new dedicated website, and the key questions of promotion and scope. Should such a website be exclusive to the city or should it be a national site with the option of a specific Glasgow page with links to national information? Could Glasgow be used as a pilot for a national website, given that other local authority areas and other key organisations may also be willing to buy into the proposal?
- 4.30.14 The Commission took the view that the creation of a dedicated website was one of its major priorities in any action plan, but that there would need to be consultation across the industry about how such a concept could be realised. Lastly, there was the issue of how to fund the start up costs and who could or should host, maintain and develop the site?
- 4.30.15 Such a proposal can only be achieved if the key agents involved in property purchase and maintenance agree to work more closely together to ensure that this becomes a reality. It also implies a commitment on behalf of stakeholders to co-operate, and the possibility of providing funding should this prove necessary.
- 4.30.16 In response to the concept of a new website, more than three quarters of respondents to the Draft Consultative Report supported the idea in principle, with a minority opposed or suggesting proceeding with caution. The issue of who should set up and run the website was also raised.
- 4.30.17 With regard to the issue of providing information to those who are unable to access the information online, the Commission considered the possibility of the reintroduction of a city centre shop-front housing advice centre which could provide a face-to-face service and also provide printed information. The concept of providing printed information remains a key proposal, however, the costs associated with setting up a ‘one stop shop’ are likely to be prohibitive, at least in the short term.

## Common property surveys, maintenance plans and the benefits of energy efficiency

- 4.31 There is no obligation on the part of owners to carry out regular property condition surveys, and as a result, no requirement to effect comprehensive repair and maintenance plans. The current legislation which triggers intervention is based on a system of reactive statutory notices, where a particular problem in a particular property has been brought to the attention of the City Council. Resulting interventions may be statutory but participation in a comprehensive repair and maintenance scheme is more often carried out through voluntary schemes which often rely on co-operation between owners and application to the City Council for contribution towards costs. Such contributions may also be restricted, and owners and factors cannot become over reliant on the application of the “missing share” (2).

### *Common property surveys*

- 4.31.1 There is already some established good practice in respect of commissioning, implementing and applying comprehensive property surveys by Registered Social Landlords who, because of the regulated environment in which they operate, are required to establish stock condition surveys on a regular cycle and bring forward maintenance plans which are scrutinised and overseen by their governing bodies. Some housing association subsidiaries already include regular common property condition surveys within their fee structure and actually employ their own surveyors.
- 4.31.2 In the course of review, the Commission found excellent best practice in terms of existing advice through independent sources and consumer agencies. “The Tenement Handbook” (**Assist Architects, 1992**) contains much valuable advice and technical information specifically relating to pre-1919 tenements in Glasgow. More recently “Common Repair, Common Sense”, Second Edition, 2009 (**Consumer Focus Scotland, 2009**) <http://www.scotland.gov.uk/Resource/0041/00417200.pdf> originally produced for Communities Scotland in 2004 provides a guide to responsibilities of homeowners in respect of common repair following the passing of the Tenements (Scotland) Act, 2004. However, it should be noted that both documents precede the Property Factors (Scotland) Act, 2011 and the Housing (Scotland) Acts 2006 and 2010.
- 4.31.3 Copyright of “Common Repair, Common Sense” has been passed to the Scottish Government. Agreement to make this widely available and following an updating in respect of subsequent legislation and the changing circumstances since the onset of the credit crunch in 2008 would need to be brokered with the copyright holder. A series of briefings on factoring and related matters were produced in 2011 through the Scottish Parliament Information Centre (SPICe) and include “Frequently Asked Questions on factoring and maintenance of common property” (**Scottish Parliament Information Centre, 2011**) <http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB11-56.pdf> and “Common property and open spaces: Management, Repair and Maintenance” (**Scottish Parliament Information Centre, 2008**) <http://www.scottish.parliament.uk/Research%20briefings%20and%20fact%20sheets/SB08-68.pdf>
- 4.31.4 A recently-published draft guide entitled “A Scottish Monument Watch: The case for a proactive maintenance scheme for traditional buildings in Scotland” (**Stirling City Heritage Trust / Historic Scotland, 2012**) <http://conservation.historic-scotland.gov.uk/scotmonumentwatchfull.pdf> contains very specific technical guidance on the maintenance and repair of older properties and describes the process of carrying out property condition surveys for older properties.

## *Repair and maintenance programmes*

- 4.31.5 An important justification for the wider dissemination of this type of practical advice is that disrepair often spreads from one block to an adjacent block. This can lead to additional individual repair notices being issued, which in turn can lead to one-off replacement, rather than planned repair which will be more cost-effective and less labour intensive in the long term. The cycle is rarely broken, and individuals react to individual situations as they arise, often with temporary or insufficient repair until the disrepair becomes serious.
- 4.31.6 It follows from this that there should be national level review of the requirement for common property condition surveys in the private sector and in tenements and other multiple-unit blocks.
- 4.31.7 In order to protect these assets, the Commission believes that there should be a minimum standard of communal property maintenance. However it is very important that owners are convinced of the value of such a change, and recognise that they must bear the cost.
- 4.31.8 It also follows that there would need to be a mechanism to encourage implementation of maintenance plans arising from survey findings because, in the long run, preventative action will result in significant savings for current and future owners, and will avoid the situations where factors conclude that they have no choice but to withdraw their services when repair problems or disputes over shares become intractable. In this regard, Glasgow City Council already has a standard Maintenance Plan checklist which provides a local template **Glasgow City Council (2011a)** <http://www.glasgow.gov.uk/index.aspx?articleid=6942>
- 4.31.9 As a result of consultation responses and further discussion at the Commission, the notion of compulsory surveys was considered to be impractical at the moment, principally because of the legal constraints around this and the prohibitive costs of works which might arise from the consequences of these surveys. However the Commissioners were of one mind that property maintenance reports and property maintenance plans should be more actively promoted and encouraged.
- 4.31.10 The Commission noted some innovative proposals arising from the consultation exercise in respect of raising standards and awareness including the concept of a “Glasgow Factoring Standard” and the encouragement of “tenement champions”.

## *Energy efficiency and dilapidation in older properties*

- 4.31.11 The Scottish Government has been actively promoting a range of energy efficiency measures through a variety of schemes (**Scottish Government, 2010**) <http://www.scotland.gov.uk/Resource/Doc/326979/0105437.pdf>  
Uptake of these schemes varies across the owner occupied and private rented sectors. However, it is apparent that registered social landlords and local authorities have been in a far stronger position to bid for funds and benefit from the economies of scale through working directly with energy providers. The fact that they are obliged to meet specific energy efficiency as part of the overall Scottish Housing Quality Standard (SHQS) by 2015 acts as a major incentive (**Scottish Government, 2013a**) <http://www.scotland.gov.uk/Resource/0041/00418714.doc>

4.31.12 An important point made as part of the consultation process in regard to pre-1919 properties was that:

*“Government initiatives to upgrade the energy efficiency of domestic properties have had a minimal impact on pre-1919 tenement stock which is both difficult and expensive to treat. Many Scottish Government and UK Government energy efficiency schemes are difficult to implement in pre-1919 tenement stock. Ineffective or absent factoring arrangements often make it completely impossible to implement energy efficiency schemes in this stock”.*

**Extract from consultation response to Draft Consultative Report by South Seeds, August 2013**

4.31.13 The standards described in Appendix C to the guidance on meeting SHQS

<http://www.scotland.gov.uk/Resource/0041/00418714.doc>

are clearly set high relative to expectations on the private sector. However, this does not prevent individual owners or private landlords from taking advantage of boiler replacement and other white goods appliance replacement schemes on an individual basis. However energy efficiency measures which must be done by common consent in flatted properties with a shared roof and walls, such as installation of solar panels and cavity fill insulation cannot (or should not) proceed without reference to the condition of the common parts of the building. This being the case, the Scottish Government will have a difficult task in bringing private sector stock up to the same standards their social rented counterparts.

**(Scottish Government, 2012b)**

<http://www.scotland.gov.uk/Resource/0039/00394563.pdf>

4.31.14 SHQS cannot be met where the social rented properties in a close or common property unit are in a minority, and where owners refuse to participate in common repair and improvement schemes. It means that more and more social rented tenants (and their landlords) are dependent on neighbouring owners to participate in common repair schemes and without the benefit of local authority repair grant. There may come a point where the process grinds to a halt simply because owners are not obliged to meet the SHQS, and this may lead to a significant slowdown in meeting home CO<sup>2</sup> emission targets.

4.31.15 In conclusion, the Commission urges the Scottish Government to open up debate on the threat posed by the breakdown of communication between owners and between owners and factors over the issue of shared responsibility in tenements and flatted properties, and the need to promote common property surveys, ideally organised by the property factor or owners association which has opted to self-factor. It is clear that there is a disconnect between the standards of common property repair and energy efficiency expected of social rented landlords compared to owners and private landlords. The Commission believes that the question of balancing individual rights against the long-term common good associated with effective preventative repair and increased thermal efficiency needs to be addressed sooner rather than later.

## The Legal Framework

- 4.32 Discussion on common responsibility centred upon condition surveys and maintenance implementation referred to in the preceding section, prompted more discussion at the Commission on the overall legal framework covering the responsibility for common property maintenance and repair and sanctions in the event of inaction.
- 4.32.1 Any new or existing owner within a tenement or a development encountering a factoring related issue will need to work out which system of management applies. It is important to work this out as different systems will have different rules. For instance some systems will require a majority of flat owners to vote for a particular work to be carried out while some older title deeds may require a larger majority or even unanimity.
- 4.32.2 The rules governing the dismissal and appointment of factors also vary widely. In certain cases it may be very difficult to remove a factor. A lay person may have some difficulty in working out what system applies and understanding the rules applicable to each system.
- 4.32.3 Even a legally-trained person may need some time to understand what rules apply to a particular situation. This may represent a barrier to a good system of common maintenance and repair.
- 4.32.4 **Appendix 5** provides notes on this framework. These notes were prepared by the City Council's Legal Advisor to the Commission to assist the Commission and to provide the basis for wider discussion on the complexity of the law as it is currently stands. The notes describe which parts of the two main acts passed in 2003 (The Title Conditions, Scotland Act) and 2004 (The Tenement (Scotland) Act) set out the process for decision making in the event of a need for clarity on burdens, cost sharing or disputes over responsibility for shares.

### *“Community Burdens”*

- 4.32.5 Burdens and other common responsibilities written in to title deeds vary from property to property. This creates a degree of complexity for individual owners and factors should they decide to challenge a decision taken by a factor, to dismiss their factor or where they wish to alter any existing arrangement in respect of a burden on an individual owner. While the legal arrangements appear to be adequate in terms of the technical and procedural process for eliciting change, legal advice on making such changes will usually be recommended. This is because individual changes must follow a route through different clauses of one or more relevant property-related act. **(3)**

### *Role and powers of property factors*

- 4.32.6 The Commission found that the legal framework associated with factoring is complex, and difficult for the lay person to comprehend. “Common Repair, Common Sense”, whilst useful from the point of view of those wishing to self-factor does not focus specifically on the historical and contemporary role of established property factors. An important task for the Commission was to obtain a clear understanding of the operation of large-scale factoring in terms of its legal basis, that is, the factor acting purely as an agent of individual owners to provide services as set out as a legal requirement in the original title deeds or by default where the titles are silent, through the Tenement Management Scheme.

4.32.7 While there is guidance on individual private housing sector related acts (**One Scotland, 2005**), <http://www.scotland.gov.uk/Resource/Doc/76169/0019425.pdf>, there is no single plain English comprehensive guide which explains the relationship between the different acts relating to property maintenance and property management, including original clauses in parts IV to VIII of the 1987 Housing Scotland Act (**United Kingdom Parliament, 1987**) [http://www.legislation.gov.uk/ukpga/1987/26/pdfs/ukpga\\_19870026\\_en.pdf](http://www.legislation.gov.uk/ukpga/1987/26/pdfs/ukpga_19870026_en.pdf), the 2006 Housing (Scotland) Act (**Scottish Government, 2006**) [http://www.legislation.gov.uk/asp/2006/1/pdfs/asp\\_20060001\\_en.pdf](http://www.legislation.gov.uk/asp/2006/1/pdfs/asp_20060001_en.pdf) and the 2010 Housing (Scotland) Act (**Scottish Parliament, 2010**) [http://www.legislation.gov.uk/asp/2010/17/pdfs/asp\\_20100017\\_en.pdf](http://www.legislation.gov.uk/asp/2010/17/pdfs/asp_20100017_en.pdf) with reference to statutory powers of local authorities relating to disrepair in private properties. Clauses in the Title Conditions and Tenement Acts (**One Scotland, 2005**) <http://www.scotland.gov.uk/Resource/Doc/76169/0019425.pdf>

are open to interpretation, and often the two acts need to be read in parallel to assess a given situation in respect to owner responsibilities.

4.32.8 The Commission calls for the 2004 Tenement Act in particular be reviewed by the Scottish Government, particularly in respect of anomalies which have been identified through the work of the Commission in respect of points of detail over responsibility for particular parts of buildings i.e. whether or not they are defined as being common or the responsibility of individual flat owners. The position on this in Glasgow can be different from that in Edinburgh, for example.

### *Role and powers of local authorities*

4.32.9 Individual sections of the different Scottish housing and property Acts noted above have, over the years, introduced new requirements each of which is designed to give local authorities powers to intervene to solve particular problems found in tenements. However, these tend to be used in isolation, under the strict terms of the relevant clause in the relevant act. Some particular clauses simply have not been enacted by local authorities due to the complex legal arrangements and set up costs which are required. Housing Renewal Areas (HRAs) for example cannot be enacted due to annuality of the budget setting process, with costs of a full rehabilitation of a tenement block being upwards of £700,000, excluding acquisition costs.

### *Relationship between property-related statutes*

4.32.10 The Commission would therefore like to see a consolidating act which brings these private housing sector relevant acts together in the longer term, and which simplifies the process of applying the various clauses of each act simultaneously. However, the Commission recognises the practicalities of doing this, and so would wish to see the Scottish Government urgently bring together plain English guidance on all legislation passed since 1987 pertaining to common property repair, maintenance and factoring which reconciles any contradictions.

4.32.11 In addition, subordinate measures, such as the powers of licensing boards or statutory guidance issued to Councils should also be reviewed to develop a more coherent and constructive approach to property management **(4)**

- 4.32.12 As part of this overall review process, the Commission saw the need for much closer practical connections to be made between the current legal processes associated with house purchase, factoring and property maintenance to reflect:
- the increasing fragmentation of ownership and the chain of decision making where letting agents are operating on behalf of absentee landlords
  - the lack of understanding of title conditions by new and existing homeowners and the roles of property professionals involved in the house selling and purchase chains in respect of the establishment of an agreed industry-wide homeowner information template.

### *The house selling and purchase process*

- 4.32.13 The Commission identified the important role which can be played by all of the professionals involved in the process at house purchase stage. In particular, the Commission would wish to see prospective owners being provided with a fuller range of information on common element responsibilities. This might include key information being provided by estate agents and solicitors on
- who the factor is
  - the role of the factor, and
  - responsibilities for common maintenance set out in the title deeds, factoring agreement or by default the application of appropriate clauses of the Tenement (Scotland) Act, 2004 and the Tenement Management Scheme where deeds are silent on specific responsibilities.
- 4.32.14 In this connection, the Commission has considered a draft proposal which sets out in more detail why and how property professionals should set out the roles and responsibilities of factors to prospective homeowners in a way which will inform, educate and influence. The key to this is for estate agents and conveyancing solicitors to take their clients systematically through a checklist on the role of the factor and the specific title conditions and other requirements which relate to the particular property. This should also include provision of a copy of the actual title deeds pertaining to the property. This would need to be a copy or facsimile, as the original deeds will most likely be held by the Registers of Scotland, mortgage provider or the solicitor, unless the property has been purchased outright.
- 4.32.15 The Commission welcomes a specific recommendation in the recent report prepared by the Justice Committee of the Scottish Parliament, (**Scottish Parliament, 2013**) in respect of its review of the operation of the Title Conditions (Scotland) Act, 2003:

“10. The Committee accepts the general view that the culture of common maintenance is not prevalent in Scotland. It notes that it is the duty of solicitors and developers to highlight to individuals during the purchasing process, their relationships to common maintenance.....the Committee calls on the Scottish Government to make provision to raise awareness of homeowner responsibilities more generally”

**Scottish Parliament Justice Committee, 2013**

[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Reports/juR-13-08-w-rev.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/juR-13-08-w-rev.pdf)

- 4.32.16 The Commission also noted that the Home Report, though comprehensive in many other ways, tends to contain only minimal information about the factoring arrangements for the whole property, and sometimes only refers to the condition of common elements in general terms. This is because the survey requirement tends to relate more strongly to the condition of the individual property which is to go on the market, rather than the shared building as a whole.

- 4.32.17 Eliciting such a change would involve the establishment of a clearer set of responsibilities for estate agents and conveyancing solicitors in respect of the information to be provided to prospective homeowners on title conditions, the Tenement Management Scheme and factoring arrangements. It may also involve a specific addition to the content of the Home Report to provide more specific information on the condition of common property elements.
- 4.32.18 On 31 May 2013, the Law Society of Scotland [http://www.lawscot.org.uk/news/press-releases/2013/june/news\\_propertygroup5613](http://www.lawscot.org.uk/news/press-releases/2013/june/news_propertygroup5613) announced that it intended to convene a working party to look into Scotland's residential conveyancing practice and procedure with a view to enhancing and developing the process to meet the needs of home buyers in the 21st century.

### *Difficulties with shared titles*

- 4.32.19 The Commission identified a particular issue in respect of problems associated with titles which are shared between tenements (often including shops) and their abutting tenements, and also properties which are not physically joined together but are covered by the same set of titles. There are situations in Glasgow where one tenement sharing title deeds with another is well maintained but the other has been allowed to deteriorate.
- 4.32.20 This creates a problem for both sets of owners in each tenement, but more especially for those who have co-operated to ensure that the tenement in which they reside or the shop unit which they operate as a business is protected. Liabilities in legal terms fall on all owners, but in practice, conscientious owners in one block may end up having to contribute a disproportionate amount of their own resources to help save the other block.
- 4.32.21 Under the current arrangements, owners in this situation may need to present a case to the Lands Tribunal to have the matter resolved, but this is a costly and time consuming process. As the Justice Committee noted in its recommendations summary following review of the operation of the Title (Conditions) Scotland Act, 2003:

*“9. The Committee is concerned that the Lands Tribunal may not be accessible to individual homeowners. In particular, it is concerned that expenses liability may deter homeowners from using the Lands Tribunal.... The Committee calls on the Scottish Government to consider these concerns in more detail”*

**Scottish Parliament Justice Committee, 2013**

[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Reports/juR-13-08-w-rev.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/juR-13-08-w-rev.pdf)

- 4.32.22 The Commission therefore recommends a review of the nature of title deeds and apportionment of common maintenance shares to reflect the situation in the 21st century. The Commission recognised that it would be difficult to make retrospective change to title conditions. The Tenement Management Scheme (TMS) which is a key plank of the Tenement (Scotland) Act 2004 creates a precedent for the existing legislation to over-ride specific tenement management conditions, but clarification on how it operates in practice (for both factors and owners) is urgently required. There is scope to extend the TMS to include clauses such as setting up building reserve funds, requiring surveys at specified intervals and replacement of division of costs for example by Rateable (Council Tax) Value.
- 4.32.23 The Commission has concluded that a new model title deed should be produced to reflect present day conditions. The objective of this would be to resolve specific anomalies especially where the original deeds were deemed as unfit for purpose and to test whether or not revised title deeds could be changed retrospectively. This would help to address a number of anomalies in the system (5).



## *The Experience of Self-factoring*

- 4.32.24 The Commission received submissions and heard testimony from individuals who had opted to self-factor. It was clear from this evidence that when individuals are able to give up personal time to organise such schemes and provided that other owners in the block are prepared to co-operate that this can be successful. However, it is also clear that the process can take some considerable time to work through and that knowledge of the steps which need to be taken to comply with the relevant legislation is required.
- 4.32.25 The main pitfall appears to be the situation which can arise when one or more of the original owners in the scheme leaves and is replaced by an owner who does not wish to participate or who will not pay their share. This can generate considerable additional work for the owners' association members, and can lead to acrimony and failure to effect repair and maintenance. In many ways self factors face the same problems of obtaining co-operation and recovering debt as professional, full time factoring operations do, but often with less expertise or resources to deal with them.
- 4.32.26 The Commission does not have a specific solution to this problem, but would suggest that those wishing to self factor should be directed to the most recent best practice advice in terms of the process. In this respect, the Commission would suggest that there is a need to update the content of "Common Repair: Common Sense" and to include links within this document to other best practice which reflect the position some ten years after the passing of the Tenements (Scotland) Act , 2004.

## *Switching factors*

- 4.32.27 A specific issue emerging from the evidence was the need for clarification on the rules concerning homeowners' rights to dismiss a factor and re-appoint an alternative provider. This appears to have become problematical in some modern multi-unit blocks where a factor has been appointed by the developer as part of the overall project and long-term maintenance plan in advance of occupancy:

"Title deeds for new developments may be based on the Tenement Management Scheme. However, developers are free to vary them to suit their own requirements..."

**Extract from Section 5 of "Common Repair, Common Sense", Communities Scotland, 2004**

- 4.32.28 Owners' ability to switch factor is usually governed by rules set out in the title deed and there are various rules in terms of the proportion of owners required to agree to a switch. This appears to be true of many modern developments. Conversely, there are a few instances where a small minority can authorise a switch. It is the Commission's understanding that generally speaking, a two-thirds majority of owners in a block is required to dismiss a factor, and by a simple majority where title deeds are silent. However, the Commission was advised of situations where, in spite of there being a substantial majority of owners (i.e. more than two-thirds) wishing to switch factor, this had proved more difficult to achieve. One reason cited has been a condition in the deed whereby the factor could not be dismissed until all of the properties in the block had been sold. If this is indeed the case, then it suggests that there is a loophole in the law which allows title conditions to be written in such a way as to make it almost impossible for owners to switch factor. The Homeowner Housing Panel has no power to rescind such a clause in the Title Conditions.
- 4.32.29 The Commission is of the opinion that a simple majority (greater than or equal to 50%) should be the minimum requirement to allow dismissal, and therefore enable switching and that there may need to be a change in the law relating to attaching conditions.

### *Situations where there is no factor*

- 4.32.30 The Commission was particularly concerned with the situation where there is no factor. This usually occurs when either the factor “walks away” as a result of breakdown of relationship with owners or where the factor is unable to obtain unpaid debts, or the owners have collectively sacked the factor, but are unable to procure a new service or come to an agreement to self factor as an owner’s association.
- 4.32.31 The Commission is concerned that there is no live database of properties which currently do not have a factor and there is no register of self-factored properties, and therefore it is difficult to estimate the numbers which may require advice and assistance.
- 4.32.32 The Commission proposes that a localised data base of factored properties should be set up and mapped in order to establish gaps factoring coverage across the city. Plugging these gaps would allow targeting of independent information which would assist owners in these situations to explore their options. These options might include: appointing a new private sector factor, contacting a housing association with a view to securing factoring services or setting up their own owners’ association in order to self-factor.

### *The impact of the private rented sector on effective factoring*

- 4.32.33 In the background section to the report, reference was made to the significant rise in recent years of the numbers of previously owner-occupied properties which had switched to being rented out or sold on to established private landlords. In 2011, the Scottish Government passed legislation to further regulate private landlords (**Scottish Parliament, 2011b**) through the Private Rented Housing (Scotland) Act, 2011  
[http://www.legislation.gov.uk/asp/2011/14/pdfs/asp\\_20110014\\_en.pdf](http://www.legislation.gov.uk/asp/2011/14/pdfs/asp_20110014_en.pdf)
- 4.32.34 The legislation did not appear to specifically address factoring or property maintenance arising from the expansion of a new class of owner emerging right across the spectrum of properties in the city, which the Commission distinguishes as “owner-landlords”. The City Council’s Private Landlord Registration Unit (PLRU) estimates that of the 33,600 registered landlords operating in the city at 31 March 2013, around 80% were landlords with only one property to let out.
- 4.32.35 The physical proximity of landlord owners to neighbours in the property has been broken and they are often (though not always) dependent upon their letting agent to organise on their behalf any co-operation with other owners and the factor in respect to the full range of common responsibilities expected on all owners. When this issue was raised in the Draft Consultative Report, there was near unanimous agreement amongst respondents that it should be mandatory for owners to leave contact details with their factor or resident owners where there is no factor.
- 4.32.36 In some parts of the city, the proportion of private rented/owner-landlord properties in any one close now outstrips the number of owner-occupiers. This may not necessarily lead to problems if letting agents are working co-operatively and tenants are adhering to the terms of their tenancy. However, where this breaks down, remaining owners can be left in a very uncertain and sometimes traumatic situation. Their instinct may be to complain about poor behaviour to the factor. However the factor is not in a strong position to intervene. Sending a letter to the owner of the flat which is the source of the problem is no guarantee that any action will be taken. Does the factor know who the letting agent is? Would communication with the letting agent ensure that the owner takes responsibility?

- 4.32.37 It is becoming more apparent there is growing demand for intervention through the police, the Council and its arms-length organisations to exercise powers to deal with the antisocial behaviour of private sector tenants. This in turn raises the question of whether or not letting agents should be held to greater account for ensuring that the respective expectations of tenants and owner-landlords are fulfilled. For factors, it is important that common repairs are reported and bills paid promptly and that any damage or additional costs incurred as a direct result of the behaviour of tenants are properly apportioned in respect of any items of the factoring bills.
- 4.32.38 The Commission understands that following the launch of the Scottish Government’s private rented housing strategy (A Place to Stay, A Place to Call Home: A strategy for the private rented sector in Scotland (**Scottish Government, 2013b**) <http://www.scotland.gov.uk/Resource/0042/00423336.pdf> the Scottish Parliament is likely to consider draft legislation which may lead to the registration and regulation of managing/letting agents. This development is welcomed by the Commission.
- 4.32.39 This new legislation may take some time to be passed into law and will, in all probability, be subject to wider consultation. As part of the process, the Commission proposes that in line with the current arrangements for HMO licensing, there be a legal requirement that all owner landlords and their letting agents be obliged to give real-time contact details to the factor and/or the other owners to deal with emergencies and any other issues or complaints concerning the tenants of private rented properties within the building.

## Dispute Resolution and Arbitration

- 4.33 The Commission was particularly concerned by the problems facing owners, factors and social rented landlords dealing with specific types of problem where “can’t pay” or “won’t pay” (or both) formed the centre of the dispute. The Commission was advised of situations concerning:
- factorless properties, usually in situations where the factor had withdrawn services due to non payment by owners
  - self factoring schemes where the original agreed arrangements had broken down
  - owners in recently built multi-unit developments where there were issues relating to additional charging of residents to compensate for failure by absentee owners or landlords to shoulder common charge costs
  - situations in owner-factor disputes, where the factor appeared not to be willing or to challenge those who refused to contribute without the resources to pursue redress through the courts
  - former Council / GHA, and other qualifying housing association properties where the offer of improvement grant has not been taken up by the owner, either because they could not raise the balance or were unwilling to co-operate with the social rented landlord.
- 4.33.1 In these different circumstances, there are problems for both individual or small groups of owners and factors in tracking down absentee owners or their agents, and being able to obtain movement by these parties in terms of obtaining their agreement to participate in cost-sharing.
- 4.33.2 The Commission is unable to provide a definitive solution to these problems, but sees the need for support to be given to both owners and their factors acting on owners’ behalf who find themselves in a difficult and sometimes intractable position.

### *Inability to pay shares of repair and maintenance costs*

- 4.33.3 The particular financial problems facing owners on low incomes should be reviewed at a national level. Amongst the suggestions considered were
- the introduction or extension of payment plans (subject to financial regulation and risk assessment) by factors and landlords
  - budgeting advice provided by factors to owners based on projected costs to the owner over a year
  - repair savings schemes which could be held by the factor or an independent third party organisation, along the lines of rent deposit scheme companies
  - equity release schemes
  - the creation of a national low cost maintenance loan fund.

An additional suggestion arising from the Draft Consultative Report responses was the idea of imposing a charge for a missing share recorded against the property title.

The Commission was not in a position to explore these options in detail, but saw value in these ideas being reviewed, as a possible outcome at a national level, or through discussion between factors themselves.

### *Sinking Funds and Multi-unit development regulation*

- 4.33.4 The Commission discussed the options for developing the concept of sinking funds (sometimes referred to as Reserve Funds). This is an extension of the idea of a float to cover urgent repair costs, but is distinctive in that it is a more structured and longer-term source of income, held in trust on behalf of the owners on an interest-bearing basis. Its specific purpose is to address significant shortfalls in funding where there is serious disrepair and is specifically tailored to the type of property being factored.
- 4.33.5 Some modern developments already operate a sinking fund system, but it is by no means ubiquitous and there is, so far as the Commission is aware, no legal duty placed on developers to setting up a sinking fund.
- 4.33.6 The Commission also explored ways in which the value of property is protected in other countries and received reports on the maintenance systems in Germany and the Republic of Ireland. The Commission saw value in obtaining more information on the actual operation of the legal basis on which these schemes operate, with a view to exploring whether or not such a scheme could be developed in Scotland.
- 4.33.7 A further suggestion is that sinking funds and multi-unit development regulation should be made compulsory for all new development. There is also the option of devising a test to determine if sinking funds could be applied retrospectively in older properties. However, there is some debate on the size of the sinking fund and whether or not a limit should be placed on this.
- 4.33.8 The Commission noted that the Chartered Institute of Housing in Scotland had produced a report in May 2010 making the case for the introduction of a compulsory Building Reserve Fund for all new flatted accommodation in Scotland (**Chartered Institute of Housing in Scotland, 2010**) <http://www.cih.org/resources/PDF/Scotland%20Policy%20Pdfs/Private%20Housing/BRFMay10.pdf>.  
The Commission believes that the principles set out in that report should be revisited by property professionals and the Scottish Government.

## *Owners who refuse to pay shares of repair and maintenance costs*

- 4.33.9 The Commission found that the problem of individuals who refuse to pay their fair share of reasonable common repairs, charges and insurance premiums appears to be endemic and worsening, and this is perhaps the biggest single threat to the stability of the factoring and property maintenance systems across all of the factored stock categories described elsewhere in this report, and which have led to our concern expressed earlier about the dire consequences of inaction on this point.
- 4.33.10 The Commission found that the current dispute resolution arrangement through the Homeowner Housing Panel (HOHP) and the Small Claims and Sheriff Courts is in itself complex for owners to navigate. It is also likely that a large number of homeowners may be unaware of their options. What is clear, however is the need for owners who are diligent and willing to invest in their properties to be supported by their factor, specifically in terms of encouraging owners who are reluctant to contribute to do so, and to ensure that those who have failed to contribute but have the means to invest are pursued quickly and efficiently through fast-track legal procedures. A specific “housing court” may be a better long-term solution in such cases.
- 4.33.11 The Commission is aware that the HOHP has only just begun to adjudicate on cases referred to it, but there is unanimous agreement that a root and branch review of the dispute resolution system is urgently required which makes the process less intimidating for complainers and where the level of scrutiny by a third independent party is proportionate to the scale of the dispute. The Commission welcomes the recent debate which has emerged following the consultation exercise on better dispute resolution (**Scottish Government, 2013c**)  
<http://www.scotland.gov.uk/Publications/2013/01/6589>
- 4.33.12 While the current Sheriff Court system – particularly the Small Claims Court - is the established home of resolution of disputes over alleged failure by a party to pay a share of disputed costs of works or charges, there remains the problem of representation. Factors clearly have experience and some practice in taking these claims to court, but those who believe that they are being unfairly co-coerced into paying bills which they dispute, may not have the skills or resources to appoint defending or opposing counsel when issued with the threat of court action. In addition, they may feel uncomfortable and intimidated in this setting. In evidence to the Commission, Glasgow City Council’s Trading Standards Team provided examples of complaints brought to them where the owner believed that such threats were unwarranted. In these circumstances, court action may be avoided if there is a mechanism to resolve such disputes before they reach court stage. The Commission noted that Trading Standards do not have the power of third-party referral to the HOHP.
- 4.33.13 It is the Commission’s understanding that the role of the Homeowner Panel is limited to an assessment of whether or not a property factor has breached the Property Factor’s Code of Conduct, or has failed to carry out its duties  
<http://hohp.scotland.gov.uk/prhp/2157.325.326.html>.  
It does not appear to have any jurisdiction over cases where there is dispute between owners living in a factored property, or where the factor and owners are unable to gain approval for repair from one or more other owners in the block.
- 4.33.14 The Commission saw benefits in the deployment of the full range of dispute resolution mechanisms relating to breakdowns between factors and owners, but also between owners within the block, between owner-occupiers and owner-landlords, and between owners and tenants. There was agreement that the preferred approach would be to try to avoid the need for formal court procedure, unless the matter was of a criminal nature.

- 4.33.15 The Commission noted that there had recently been consultation on dispute resolution on housing matters (mainly relating to social rented and private tenancies) and the suggestion that a new Scottish Housing Panel be developed as an extension to the Private Rented Housing Panel (PRHP). The Commission noted that some panel members currently serve on the Homeowners Housing Panel. Notwithstanding the minority support for the establishment of housing courts in this recent consultation, the Commission members believe that there is a place for housing courts and that some factoring-related matters may be better handled at this level.
- 4.33.16 The Commission does not have ready answers as to where disputes should be settled but supports the principle of “horses for courses” including mediation, arbitration, panels or tribunals and housing courts. The Commission would like to see a less ambiguous set of rules in relation to where disputes should be settled over the full range of property-related matters, as the HOHP is limited to arbitration only in terms of disputes between factored owners and property factors, and to the types of disputes within its jurisdiction.

## A role for Glasgow City Council

- 4.34 The City Council has an interest in and a role to play in encouraging good practice across the private housing sector, in terms of raising quality. More broadly, the Council is required to assess supply and demand across all housing tenures and to propose strategies and investment plans which will create a better fit between supply and demand, including developing means of meeting the needs of homeless people (**Glasgow City Council, 2011b**).  
<http://www.glasgow.gov.uk/CHttpHandler.ashx?id=4584&p=0>.  
 Currently, the Council has responsibility for Private Landlord Registration, but has no jurisdiction over registration or service performance of property factors.
- 4.34.1 The Commission is aware that the Scottish Government is actively considering extension of powers, for example on third-party referrals in respect of alleged breach of the Repairing Standard, a development which is welcomed by the Commission (6).
- 4.34.2 In respect of property condition, the Council has a specific interest in meeting statutory obligations with respect to common repair and maintenance of residential properties across the spectrum of property types, regardless of the age of the property. However, it should do this as efficiently as possible and with regard to providing value for money and accountability for Council Tax payers.
- 4.34.3 In respect of the health and safety of residents, the Council has a responsibility to act in the public interest. However, public understanding of the roles of different officers whether inspecting or enforcing statute and the nature and rules surround grant funding for repair and the expenditure programme is not as well developed as it could be. Respondents to the Draft Consultative Report gave a range of suggestions as to how the Council might raise its profile on factoring-related matters. These included:
- Acquiring vacant and abandoned properties to be brought back into use
  - Improving communication so as to provide a clear understanding of what is required to assist private households
  - Carrying out independent property checks, and prompting property factors to take action
  - Suggesting ways of providing improved information for owners on their responsibilities
  - Enforcing maintenance plans and supported a wider campaign to make sinking funds a matter of law
  - Highlighting and promoting the need for maintenance
  - Tracking absentee commercial landlords
  - Committing more resources to inspection and tackling substandard properties through increased private sector grant funding.

- 4.34.4 However, the Commission recognised that very little of this could be done within existing resources, but believed that the Council should make its advice service more widely known about and placed on the proposed new website.
- 4.34.5 The Commission welcomes the recent merging of Landlord Registration with HMO officer teams within the Development and Regeneration Services Department, and the special designation of the multi-function Housing Intervention and Support Team (HIST) in Govanhill. The Commission would wish to see the HIST concept extended where the necessary resources can be found.
- 4.34.6 The Commission noted that Council officers believe that for the most part, they have sufficient powers to carry out statutory duties in respect of property repair. However, there are problems in deploying these powers and finding the resources to do so. The Commission supports a move to simplify and speed up the process of issuing maintenance orders and maintenance plans.
- 4.34.7 The Commission supports the idea that there should be enhancement of certain powers targeted at specific areas where the combination of disrepair and antisocial behaviour is hastening blight.
- 4.34.8 This may also involve the acquisition of properties which have lain vacant for six months or more. In respect of vacant properties, the Commission also noted that the only current option for local authorities is to use compulsory purchase powers which can be a protracted process. GCC is pushing for enforced-sale powers which would be targeted at longer term empty properties. A condition of any sale would be for the property to be brought back into residential use after a specified period of time.
- 4.34.9 The Commission proposes that at the start of financial year, the annual report on the priorities for expenditure of Private Sector Housing Grant and other grants to the private sector be made more widely available and placed on the new website, following formal Council approval.

### **Possible inputs by the Scottish Government**

- 4.35 Although the remit and work of the Factoring Commission was originally focussed on local situations and solutions particular to Glasgow, it became apparent that there were a number of issues emerging which appeared to be difficult to resolve simply through co-operation between stakeholder organisations operating in the city, or by adding to existing workloads without over-stretching budgets.
- 4.35.1 When considering the application of current statute, the Commission was aware of the ongoing housing-related reviews by different branches of the Scottish Government, including private rented sector housing strategy, energy efficiency and the application of the Title Conditions (Scotland) Act. While it is likely that the current preparations for additional (private housing sector) legislation relates mainly to the relationship between private sector tenants and their landlords and letting agents, the wider issue of effective property maintenance is also highly relevant. The Commission would argue that a review of common property repair and maintenance is relevant to all three lines of enquiry.
- 4.35.2 The Commission has demonstrated elsewhere in this report that quality of life in properties where there is a mix of owner occupation and renting from a non-resident landlord is highly dependent upon the successful management of common areas by all of the parties where title deeds bind them together.

- 4.35.3 It has also been noted that there is no equivalent of the Scottish Housing Quality Standard for the private sector. It is also recognised that scope for applying energy efficiency measures and encouraging private owners to take up opportunities to improve thermal efficiency and reduce carbon emissions has very recently become limited.  
<http://www.scotland.gov.uk/Resource/0039/00394563.pdf>
- 4.35.4 The Commission’s primary focus was on finding practical solutions to difficult problems where co-operation has broken down in respect of individuals taking responsibility. The artificial separation between owner-occupiers and owner- landlords is not sustainable in a rapidly changing and fluid environment where one individual - whether an owner occupier who cannot or will not pay, landlord or rented tenant - can trigger the decline of a whole street simply through ignorance of responsibility or negligence. Furthermore, such issues are unlikely to be confined to the city of Glasgow and could become a national problem in the future.
- 4.35.5 Respondents to the Draft Consultative Report expressed concern that there remained a general lack of positive support for the factoring industry and that the local authority did not have sufficient resources to intervene.
- 4.35.6 There may be a mistaken assumption that because there is legislation on the statute book that these problems can be resolved through recourse to the law, that there is sufficient on-the-ground resource available locally to enforce the law, and that there is sufficient finance available locally to pay for more forensic inspection and enforcement. In this connection, the Commission is aware of exhortations both by the government and locally elected members to “crack down” on rogue landlords, but this presupposes that
- tests of fitness are adequate and provable,
  - access can be gained to premises to collect and secure evidence,
  - local authorities have enough staff to cope with the demand,
  - penalties are sufficient enough to act as a deterrent, and
  - there is an appetite for prosecution by the Crown
- 4.35.7 The Commission therefore envisages a number of specific roles for the Scottish Government and its civil service housing specialists. These are:
- Enabling the application of private sector housing policy and investment initiatives, through direct encouragement, support and where necessary, financial resources, e.g. financial and logistical support for setting up an information website, convening discussion between national property-related professionals, providing additional resource to allow for property acquisition,
  - Sharpening up the application of current private sector housing legislation as it relates to property maintenance and property factoring to ensure that it can be enacted and that there are sufficient resources available to local agents of enforcement and change.
  - Providing a range of additional powers which will allow local authorities and partner organisations such as registered social landlords to more effectively target empty and at-risk properties and bring them back into appropriate use
  - Reviewing specific clauses in the Tenements (Scotland) Act 2004 as they apply in Glasgow, where title deeds are silent in respect of apportionment of responsibility for parts of the tenement building (7)
  - Reviewing common issues found by the Commission and the Justice Committee in respect to the operation of the Title Conditions (Scotland) Act 2003.
  - Providing improved and more user-friendly guidance on the key elements of different property related Acts of parliament , specifically around private property owner rights and duties - for example by expanding and updating “Common Repairs, Common Sense” to reflect changes in legislation and operational practice since the passing of the Tenement (Scotland) Act 2004.



## Notes to Chapter 4

- (1) Where there is no reference to the requirement to pay the factor a float in the Title Deeds (usually at the point when the owner of the flat takes up residence), the default position is that the relevant clause in the Tenement Management Scheme schedule to the Tenement (Scotland) Act, 2004 can be applied. The law relating to the management of tenements is complex. All tenements and non-tenement buildings with units with common community burdens will have a system of management and maintenance. Among other things, these systems will set out rules stating who is responsible for what part of the building, the share of costs, the process for agreeing repairs and enforcement. There is a variety of potential sources for clarifying the position for a particular building:
- a. Title Deeds, which failing;
  - b. the Tenement Management Scheme (Section 4 and Schedule 1 of Tenement (Scotland) Act 2004, “the 2004 Act”)— where Title Deeds are entirely silent;
  - c. combination of “a” and “b” with provisions in “b” being imported when “a” is silent on that particular point;
  - d. in respect of Community Burdens common to two or more units not being a tenement, section 28 through 31A of the Title Conditions (Scotland) Act 2003, “the 2003 Act”;
  - e. combination of “a” and “d”;
  - f. the Development Management Scheme under the Title Conditions (Development Management Scheme) Order 2009 (enabled by section 71 “the 2003 Act”).
- (2) Glasgow City Council's Private Housing: Statement of Assistance was last revised in June 2012. Each Scottish local authority is required by law (Housing (Scotland) Act, 2006, Section 72) to produce this statement. The statement describes the rules relating to financial and practical assistance and advice which the local authority and partner organisations may give to individual and collective groups of home owners, and also sets out the way in which resources are prioritised.
- (3) Section 63 of the Title Conditions (Scotland) Act, 2003 allows for a real burden appointing a manager and regulating that manager's function. Section 64 of 2003 Act allows two thirds of the owners to dismiss and then appoint a replacement. However section 64(2)(b) means that a manager may not be dismissed until any time limit stated in burdens for the period of management expires unless the burden is imposed in a right to buy sale. Further clarification on regulation of community burdens can be found at the end of Appendix 5.
- (4) For example, licensing boards can consider failure to repair by a landlord as a reason for the refusal of an HMO application or renewal if the applicant is also a landlord. However this does not apply to pre-existing HMO licenses. Furthermore, HMO licences in the same building are not considered simultaneously, although consultation on restrictions on the number of HMO licences in a defined area is currently being conducted by Glasgow City's Licensing Committee.
- (5) For example, situations where the top-floor flat owner is responsible for the roof or where shopkeepers must pay a disproportionate share of the full tenement.
- (6) Although councillors serve on the Licensing Board, there are a number of problems which it cannot address without government intervention.
- (7) There is scope for mis-application of the Tenements Act where title deeds are silent on clear delineation of responsibility. Where they are silent, a number of circumstances as set out in the Act apply to the situation in Edinburgh, but not in Glasgow. For example in relation to boundaries, section 2(3) states that the top flat extends to and includes the roof over the flat, and section 7 allocates airspace within the roof to the top floor flat. This is rarely if ever the case in Glasgow where the entire roof is usually a shared responsibility. Similarly, Section 2 assigns ownership of the solum to the bottom flat, and in regard to Pertinents, Section 3 (3) gives ownership of land attached to the tenement to the bottom flat. In Glasgow, the solum is assigned to the whole property and all land associated with the tenement (the whole back court) is also usually collectively owned and maintained.

## 5.0 CONCLUSIONS

### Introduction

- 5.1 A very broad range of housing in the city is now affected by the breakdown of factoring arrangements. This includes disputes between owners and their property factors and lack of co-operation between owners over common responsibilities and shares of repair and improvement costs.
- 5.2 Improvement in the quality of and accessibility to basic information for owner-occupiers and owner-landlords was considered to be the single most important change which could be made. It therefore figures heavily in the range of approaches aimed at resolving existing and potential problems, as evidenced to and considered by the Commission. Testimony relating to poor factoring practice was brought to the attention of the Commission. However, there were examples where a poor situation had been turned around by the appointment of an alternative service provider.
- 5.3 Issues associated with factoring and property maintenance are not confined to traditional pre-1919 sandstone tenements. A whole range of flatted properties are affected. There is a growing proportion of former Council-owned and ex-Scottish Homes stock which has become part of the private rented sector. This has added further complexity to the situation where there were already problems associated with the ability of Registered Social Landlords (RSLs) to enact the Scottish Housing Quality Standard for their own tenants where they are minority owners in a common property unit.
- 5.4 A number of recently constructed private new build developments for rent and sale are also affected, specifically where the original property factor has been unable to secure funds for ongoing and long term maintenance, and has been forced to withdraw factoring services. Indeed, the Commission heard evidence from the growing number of property owners across the full range of flatted stock where there is no factor at all, leaving many owners in an intractable situation.
- 5.5 The Commission concludes that living conditions are being adversely affected when the mutual system of common shared repair and maintenance has broken down.
- 5.6 The Property Factors (Scotland) Act 2011 is intended to give redress to owners who have experienced poor property factoring practice, and to ensure that every factored owner receives a clear statement of services which they can expect from their factor. The legislation was necessary but, in the Commission's view, not sufficient to produce across the board improvements.

### Heading off an emerging crisis

- 5.7 There is an emerging crisis in property factoring which will have significant consequences if not addressed in the near future.
- 5.8 Lack of common repair appears to be contributing to falling property values and is threatening the longevity of these properties. This appears to be mainly as a result of failure on the part of owners to agree collectively to invest in common area maintenance
- 5.9 Absence of any property factoring arrangements in particular properties or groups of properties means that there is no effective management system in place. This can and will affect not only the building in question, but also adjacent properties
- 5.10 The opportunity to improve the energy efficiency of older tenement properties will be lost unless action is taken to make these buildings safe, wind and watertight in the first place

- 5.11 Failure to invest is likely to lead to significant and possibly irreversible damage to the economic and social fabric of hitherto stable areas of Glasgow. This could well be replicated in other parts of urban Scotland if a comprehensive approach to the management and maintenance of residential property is not pursued. Therefore, the Commission urges the Scottish Government to review the overall legislative framework relating to common property maintenance and repair.

### **Building on the Property Factors (Scotland) Act, 2011**

- 5.12 Property factoring organisations and companies have responded to legislation passed specifically to provide redress to owners where there are disputes or disagreements between property factors and individual owner occupiers. Key elements of the Property Factors (Scotland) Act, 2011 have been successfully implemented. These include the requirement for every property factor to produce and distribute a Written Statement of Service for every factored owner and the establishment and operation of the Homeowners Housing Panel to enforce the Property Factors Code of Conduct.

- 5.13 Notwithstanding these significant changes, the Commission concludes that property factors individually or collectively should build upon this through:
- Better communication of the level of fees being charged for services and billing, including insurance issues and repairs progress
  - Clearer explanation of the purpose of the float charge and its legal basis
  - Regularly testing their own assumptions and performance. The Commission recommends that where property factors are not already doing so, they should carry out their own customer satisfaction surveys and make these available to their own factored owners.
  - Better transparency in the procurement of repairs and insurance to achieve value for money
  - Being more pro-active in encouraging the regular surveying of common property elements and
  - Providing assurance that repairs have been carried out effectively and to a good standard.

### **Owners' responsibilities**

- 5.14 The attitude of individual owners to repair and maintenance and knowledge of their responsibilities as set out in their title deeds and the role and extent of authority of their factors (where they have one) is a major concern.
- It is recognised that there are a number of cultural, financial and legal aspects to the reasons why some owners are unwilling to recognise their responsibilities.
  - Up to three-quarters of Glasgow's entire housing stock has shared common building elements. All of this stock requires regular common maintenance action.
  - Sales of former public sector stock into owner occupation has resulted in a spread of owner fragmentation, principally through conversion from traditional owner-occupation to owner-landlordism. The dramatic increase in the number of private landlords operating in the city over the last ten years has substantially increased the scope for communication difficulties between different owners and property factors, even in the many cases where landlords act as responsible owners.
  - In spite of this, there are many successful self factoring schemes throughout the city, where owners are working together. However, they can experience the same problems as commercial and RSL factors when properties change hands. These owner associations require easier, faster and less expensive access to legal redress as well as practical support.

## “Common good” versus “Individual rights”

- 5.15 In relation to obligations to manage common property, the Commission concluded that “individual rights” tend to trump the “common good”.
- The current legal property management framework does not appear to be designed to protect buildings from deterioration - for example, owners not having the right to other owners’ home addresses can slow down and often thwart the process of initiating essential common property repair. This culture of ownership sovereignty is currently embodied in law.
  - The Commission concludes that tenements and flatted property developments need common action if they are to be sustained in the longer term. The Commission also believes that if this cannot be generated through information and advice, then some degree of compulsion may have to be considered. Only the Scottish Parliament can enact such a change.

## Protecting individual and collective assets

- 5.16 At the heart of the problem is a cultural issue about maintenance. The Commission took the view that too many owners often simply fail to acknowledge that their most valuable asset requires protection.
- Owners may neither account for the cost of repairs when they make a decision to purchase nor in their day to day spend.
  - There is no requirement to plan or save for maintenance and there are no suitable financial tools to set up building reserve funds. Far too few properties have legal clauses built into the deeds of condition to permit building reserve funds to be transferred as “heritable burdens” with changes in property ownership.
  - Many individual properties within tenement buildings and indeed the building as a whole have a considerable re-sale value when in good repair. It is unfortunate that so many owners devote so little attention to maintenance of such significant assets.
  - The Commission investigated legal provision similar to that recently introduced in Ireland where owners of new multi-unit developments are required by law to set up maintenance funds. The Commission argues that there is a case for testing the feasibility of introducing a similar scheme in Scotland and to the commissioning of further research into the feasibility of extending this to all existing tenement buildings.

## The importance of good information and advice

- 5.17 The Commission argues strongly for the introduction of a campaign of information and advice. This would have to be a co-ordinated campaign involving factors, estate agents, solicitors and others, with its primary focus on the City of Glasgow local authority area. A key proposal is the establishment of a Glasgow-wide Property Factoring and Common Property Advice website, supplemented with printed material. The Council should also map the extent of non-factoring in properties and target such areas.

## A stitch in time – addressing issues before purchase

- 5.18 There is a need to take preventive action at the time of house purchase.
- Potential owners need much better information about the condition of the property they are purchasing and their mutual repairing responsibilities.
  - Estate agents and conveyancers have a major role to play and the Commission recommends that there should be simple written explanations of the owner's title deeds and how these interact with other legislative requirements, such as the Tenement Management Scheme which is the bedrock of the Tenements (Scotland) Act 2004.
  - This Act should be reviewed in terms of introducing regular compulsory common maintenance reports and plans and/or the setting up of sinking funds.
  - The Home Report (HR) is a key element of the property purchase process enshrined in law. This is otherwise known as the "Single Survey", and which the vendor is obliged to provide to prospective purchasers. However, The HR provides only minimal information on the condition of common building elements. Whilst the Commission concludes that it would be unfair to make selling owners responsible for detailed surveys of common property, regular (common property) surveys or maintenance plans need to be organised by the property factor or the group of owners in the block. This information, together with information recorded in repair log books could be fed into the Home Report of the property being placed on the market.

## Affordability

- 5.19 Financially, the recent recession has deepened the problem of owners who simply cannot afford to pay for repairs.
- The City Council may be in a position to pay individual "missing shares", offer grant support or take enforcement action, mostly in geographic priority areas where problems have accumulated to threaten the stability of whole street blocks.
  - National action is required to set up loan fund, equity release, mortgage to rent and other similar schemes for owners who cannot afford to participate in common repair schemes.

## Addressing poor thermal performance of older buildings

- 5.20 Unless some of the fundamental problems associated with lack of ongoing maintenance are addressed, the Scottish Government's commitment to increasing energy efficiency will be unmet, specifically in older, mainly private sector tenement stock. However, this also affects a number of flatted properties and tenements constructed between 1920 and 2000 where stock is not in majority ownership of a social rented landlord
- If tenement owners cannot do simple communal maintenance, they will never be able to make energy efficiency improvements.
  - Lack of repair leads to lower energy standards and can negate the effect of insulation.

## Debt recovery

- 5.21 The Commission concluded that debt recovery is a major issue for property factors and individual owners
- The complexity of current debt recovery systems, the fact that many repair debts are beyond small claims court level and the ability to recover cash once judgement has been given, effectively makes owners powerless to recover debts from those who simply refuse to pay their share of common repair and maintenance costs
  - The fear of other owners not paying prevents many from initiating repair action.
  - Debt recovery is equally an issue for the Council – where it cannot recover the costs of enforcement action, it cannot make funds available for new referrals and therefore unlock further repair schemes.

The Commission considered a number of approaches to dealing with this, including

- increasing the powers of the Home Owner Housing Panel to deal with disputes between owners,
- setting up Housing Courts, and
- increasing powers to those who register and licence landlords.

Rationalisation of property law and revision and production of plain English guidance

- 5.22 The Commission recognised that it would be difficult to make retrospective change to title conditions. The Commission also found some pieces of legislation which appeared contradictory or not appropriate to the situation in Glasgow. The Commission also concluded that the private property-related legislation has become too complex and difficult for lay owners to navigate. Therefore
- The Scottish Government is urged to consider consolidation of legislation into one act in the longer term, but as an immediate action, to overhaul guidance on the full range of property law matters and translate this into plain English.
  - Anomalies in the Tenement Act need to be brought to the attention of the Scottish Government, particularly in regard to the applicability of some key clauses as they relate to title conditions in Glasgow and the West of Scotland
  - There is also scope to extend the Tenement Management Scheme to include clauses which allow for
    - setting up reserve funds,
    - carrying out regular surveys (the “Private Housing MOT”),
    - making common property insurance mandatory without exemption, and
    - dealing with anomalies over fairness where titles are shared between separated buildings and with the distribution of share costs between flat owners and shopkeepers.

In the absence of binding legislation in respect of survey and repair, the Commission concludes that mandatory surveys are desirable. In the interim, focus should be on encouraging and supporting owners. Incentives could be developed, for example to encourage owners to develop maintenance plans, ideally through the factor or self factoring owners association. Property factors (both private and RSL) in Glasgow could lead by example, with the City Council Private Sector Grants and Advice service providing practical support.

## 6.0 ANNEX

# THE GLASGOW FACTORING COMMISSION'S ACTION PLAN FOR IMPROVING FACTORING AND PROPERTY MAINTENANCE

### Developing the action plan

In order to arrive at the actions required, it was necessary to group the issues and solutions which emerged so that they could be tackled individually or in parallel.

The Commission's approach is to tackle the issues on two broad fronts. Firstly, practical actions which can be taken now or in the near future at a local (i.e. Glasgow-wide) level. Secondly to begin the process of addressing impediments to good practice which cannot be addressed in the shorter term within the city, and which will require intervention of some kind by the Scottish Government and other key property industry representative bodies across Scotland. Where a local solution is deemed practical or where a national intervention is required this is highlighted in the final column of the tables. The letters "PLS" (practical local solution) signifies that a Glasgow-wide solution is possible in the short to medium term. The letters "NLTS" indicates that a national long term solution is required. By long-term is meant within 3 to 5 years. Short to medium term is 1 to 2 years maximum.

#### a) **Developing and adopting best practice in good factoring and property maintenance within the City of Glasgow:**

- Improving customer service for factored owners through voluntary initiatives which will engender more openness and transparency, particularly in relation to holding repair and maintenance contractors to account, billing, charging, fee structure, competitive procurement of contractor services and common buildings insurance
- Delivering, through a Glasgow wide website and associated printed publications, information and advice for owners on the importance of good factoring and responsibility for maintenance and repair of common building elements
- Providing advice and assistance for property-owners without a factor
- Providing advice to owners who are considering switching to another property factor
- Making it easier for owners to deal effectively with neighbouring absentee owners, including those owners who are also operating as private landlords in terms of obtaining agreement to proceed with repairs and collecting shares of costs
- Encouraging take up of qualifications and training for factors

## **b) Improving access and improving the complex legal framework governing private sector housing**

- Reviewing the effectiveness or otherwise of current enforcement of different statutes contained in different acts of parliament
- Providing support to allow lay people to interpret and cross reference specific pieces of legislation, when addressing particular areas of disagreement between parties
- Raising awareness of legal rights and responsibilities of individual owners
- Encouraging dialogue with conveyancing solicitors and estate agents to ensure that the role and importance of property factoring is better understood before and during the sales transaction. This should include explanation of variation in deeds and conditions for different types of property and the fixed nature of these in relation to resolving problems of fragmentation within tenement blocks
- Making a case for the extension of the Home Report to include a more thorough survey of common property failures and potential failures to protect the purchaser and other owners within the block where there is no ongoing common property maintenance survey arrangement in place, and in the longer term, building a case for mandatory common element condition surveys and maintenance plans, covering all tenemental and flatted properties including recently completed new build developments constructed for ownership and leasing.

The Action Plan provides more detail of how these principles may be rolled out, by dividing its content into six themes:

- 1) Providing information and advice to present and future homeowners
- 2) Improving service quality and providing value for money
- 3) Encouraging and enforcing repair, maintenance and behavioural standards through existing agencies, including Glasgow City Council
- 4) Improving the operation of current legislation
- 5) Consolidation and rationalisation of existing legislation and
- 6) Better managing the rights and obligations of owners.



**Theme 1 PROVIDING IMPROVED INFORMATION AND ADVICE TO HOME-OWNERS (1)**

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
1.1	Addressing lack of knowledge about factoring and property maintenance	Development of a Glasgow-specific comprehensive easy to access website to provide basic advice and contacts on all property maintenance and factoring issues in Glasgow, to include a "frequently asked questions" section, and opportunity to provide face to face advice	Development of a Glasgow-specific comprehensive easy to access website to provide basic advice and contacts on all property maintenance and factoring issues in Glasgow, to include a "frequently asked questions" section, and opportunity to provide face to face advice Glasgow City Council (GCC) as start-up sponsor with input on content and design from local partners	PLS  Long term, a national website could be developed in partnership with Scottish Office, CoSLA and SFHA to extend concept to whole of Scotland
1.2	Raising awareness and understanding of the first-time buyer's title deeds and Tenant Management Scheme responsibilities and the role of property factors prior to purchase	<p>Role for conveyancing solicitors and estate agents at point of sale to provide new homeowners with explanation and information on duties of homeowner and role and contact details for factor (or no factor where this is the case).</p> <p>Written summary of title conditions provided</p> <p>Contacts and other weblinks could be embedded in new website described at 1.1 to include basic information describing the owner's journey. Website advertised through key entry points to the market e.g.</p> <ol style="list-style-type: none"> <li>1. Established property for sale and rent websites</li> <li>2. Newspaper property supplements and pages – including regular feature articles on the house buying process but extended to cover maintenance and other responsibilities of property factors</li> <li>3. High Street based Estate/Property Agencies Conveyancing Solicitors operating in Glasgow</li> </ol>	<p>Representatives from Property Managers Association Scotland (PMAS), Glasgow and West of Scotland Forum of Housing Associations (GWSF) and GCC approach Glasgow Conveyancing Solicitors Forum and local body representing estate agents operating in Glasgow to produce guidance booklet and/or web based information pack</p> <p><b>SEE ALSO ACTION 4.4</b></p>	PLS

## Theme 1 PROVIDING IMPROVED INFORMATION AND ADVICE TO HOME-OWNERS (2)

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
1.3	Reinforcing responsibilities of existing owner occupiers	Encouraging easy access to reputable sources of impartial information, through the new comprehensive website set up under 1.1. with links to more detailed sources of assistance (e.g. technical/ planning; financial assistance including grants and loans; enforcement of legal statute; rights of individuals)	GCC  Role for PMAS, GWSF and SFHA members and other non-affiliated property factors to inform owners of impartial advice by promoting the website in communications with factored owners	PLS
1.4	Assisting owners who are unable to pay common charges	Encourage range of options such as government-backed low-cost loan fund; interest-only loans, advice on equity release; 3rd party acquisition and conversion to rent	GCC, SG and Chartered Institute of Housing Scotland (CIHS)	PLS  But will require access to Scottish Government publications, which also need to be updated in the short term
1.5	Encouraging owners who are unwilling to contribute to common repairs and charges	Raise possible options with Scottish Government in terms of  1. Simplifying redress procedure which allows factors and owners to pursue those owners who will not pay through fast-track housing courts, arbitration panels and/ or extension of powers of Homeowner Panel  2. Strengthened powers of debt recovery for local authority in respect to collecting debt incurred through application of missing share  3. Provision of more widely targeted plain English guide to home-owners responsibilities  To include sections on: - Understanding (Your) Title Deeds and Conditions, - Financial liabilities - Debt recovery process Assistance with costs for owner(s) taking a case to the Lands Tribunal where there is a dispute over titles or proposed amendment of titles.	GCC, PMAS and Scottish Factoring Network members (SFN)  Requires dialogue to be opened up with Scottish Government	NLTS  Some elements could be delivered in short term e.g. Solution No 3 at column 2, across e.g. plain English guides)

## Theme 2 SERVICE QUALITY AND VALUE FOR MONEY (1)

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
2.1	Building confidence in factors and property managers and improving understanding of their role	Developing more transparent means of appointing regular maintenance contractors, based upon practice already adopted by Registered Social Landlords	Individual property factors. However groups of PFs may opt to develop template for general use and consistency of message	PLS
2.2	Ensuring value for money to end user in procurement of regular maintenance contractors	Providing evidence to owners that there was a fair tendering process when awarding regular maintenance contracts based on a split between cost and quality	Individual property factors. However groups of PFs may opt to develop template for general use and consistency of message	PLS
2.3	Improving the quality of service by regular maintenance contractor	Encourage regular customer feedback: e.g. Freepost job satisfaction competed cards/freephone /published annual customer satisfaction surveys	Individual property factors. However groups of PFs may opt to develop template for general use and consistency of message	PLS
2.4	Ensuring value for money to end-user of discounted common building insurance procurement by factor	Communicating common buildings insurance procurement process to owners; advising of share of benefits to end users; demonstration of benefit e.g. reduction in factoring charges as incentive/ reward; provision of information on common insurance charge disclosure of terms of insurance/benchmarking of premiums for specific property type	Individual property factors. However groups of PFs may opt to develop template for general use and consistency of message	PLS
2.5	Ensuring checked and accurate billing to homeowners	Quality control checks on bills to ensure accuracy and joint procurement of standardised billing software packages; allow opportunity for owner to query bill before court action automatically raised	Individual property factors. However groups of PFs may opt to develop template for general use and consistency of message	PLS
2.6	Addressing perception of unreasonably high factoring fees and charges and clarification on the rules relating to obligations to pay factor advance fees and charges.	Openness in explaining fee and charge structure. Property Managers Association members operating in Glasgow agree consistent wording in newsletters and Written Statements which make clear exactly the legal basis of the request for advance charges, Plain English guide to the Tenement Management Scheme be included in any general information and advice	Individual property factors/ consortia of property factors  Extension/development of next round of Written Statements	PLS

**Theme 2 SERVICE QUALITY AND VALUE FOR MONEY (1)**

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
2.7	Consistency in requests for the amount of floating/sinking fund charged	Factors clarify whether or not deposit was paid, and explain reason for any top up charge, what it will be used for. Explanation of legal basis for charge e.g. whether in Title Deeds or by agreement via owner sign up to Tenement Management Scheme	PMAS+SFN  Extension/development of next round of Written Statements	PLS
2.8	Information on switching factor	Individual property factors provide information to customers on conditions under which switching may take place e.g. restrictions in title deeds; process of ending factoring agreement / contract  <b>SEE ALSO 4.3</b>	PMAS+SFN	PLS
2.9	Further development of qualification(s) in property factoring and accreditation of property factors	Focus on basic qualification in factoring administration or introduce modern apprenticeship, and specialist training where appropriate (e.g. technical and building maintenance), individual company accreditation through independent body  Advertise existing Institute of Residential Property Managers (IRPM) Scottish syllabus	Individual property factors in association with CIHS, IRPM or other accredited course provider	NLTS, but could be an early national action
2.10	Introduction of customer satisfaction surveys	Individual independent annual customer satisfaction surveys	Individual property factors	PLS

**Theme 3 ENCOURGING AND ENFORCING REPAIR, MAINTENANCE AND BEHAVIOURAL STANDARDS IN THE PRIVATE HOUSING SECTOR (1)**

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
3.1	Improving co-ordination of resources to tackle disrepair and nuisance	The City Council should consolidate and further develop its role as enabler and impartial advisor across a range of issues affecting private sector housing stock via cross-departmental officer working group.	GCC Development and Regeneration Services (DRS) lead with GCC Land and Environmental Services (LES) & Community Safety Glasgow (CSG)	PLS
3.2	Dealing with perception that the City Council is not doing enough to enable repair and maintenance of private housing stock	Glasgow City Council publishes a Statement of Assistance as legally required, detailing the Council's role in relation to the city's private sector housing stock and sets down its priorities for funding. An annual programme report is submitted to committee giving a break down of the Private Sector Housing Grant budget	GCC DRS	PLS  Migrate information to new website as soon as possible
3.3	Addressing the perception that authorities appear unable to prosecute poor landlord and /or factoring practice e.g.  • alleged or suspected exploitation or mistreatment of tenants and/or other owners  • failure of factors and/or owners to keep buildings in good repair  • cases fall at procurator fiscal level	Provision of adequate resources to execute existing discretionary powers, provision of enhanced powers for local authority on targeted area basis e.g.  • identification of "hot-spots" ("Enhanced Enforcement Areas")  • empty house purchase acquisition (enforced sale powers)  • synchronisation of HMO license renewal and enforcement of outstanding repairs affecting all owners in the block.	GCC DRS and SG	NLTS  There is ongoing dialogue between Scottish Government and the Council. Some key issues being addressed in current round of private housing sector legislation e.g. Enhanced Enforcement Areas; registration of letting agents
3.4	Development of means to assist owners and landlords in a situation where there is no factor for the common property	1. Development of a new data base to determine location of all properties without a factor  2. Provision of helpline/ advice point as part of new website (from Rec 1.1) e.g. guide to self-factoring, how to set up an owners' association, guide to legal redress against debtors  3. Registered Social Landlords consider acquisition of properties when opportunities arise  4. Council provides missing share as backstop within existing rules of engagement in Scheme of Assistance	GCC  GCC  GCC working in partnership with RSLs  GCC working in association with Property Factors / Owners.	PLS  1. Establishment of a data base, would have to be a voluntary arrangement  3. Property acquisition may be limited. However, there are example of where this is already happening in the city  4. Information on the operation of the "missing share" to be more widely publicised to Property Factors

**Theme 3 ENCOURGING AND ENFORCING REPAIR, MAINTENANCE AND BEHAVIOURAL STANDARDS IN THE PRIVATE HOUSING SECTOR (2)**

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
3.4	Development of means to assist owners and landlords in a situation where there is no factor for the common property	<p>1. Development of a new data base to determine location of all properties without a factor</p> <p>2. Provision of helpline/ advice point as part of new website (from Rec 1.1) e.g. guide to self-factoring, how to set up an owners' association, guide to legal redress against debtors</p> <p>3.. Registered Social Landlords consider acquisition of properties when opportunities arise</p> <p>4. Council provides missing share as backstop within existing rules of engagement in Scheme of Assistance</p>	<p>GCC</p> <p>GCC</p> <p>GCC working in partnership with RSLs</p> <p>GCC working in association with Property Factors / Owners.</p>	<p>PLS</p> <p>1. Establishment of a data base, would have to be a voluntary arrangement</p> <p>3. Property acquisition may be limited. However, there are example of where this is already happening in the city</p> <p>4. Information on the operation of the "missing share" to be more widely publicised to Property Factors</p>

## Theme 4 IMPROVING THE OPERATION OF EXISTING LEGISLATION

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
4.1	Finding ways to reduce length of time it takes to process maintenance orders and plans, reduce bureaucracy and cost to owners and local authorities.	Streamline the process, removing the need to register orders against the property title on 2 separate occasions and reduce timescales for implementation.	GCC and SG	NLTS  Further dialogue with Scottish Government required
4.2	Applying Repairs Notices in a situation where more comprehensive improvement is required	Look at the full range of statutory powers available to local authorities which could include the service of Work Notices .Investigate the use of Housing Renewal Area powers.	GCC and SG	NLTS  Further dialogue with Scottish Government required
4.3	There is no obvious independent advice available on the process of switching factors, even although some factors offer a service.	Provision of independent advice on the mechanics of switching. Factors offering a service may not be accredited.  • Provision of information e.g. updated version of "Common Repair, Common Sense"  • Specific information on arrangements/variation in modern mixed tenure developments and land ownership companies	GCC via new website and Scottish Government via updated guidance reflecting legislation as passed  <b>SEE ALSO 2.8</b>	NLTS  Requires further research and development time and input of Scottish Government re formal advice
4.4	Raise awareness of Section 63 of the Title Conditions Scotland Act which can over-ride Title Deeds to limit period that factor can exercise right to manage the property	Provide copies of Land Certificate and/or Title Deeds to new owners prior to purchase	Conveyancing solicitors  SG Linked to 4.3 Also joint approach by PMAS, GWSF and GCC to Glasgow Conveyancers Forum in parallel with ACTION 1.2	NLTS  Requires further research and development time and input of Scottish Government re formal advice
4.5	There is no single agency to which homeowners can refer a dispute out-with formal court process or breach of Property Factor Code of Conduct	Find alternative means of resolving disputes  a) between owners within a single tenement  b) where buildings are linked by shared titles e.g. shared property disputes referred to the new proposed First Tier Tribunal; Serious cases referred to a specialist housing court	GCC, SG and HOHP	NLTS  Requires further research and development time and input of Scottish Government re formal advice

## Theme 5 CONSOLIDATION AND RATIONALISATION OF EXISTING LEGISLATION

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
5.1	Ability of owners to dismiss or switch factors where a majority of owners cannot be obtained	Closing of loopholes in deeds and conditions to ensure that factors and developers are not able to prevent a majority of owners from dismissing current factor and appointing an alternative factor e.g. by majority decision at a meeting and use of proxy voting and with period of notice.	SG and Law Society of Scotland	NLTS
5.2	Rationalisation of private property legislation	Preference would be for a consolidated Act. In the meantime, Scottish Government commissions handy cross referenced, jargon free guide to using the various clauses of the Scottish Title Conditions Act, Tenements Act, Housing Act, 2006, Property Factors Act and Private Sector Housing Act as they relate to factoring and property management and maintenance;	SG	NLTS
5.3	Lack of obligation to establish a sinking fund in all new multi-unit developments	Establishment of a minimum sinking fund agreement for all new-build flatted developments and consider ways in which this could be introduced retrospectively where the agreement has broken down, feasibility of enabling a new model "Multi-unit development" regime based on the Owner Management Companies in the Republic of Ireland, with guarantee that any moneys put into the scheme are safeguarded and used for the original stated purpose.	SG-CIHS-GCC research project	NLTS
5.4	Disrepair and HMO Licence Renewal	Provision of discretionary powers to local authority to deal with HMO licensees and neighbouring owners when addressing disrepair at point of HMO license renewal Landlord registration ? SEE ALSO 3.3	SG	NLTS



## Theme 6 RIGHTS AND OBLIGATIONS IN RESPECT OF COMMON PROPERTY MAINTENANCE

Action point Ref No	Key Issue to be Resolved	Solution Proposed by Glasgow Factoring Commission	Suggested Main / Joint Responsibility for Co-Ordinating the Action	Practical local solution (PLS) or national long term solution (NLTS)
6.1	Lack of a standardised maintenance assessment/report for common property elements and consequent maintenance programme	Introduction of a Common Report and Maintenance Plan (The Housing "MOT") on a regular cycle	SG + relevant professional bodies and local authority representatives	NLTS
6.2	Implementing a cyclical maintenance programme following condition survey	Common property surveys should be followed up by application of maintenance plans and wherever possible, initiatives to improve thermal efficiency are practicable	SG + relevant professional bodies and local authority representatives	NLTS
6.3	Clarifying owner-landlord role in addressing factoring issues	When considering regulation of letting agents, Scottish Government should also address responsibilities of owner-landlords in relation to co-operation with factors and other owners in the property	SG	NLTS

## 7.0 APPENDIX 1: Remit of the Commission (as agreed at June 2012)

### Agenda Item 3 (27.06.12)

### Revised following meeting

### Glasgow Factoring Commission

#### Proposed remit and method of working

##### A. Remit

1. The remit of the Factoring Commission is:
  - To act as a representative grouping of key stakeholders.
  - To take evidence and consider issues in relation to factoring in Glasgow.
  - To identify current good practice and build on it.
  - To identify ways in which residents who have no factor can deal with common repairs and maintenance
  - To make recommendations for improving factoring in the city.
  - To make recommendations in particular for ensuring that residents are aware of their rights and are able to exercise them on factoring issues, and to ensure that residents are aware of their responsibilities
  - To present a report for public consultation.
2. The main outcomes expected from the Factoring Commission are:
  - To develop proposals for improving factoring in the city.
  - To provide a plan of action for residents and agencies.
  - To maximise the contribution of partners to the delivery of this plan.
3. The product of the Commission's deliberations should provide a statement of and collective commitment to action.
4. Members will consider current property management arrangements in Glasgow and how sufficient it is for stated purpose – and then comment on whether partners should do more of what they are already doing, or need to do things differently. The Commission will look at both current and future property management challenges, seeking to think ahead for new or growing challenges.
5. The Commission will seek to identify what will make the most difference to property management which can be made in Glasgow and which Glasgow itself can achieve. This does not necessarily omit statement of areas where national government could also intervene, but it primarily looks to what can be done with the current institutions and resources in the city.
6. For the recommendations, the Commission should avoid budging up lots of things that are already happening. A statement of existing work can be given in the context of proposals for what more needs to be done or where further value can be added.

##### B. Mode of working

1. It is anticipated that the Commission will operate on a similar model to a Select Committee – taking evidence, synthesising it, and deliberating on what to do. Site visits can be considered if members believe that would be useful.

2. Specific timescales for progress can be agreed by members in the light of initial consideration of agendas. However, there is an expectation for an initial consultative report with draft recommendations within six months of the first meeting. Further work beyond this point will be subject to negotiation between Commission members.
3. In the light of the above, it is expected that members will make a commitment to attending six half-day meetings over six months. Briefing materials will be provided between meetings and further reading made available on request from members. In addition to the monthly meetings, a few longer sessions may be required at the conclusion of the Commission's deliberations in order to agree on recommendations for a final report.
4. A key aspect of the Commission's work will be to engage partners, especially stimulating relationships with those sectors or agencies which are not currently so well involved in the policy debate around property management and factoring.
5. An aspiration of the Commission should be to build on meaningful dialogue with the city's communities. Use of special consultative sessions can be considered and also whether to use them during the period of deliberation and/or to comment on recommendations.
6. The Commission can request further work to assist in costing out the implications of specific recommendations.
7. The members of the Commission will be invited at the first meeting to determine the shape of future agendas and their requirements for evidence. Agreement will be required on the nature of evidence and background materials and a schedule of issues for consideration, together with preferred methods of submission (written, presentation, via general website invitation).
8. There will need to be a framework or priorities set out for inviting evidence. A suggested group of themes and stakeholder groups could provide the basis for Commission meetings. These would be for members' consideration and there is no fixed set of themes beyond that of the remit of the Commission.
9. Facilitation support will be provided to the Factoring Commission for the following purposes:
  - Preliminary work with members of the Commission to explore and capture existing information on property management and current practice in the city
  - Help to establish clear ground rules for discussion
  - Ensuring that the Commission provides a forum in which members can have an equal chance to participate and put forward their views (for example, through minimising jargon and bureaucracy). This will include support for issues such as managing disagreement, the degree of collective confidentiality, and openness
  - Support for members to articulate and agree on timescales, roles and remits, contributions
  - Help with the Commission's final deliberations and production of draft recommendations and then final report with recommendations.
10. Secretariat support will be given to the Factoring Commission and its members at meetings and between meetings by the Housing Strategy Team of Development & Regeneration Services, Glasgow City Council. This team will write up the Commission's deliberations as meetings take place and be responsible for drafting its final report and recommendations. Resources from other local partner agencies will be called upon as required.
11. A final report will be presented to the Council and its Community Planning partners, following consultation. The Council will take responsibility for leading on the delivery of this plan, with implementation of specific recommendations through appropriate partners.

## APPENDIX 2: Commission membership and support

### Agenda Item 4 (27.06.12)

#### Revised following meeting

### Glasgow Factoring Commission

#### a) Commission membership

Members of the Commission are:

The Commission will be chaired by Jean Charsley, Secretary of Hillhead Community Council.

- Property Managers Association Scotland: Lorraine McDonald (President)
- Glasgow & West of Scotland Forum of Housing Associations: Patrick McGrath (Spokesperson on Factoring)
- Glasgow Housing Association - YourPlace: Jennifer Russell (Managing Director)
- Chartered Institute of Housing Scotland: Alan Ferguson (Director)
- Scottish Association of Landlords: Anne Halsey (Director)
- Scottish Federation of Housing Association: Andy Young (Policy Manager)
- Frank Plowright – Community Representative
- John Dawson – Community Representative
- Derek Manson-Smith – Community Representative
- Annie Flint, Housing Consultant

Council Services & arms-length organisations:

- Glasgow Community & Safety Services      Ann Fehilly (Head of Strategic Services)
- Development & Regeneration Services      Patrick Flynn (Head of Housing Services)
- Corporate Services      Lawrence O'Neill      (Partnership & Development Services)
- Corporate Services      John Morrison (Legal Manager)

Further representation from Council family services and other bodies will be co-opted onto the Factoring Commission as necessary.

Administrative support for the Commission will be provided through the Council's Housing Strategy Team, Development and Regeneration Services.

#### b) Changes to membership and support during the course of the Commission meetings June 2012 – November 2013

In January 2013, following the passing of John Morrison, the legal manager role was taken up by Ken McDonald.

Alison McDiarmid replaced Jennifer Russell, who resigned from the Commission in May 2013 following her appointment to a new role within the Wheatley Housing Group.

Iain Friel replaced Lorraine McDonald as the representative of the Property Managers Association Scotland from October 2013

Duncan Thomson was co-opted on to the Commission to provide specialist advice in terms of his role as DRS Private Sector Housing Grants and Advice Group Manager.

Les Milne replaced Jennifer Sheddan as evidence collator and draft report co-ordinator in February 2013. Jennifer returns to a new role in August 2013.

Debbie Gardiner replaced Helen Douglas in April 2013 as minute taker and keeper of records. Helen has taken up a new promoted post.

## **APPENDIX 3: Draft Consultation Report - Respondents**

### **List of consultees who responded to the Draft Consultative Report**

#### **Property Factoring Organisations**

A & K Property Management Services  
Anne Gordon Property Management  
Hacking & Paterson Management Services  
Life Property Management Ltd  
Milnbank Property Services Ltd  
Parkhead Housing Association Ltd  
Partick Works Ltd  
Peverel Scotland Limited  
Ross & Liddell Ltd  
Sharp & Fairlie  
Southside Factoring and Related Services

#### **Community Councils and voluntary groups in Glasgow**

Baillieston Community Council  
Parkhead Community Council  
South Seeds

#### **Professional , trade and other representative bodies**

Property Managers Association Scotland  
Association of Residential Letting Agents  
Glasgow and West of Scotland Federation of Housing Associations

#### **Individuals**

John Daniel Steel  
Mark Charwood

## APPENDIX 4: Issues and solutions matrix headings

<b>1</b>	<b>Theme 1 INFORMATION AND ADVICE</b>
1.1	Addressing poor knowledge base about factoring and property maintenance in the city
1.2	Raising awareness and understanding of the first-time buyer's responsibilities and the role of property managers prior to purchase
1.3	Reinforcing responsibilities of existing owner occupiers
1.4	Assisting owners who are unable to pay common charges
1.5	Encouraging owners who are unwilling to contribute to common repairs and charges
<b>2</b>	<b>Theme 2 SERVICE QUALITY AND VALUE FOR MONEY</b>
2.1	Building confidence in factors and property managers and improving understanding of their role
2.2	Procurement of regular maintenance contractors
2.3	Service quality of regular maintenance contractor(s)
2.4	Procurement of common building insurance
2.5	Ensuring checked and accurate billing to homeowners
2.6	Perception of unreasonably high factoring fees and charges and clarification on the rules relating to obligations to pay factor advance fees and charges
2.7	Consistency in requests for amount of floating charge / sinking fund
2.8	Development of training and qualifications in property factoring
2.9	Encouraging regular customer satisfaction surveys and feedback
<b>3</b>	<b>Theme 3 ENCOURAGING AND ENFORCING REPAIR, MAINTENANCE AND BEHAVIOURAL STANDARDS</b>
3.1	Co-ordination of resources to tackle disrepair and nuisance
3.2	Perception that City Council is not doing enough to enable repair and maintenance
3.3	Perception that authorities are unable to prosecute poor landlords and factors
3.4	No factor : Developing means to assist owners with no agent to manage common repair/maintenance
<b>4</b>	<b>Theme 4 LEGAL ISSUES : OPERATION OF LEGISLATION</b>
4.1	Reducing length of time to process maintenance orders and plans.
4.2	Applying Repairs Notices in a situation where more comprehensive improvement is required
4.3	Provision of advice on switching factor
4.4	Changing factors in recently built property with a "manager burden" clause
4.5	Simplification of formal legal process for resolving cross-tenure disputes
<b>5</b>	<b>Theme 5 LEGAL ISSUES: CONSOLIDATION AND RATIONALISATION OF EXISTING LEGISLATION</b>
5.1	Ability of owners to dismiss or switch factors where a majority of owners cannot be obtained
5.2	Factoring statute not yet formally "joined up" with other related public, private and voluntary sector housing-related legislation
5.3	Lack of obligation to establish a sinking fund in all new multi-unit developments
5.4	Disconnect between landlord registration criteria and HMO licensing criteria
<b>6</b>	<b>Theme 6 LEGAL ISSUES: RIGHTS AND OBLIGATIONS IN RESPECT OF COMMON PROPERTY MAINTENANCE</b>
6.1	Lack of a standardised survey for common property elements
6.2	The need for planned programmes of works following regular cyclic survey
6.3	Clarifying owner-landlord role in addressing factoring issues

## APPENDIX 5: Notes on Law Relating to the Management and Maintenance of Common Property

1. **Management:** All tenements and non-tenement buildings with units with common community burdens will have a system for managing and maintaining. These will be based on:
  - a. Title Deeds;
  - b. In **Tenements**, a Tenement Management Scheme (Section 4 and Schedule 1 of Tenements (Scotland) Act 2004, “the 2004 Act”)— where Title Deeds are entirely silent;
  - c. Combination of “a” and “b” with provisions in “b” being imported when “a” is silent on that particular point;
  - d. In respect of Community Burdens common to two or more units not being a tenement, section 28 through 31A of the Title Conditions (Scotland) Act 2003, “the 2003 Act”;
  - e. Combination of “a” and “d”;
  - f. Development Management Scheme under the Title Conditions (Development Management Scheme) Order 2009 (enabled by section 71 “the 2003 Act”); and
  
2. **Management in Community of Units linked by a Community Burden and the Fall Back Position Under 2003 Act:**
  - a. Section 25 of the 2003 Act: Community burden is a real burden imposed under a common scheme on two or more units and each of those units in relation to all or some of those units is both a benefited and burdened proprietor. A Community is all the units subject to a community burden. Special rules for retirement housing. **NB:** 1) Community Burdens will be found in the title deeds of burdened properties; 2) sections 21 through 31 below are fall back conditions where title deeds are silent on community burdens; 3) Section 28(1)(a), (d), (2)(a) (d), 29 and 31 do not apply to a community of one Tenement but the 2004 Act does; 4) Sections 28(1)(a), (d), (2)(a), (d) and 31 do not apply to where a Development Management Scheme applies.
  - b. Section 26 of the 2003 Act: Community Burdens may make provision for: appointment of managers; dismissal of managers; duties and powers of managers; nomination of the first manager; procedures on decision making; subject matter for decisions; dispute resolution;
  - c. Section 27 of 2003 Act: If the Constitutive deeds state that a real burden is a community burden then all proprietors will be able to enforce against each other.
  - d. Section 28 of the 2003 Act: except in cases of sheltered housing or where time limited monopolies on management exist (new schemes) a simple majority will be required to appoint or remove a manager. The manager need not be a professional factor. The manager may be empowered to carry out maintenance, instruct community burdens and vary or discharge burdens.
  - e. Section 29 of 2003 Act: applies where a community burden imposes an obligation on owners of all or some units. Majority Rule. (however, the power of the majority will not apply if the title deed are defective in that that the shares of each owner do not add up to 100%; presumably this means having the title deed varied). Provides for a deposit and for floats.
  - f. Section 30 of 2003 Act: Majority Rule binding on owners and successors.
  - g. Section 31 of the 2003 Act: Managers remuneration shared equally amongst units (joint owners of units joint and severally liable)
  - h. Section 31A of the 2003 Act: above **does not** apply to a community consisting of one tenement or where a development management scheme is still in place.



**3. Management in Tenements under 2004 Act:**

- a. Section 4 of the 2004 Act: Applies Tenement Management Scheme (TMS) to tenements where title deeds are silent on subject or where a Development Management Scheme exists. TMS details in Schedule 1 of 2004 Act.
- b. Rule 2.5 of TMS: Where the majority of owners agree a repair (assuming a simple majority rule applies) then that decision is binding on all owners. There are rules in the Tenement Management Scheme for coming to a decision.
- c. Section 5 of the 2004 Act: An owner who disagrees with a decision may appeal to the Sheriff by Summary Application.
- d. Section 6 of the 2004 Act: Sheriff can resolve disputes.
- e. Common Interest: Concerns parts of building key to support and shelter. Sometimes these are owned by one owner but all owners will have a common interest. In the past (and it may still be the case with old title deeds) the sole responsibility for paying for repairs rested with that owner. However, where the part is “scheme property” the other owners must contribute too. The owner can instruct works and require payment. Other owners can request the owner carry out works. Sections 8, 9 & 10 of 2004 Act.
- f. Section 26 of 2004 Act--meaning of tenement: a building or part of a building which comprises two related flats which, or more than two such flats at least two of which: (a) are or are designed to be, in separate ownership; and (b) are divided from each other horizontally, and except where the context requires, includes the solum and other land pertaining to that building or, as the case may be, part of the building. Titles and burdens to be regarded when determining if flats in a building are related and therefore a part of a tenement.

**4. Development Management Scheme:**

- a. In theory is the rule for all newer developments. The rules for this scheme can be found in the The Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009. The Order sets out rules for decision making, variation of the the rules, challenges that may be referred to the Sheriff and powers of the Land Tribunal in relation to the Scheme.

**5. Changing Title Deeds: If owners within a community or a tenement are not satisfied with the terms of their title deeds, then the title deeds may be amended. This may be done by:**

- a. Sections 33 and 34 of the 2003 Act: A deed of variation is prepared, signed by the majority of owners, notify the owners who do not sign and wait 8 weeks. If the non-signing owners do not object the deed may be registered and it becomes effective. The non-signing owners have 8 weeks to object to the Lands Tribunal (LT). The LT will decide. **(A fall back position where the title deeds are silent according to statutory commentary)**
- b. Sections 35,36 and 37 of the 2003 Act: Adjacent owners.
- c. Section 91 of the 2003 Act: 25% of owners acting together may apply to the LT to discharge or vary a community burden. The LT notifies all interested parties. Interested parties have 21 days to object. If there is an objection LT will decide. Must be read with section 90 which sets out LT powers. Compensation available to proprietors who lose out.

**6. Regulation of Factors: Property Factors (Scotland) Act 2011 — must be registered. May be refused registration. May appeal non registration.**

**7. Non Payment: As will be seen there are ways of agreeing works and making debts enforceable. This likely would be done at the Sheriff Court. If successful the pursuer would have a decree for payment. The trouble is getting payment where the person being sued is of limited means.**

## 8. **Management Burdens:**

- a. Section 63 of 2003 Act: A burden appointing a manger and regulating a manger's function may be imposed in title deeds.
- b. Section 64 of 2003 Act: There is an overriding power to dismiss a manger. Two thirds of the owners may dismiss and then appoint a replacement. This overriding power to dismiss does not apply to a manger appointed under a management burden until the time limits have expired, except in a condition, except where the burden was imposed in a right to by sale (see section 64(1)(b) of the 2003 Act for limits to overriding power to dismiss a manger).

## 9. **Regulation of Community Burdens:**

Regulation of community burdens by sections 25 to 37 of the 2003 Act: A community burden is a **real burden** imposed under a common scheme on two or more units and each of those units in relation to all or some of those units is both a benefited and burdened proprietor. A community is all the units subject to a community burden. Community burdens will be found in the title deeds of burdened properties. Sections 21 through 31 of the 2003 Act below are fall back conditions where title deeds are silent on community burdens; Regulation of Tenements under 2004 Act: Tenements are covered by the 2004 Act. A tenement is a building or part of a building which comprises two related flats which, or more than two such flats at least two of which: (a) are or are designed to be, in separate ownership; and (b) are divided from each other horizontally, and except where the context requires, includes the solum and other land pertaining to that building or, as the case may be, part of the building. Titles and burdens to be regarded when determining if flats in a building are related and therefore a part of a tenement. Section 4 of the 2004 Act applies the Tenement Management Scheme (TMS) to tenements where title deeds or silent. Rule 2.5 of TMS: Where the majority of owners agree a repair (assuming a simple majority rule applies) then that decision is binding on all owners. There are rules in the Tenement Management Scheme for coming to a decision. Owners who disagree may appeal to the Sheriff. Development Management Scheme: The Development Management Scheme under the Title Conditions (Development Management Scheme) Order 2009 (enabled by section 71 "the 2003 Act"). Most decisions by majority.

**Note prepared by Kenneth McDonald, Senior Solicitor, Glasgow City Council Legal Services**

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## 9.0 GLOSSARY OF TERMS USED IN THE REPORT

ACRONYM	TERM IN FULL	NOTES
	Burden	A requirement set out in Title Conditions obliging the subject who owns the property to enact any duty contained in the burden (See also Appendix 4)
CE, (GCC)	Chief Executive's Office of Glasgow City Council	The officer department of Glasgow City Council responsible for corporate and legal services
CIH	Chartered Institute of Housing	Representative body of housing professionals in the United Kingdom with devolved branch CIH Scotland
	The City Council	Shortened form of Glasgow City Council
	(The) Commission	Shortened form of Glasgow Factoring Commission
	Community burden	A burden imposed upon an owner of a property usually in respect of subject external to the actual building which are also binding on neighbouring owners in adjacent buildings or buildings forming part of a larger development
	Communities Scotland	Body set up to replace Scottish Homes in 2001 to regulate registered social landlords and allocate grant funding to registered social landlords
	Conveyancing solicitor	A solicitor with specific expertise in the legal process of buying and selling properties
	(The) Credit crunch	A term introduced to describe the fall in value of several international and UK merchant banks and its impact on the availability of credit especially access to mortgage capital, and increases in the proportion of deposit required to secure a mortgage
	Deck access	A row of properties on one or more level linked by a communal access stair and common walkway, built from 1948 onwards. Also defined as a tenement.
DMS	Development Management Scheme	A system of rules introduced for defining responsibilities of owners in a major flatted development which has multiple owners and shared facilities and which provides more specific information than is contained in the title deeds
DRS, (GCC)	Development and Regeneration Services. (Glasgow City Council)	The officer department of Glasgow City Council with responsibility for housing planning, advice, regeneration, planning and building control services
	4-in-a block	A particular form of flatted dwelling, constructed after 1920 containing four properties usually two upper flatted and two lower flatted, each with private access, usually with defined garden space and boundaries pertaining to each flat. Also defined as a tenement.
	Factor	A generic term for the manager of a property or group of properties acting on behalf of owners (see also Property Factor and Property Manager)
	Factoring Agreement	A written contract of agreement between an owner of a property and the property manager or factor
	Float	A charge levied on an owner at point of occupancy to provide a fund to the property factor to contribute to meeting the costs of property defects which may arise in the future
GCC	Glasgow City Council	The name of the local authority with responsibility for a range of public services within the boundaries of the City of Glasgow
GCSS	Glasgow Community Safety Services	An arm's length organisation of Glasgow City Council working in partnership with Police Scotland responsible for community safety, which includes mediation services to resolve inter personal disputes
GFC	Glasgow Factoring Commission	Independent commission set up in June 2012 to enquire into the operation of property factoring within the City of Glasgow
GHA	(The) Glasgow Housing Association (Ltd)	A housing association registered with the Scottish Housing Regulator established specifically in 2001 to take ownership of all Glasgow City Council municipally owned rented housing stock. The stock transfer of all 80,000 properties took place in March 2003 with its factoring subsidiary, GHA (Management) Ltd. (trading name – YourPlace), created later that year

ACRONYM	TERM IN FULL	NOTES
GWSF	Glasgow and West of Scotland Forum of Housing Associations	An organisation representing the interests of registered social landlords based within Glasgow and the west of Scotland
HIST	Housing Support and Intervention Team	A multi-functional team of officers charged with providing advice and support to residents and investigating alleged breaches of housing statute and other public health, environmental and social issues within a defined geographical area
HOHP	Home Owner Housing Panel	An independent panel of expert professionals who adjudicate on disputes between owners and property factors in terms of the Property Factors (Scotland) Act 2011 Part 2 Section 16
	Home Report	A legally required document to be provided by sellers to would-be purchasers which describes the condition and amenities of the property and its energy efficiency rating. The Home Report must be completed by an independent valuation surveyor
HMO	House in Multiple Occupation	Any living accommodation if it is occupied by 3 or more persons who are not all members of the same family or of one or other or two families (Housing (Scotland) Act, 2006, Part 5, Section 125)
HRA	Housing Renewal Area	A property or group of properties designated by the local authority and approved by the Scottish Government for comprehensive repair, improvement or demolition under Part 1 of the Housing (Scotland) Act 2006, and which replaced Housing Action Areas under sections 89 – 91 of the Housing Act 1987
	Justice Committee	A standing Committee of the Scottish Parliament
LAS	Landlord Accreditation Scotland	Voluntary body which encourages best practice in private renting tenancy management and landlord standards, and organises training for private landlords and letting agents in Scotland
LES, (GCC)	Land and Environmental Services, (Glasgow City Council)	The officer department of Glasgow City Council with responsibility for enforcement of non-housing legislation, collection of refuse collection, maintenance of parks and open spaces and roads and pavement maintenance
	Lands Tribunal	A national tribunal which addresses matters referred to it through due process concerning land ownership
	Maintenance order	Where owners fail to effect their own maintenance plan (see Maintenance plan below) the local authority may issue a Maintenance Order and appoint an independent agent if necessary to oversee the plan
	Maintenance plan	A power of the local authority to intervene where there is danger of deterioration of a building (Section 42, Housing (Scotland) Act, 2006), and to issue an order to owners to develop a maintenance plan to a property. In Glasgow these are targeted particularly at properties which have already received grant funding in the past, which have been the subject of revolving fund or missing share schemes or are in danger of falling into serious disrepair
	Management fee	The regular fee charged to cover administration costs of running a factoring service on behalf of a group of owners
	Missing share	A possible use of a power by the local authority to pay monies in advance to ensure that a repair can be carried out where one owner refuses to participate. The non-payer is then pursued for their share of the costs plus 15% of all professional and administration fees upon completion of the works
MSP	Member of the Scottish Parliament	Democratically elected representative of the people to serve within the Scottish Parliament
	Multi-unit development	A residential development being land on which there is erected a building or buildings comprising a number of flatted or maisonette properties. Can also be defined as a tenement in Scotland
OFT	Office of Fair Trading	A United Kingdom Government agency charged with protecting consumer rights
	Owner-landlord	An individual who owns or has a mortgage on a property but who is renting it to a third party

ACRONYM	TERM IN FULL	NOTES
	Owner-occupier	An individual who owns or has a mortgage on a property and uses it as their main form of living accommodation PFCC Property Factor's Code of Conduct Code of Conduct which is a legal requirement to be complied with by all registered property factors, as part of the Property Factors (Scotland) Act 2011
PLRU	Private Landlord Registration Unit	The City Council's officer team charged with registering and reviewing the registration of private landlords in the city and in encouraging and developing good private landlord practice
PMAS	Property Managers Association Scotland	The trade body representing property factors in Scotland
	Pre-1919 Tenement	A tenement building, usually of sandstone exterior construction built between around 1840 and the outbreak of the First World War.
	Private Factor	A property factor carrying out a business of providing property factoring or property management services on behalf of owners and defined as being in the private sector
PRHP	Private Rented Housing Panel	An independent panel of expert professionals who adjudicate on disputes between private rented tenants and their landlords. PRHP was developed from the original Scottish Rent Assessment Panel and now also addresses issues arising from alleged breaches of the Repairing Standard and alleged breaches of tenancy conditions
	Private Sector Housing	Residential property which is rented privately and/or owned by a private individual or company and not regulated by the Scottish Housing Regulator. Some aspects of private renting regulation (specifically registration of private landlords and HMO regulation) fall within the powers of Glasgow City Council
PSHG	Private Sector Housing Grant	A discretionary grant raised and administered by a local authority to enable major repair and improvement works in private sector properties
	Property Factor	A provider of property management or factoring services to a group of property owners (can sometimes be termed "property manager")
	Property Manager	A provider of property management or factoring services to a group of property owners (can sometimes be termed "property factor")
	Property manager's portfolio	The number and type of properties factored by the Property Manager/Property Factor
	Repairing Standard	A minimum standard of property condition set for private landlords but which includes strict conformity to electrical and gas safety regulations
	Revolving fund / stitch in time scheme	A form of assistance by the local authority to ensure that small scale common repairs are attended to when owners approach the Council for assistance directly. Operates in a similar way to the Missing share scheme described above
RTB	Right to Buy	Right to Buy introduced into law in 1980 permitting all Council and New Town Development Corporation and Scottish Special Housing Association tenants to purchase their rented property at a discounted price
RSL	Registered Social Landlord	Independent housing organisation registered with the Scottish Housing Regulator. An RSL's primary purpose is to provide social rented housing. Housing Associations, Housing Co-operatives and Local Housing Organisations all come under the term RSL
	RSL Property Factor	A housing association or its subsidiary company providing property factoring services under a not-for profit arrangement. The subsidiary may gift aid a proportion or all of any operating surplus generated to the parent body
SHARE		A training and development organisation providing services to registered social landlords
SAL	Scottish Association of Landlords	A limited company representing the interests of private sector landlords in Scotland and Local Housing Organisations
SFN	Scottish Factoring Network	A reference group of property factors which meets occasionally to consider best practice and policy in property factoring
	Scottish Homes	Body set up to acquire and onward transfer SSHA properties and provide housing association grant to RSLs and private housing development grant to local authorities. Wound up in 2001



ACRONYM	TERM IN FULL	NOTES
SFHA	Scottish Federation of Housing Associations	An organisation representing the interests of registered social landlords throughout Scotland
SHQS	Scottish Housing Quality Standard	The condition of a property which should be attained (by 2015) in respect of the state of repair, modern facilities, health, safety and security over and above the established Tolerable Standard
SPICe	Scottish Parliament Information Centre	An internal (Scottish) parliamentary service for MSPs providing research, information and documentation solely and impartially for MSPs
SHR	Scottish Housing Regulator	Body established under the Housing (Scotland) Act 2010 on 1 April 2011 to regulate Scottish Registered Social Landlords, following the wind up of Communities Scotland
	Shared titles	A situation where more than one tenement shares the identical title conditions as another tenement, even if these tenements are not physically linked or joined.
	Sinking fund	A fund or account into which a person or company deposits money on a regular basis in order to repay some debt or other liability that will become due in the future
SSHA	Scottish Special Housing Association	A government sponsored agency set up to provide overspill and economic expansion housing throughout Scotland from the mid 1950s until the late 1980s
	The Statement	See Written Statement of Services
	Statutory notice	A formal notice in a letter (usually served on a property owner or owners) to effect a specific repair under the relevant housing repair or improvement statute. The notice is prepared by an officer from the City Council and delivered directly to the occupant of the property. See also Works Notice.
	Stitch in time	See Revolving fund
	Tenement	Two or more related but separate flats divided from each other horizontally. The definition is framed broadly in order to include not only traditional tenement properties but also four-in-a-block houses and houses which have been subdivided. Subsequently broadened further to include high rise blocks and modern blocks of flats, the latter of which are usually referred to as multi-unit residential developments
TMS	Tenement Management Scheme	A system of rules introduced in 2004 for defining responsibilities of owners in a tenement which acts as a default position where title conditions are silent on one or more responsibility or burden
	Title Deeds	The legal description of a property which is also proof of ownership. Title deeds usually describe burdens on the owner and other parties who own the land or parts of the land in which the property sits
	Trading Standards	The dedicated team of Trading Standards Officers based within Land and Environmental Services, Glasgow City Council
VAT	Value Added Tax	Tax levied by the United Kingdom Government on goods and services which are not exempt for a tax levy
	Voluntary scheme	A repair or improvement scheme where all of the owners in a tenement agree to common works and agree to pay a proportionate share of the cost
	Works notice	A notice served on an individual owner or group of owners under Section 30 of the Housing (Scotland) Act, 2006 advising that a property is sub-standard, and that owners are failing to address issues of disrepair. If the owner(s) fail to effect the repair within a specific timescale, the Council has the power to carry out the works and pursue the owners for their share of the costs plus 15% of all professional and administration fees upon completion of the works
	Written Statement of Services	The document which must be provided by law to every factored owner by the property factor setting out services which are and can be provided by the property factor for a particular group of properties, as set out in the Property Factors (Scotland) Act, 2011





**Glasgow**  
**Factoring**  
**Commission**